

**INDUSTRIAL RELATIONS IN SOUTHERN AFRICA:
THE CHALLENGE OF CHANGE**

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Preface

This publication is the fifth issue in the Policy Paper Series of the ILO Southern African Multidisciplinary Advisory Team (SAMAT). The present paper, entitled *Industrial relations in Southern Africa: the challenge of change* reflects a survey of the dynamic transformations taking place in the industrial relations systems of Southern Africa, and within the larger global environment. Without paying much attention to historical developments in the various countries, the paper examines the environmental forces shaping industrial relations concepts, policies and practices in a region that has seen profound and fundamental changes in just a period of less than a decade.

The paper compares the industrial relations systems in the region and the overwhelming influence of labour relations practices in South Africa which, until the recent changes in that country, has had a negative effect on industrial relations practice elsewhere in the region. However, while phenomenal changes are equally taking place in all countries in the region, the speed or pace of the changes vary from one country to another. These changes are seen by the author as challenges for the key actors, that is: governments, employers and workers organizations. How are they perceiving these challenges? How are they responding? What implications are these challenges for their internal and organizational processes? These are some of the questions that the paper attempts to answer.

The paper makes several conclusions, including the positive responses by the respective stakeholders to address the challenge of change. Governments are redefining their roles and in the process allowing the parties in industry to have greater control of their relations, while workers and employers organizations are redefining their strategies to strengthen their membership base and the services for workers. The role of the ILO is seen as helping the parties to consolidate those positive initiatives taking place in the region by strengthening social protection, tripartite consultation and dispute settlement procedures.

SAMAT Policy Papers focus on policies and strategies that are pursued and developed in Southern Africa which affect labour standards, employment, and other labour issues. The new series is, therefore, intended to provide an ILO perspective on such issues, with a view to suggesting ideas and alternatives which can be taken account of by policy makers in the fields of labour and development. In this way, the Policy Papers aim to provide a basis for technical cooperation between the ILO and its constituents in Southern Africa.

Finally, I would like to acknowledge the assistance of the African Regional Labour Administration Centre, ARLAC, in contributing funds for the publication of this study.

This report was prepared by Tayo Fashoyin, Senior Labour Relations and Labour Administration Specialist of the ILO's Southern Africa Multidisciplinary Advisory Team in Harare, Zimbabwe.

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Director

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Chapter One

INTRODUCTION: CHANGING CONTEXTUAL ENVIRONMENT

The Industrial Relations Systems: An Overview

The prevailing industrial relations systems in Southern African countries¹ can be categorized into three broad levels of development. This approach to analyzing industrial relations will improve our understanding of not only the basic characteristics of employment relations in the region and the implications of recent fundamental environmental changes; it will also highlight the nature of the challenges facing the key industrial relations actors. Thus in the first category, there is the comparatively advanced industrial relations system in South Africa. This system has highly developed institutions and processes which are a reflection of the comparatively high level of economic and industrial development in the country. Historically however, this system was best known by the apartheid policy by which the majority of the population was denied fundamental human rights, including the right to freely organize and bargain collectively. This policy was dismantled in 1994 with the introduction of full democracy and accompanied by an extensive reform of industrial relations policies and practices.

The second category comprises the industrial relations systems in countries such as Swaziland, Zambia and Zimbabwe in which workers have enjoyed a relatively longer history of freedom of association and the right to collective bargaining. With the exception of Zimbabwe which attained independence in 1980, after more than two decades of oppressive minority rule, these countries have enjoyed relative political stability. However, in the particularly case of Swaziland, the prevailing system of governance, coupled with internal and external factors, has not allowed the parties in industrial relations the freedom they need to play their respective role in labour relations. Also in some cases, public policies have not been generally in favour of good industrial relations.

In the third category are countries such as Botswana, Lesotho, Malawi, Mozambique and Namibia whose industrial relations systems though old in a few cases, have remained underdeveloped until very recently. This arose partly as a result of internal political disturbances and partly as a result of the overbearing influence of the apartheid system in South Africa, both of which have generally inhibited proper development of labour market institutions. Namibia attained independence only in 1990 after being governed by South Africa. Mozambique plunged into a devastating civil war soon after

¹ The geographical area covered in this report refers to ILO/SAMAT's jurisdiction which includes 9 countries of Southern Africa, namely Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia and Zimbabwe.

independence in 1975, which lasted until 1994 following a peace agreement. In the case of Malawi and Lesotho, while these countries attained independence as far back as the 1960s, they have operated under largely undemocratic political systems which undermined basic industrial relations tenets, such as freedom of association for workers and their right to bargain collectively. Botswana is in a unique category in this group, for while the country has enjoyed the status of being the most stable and prosperous economy in the continent, it has comparatively little experience in collective bargaining, and though trade unions are free, they have been unable to use the bargaining machinery to beneficial results. Until very recent times, the government has been the most important actor in wage determination in the country.

From the onset, one needs to bear in mind that the development of industrial relations in the whole of Southern Africa had, in varying degrees, been negatively influenced by the prevailing system in South Africa particularly before the collapse of apartheid. In the other countries of the region, workers' rights to form organizations of their choice and bargain collectively with employers are recognized. However, the fact that the South African economy has been dominant in virtually all the neighbouring countries meant, in practice, the influencing impact of labour relations practice in South Africa. In other words, the effect of human resource management policies in apartheid South Africa, given the country's comparatively superior level of industrial development, has been to inhibit progressive development of industrial relations in the neighbouring countries. Thus, several employers (whose origin was from South Africa) in these countries adopted the anti-labour posture. Moreover, there is the inherent weakness of the trade unions and in some cases employers' organizations, which is worse oftentimes by unfavourable public policy.

As this study points out, it is nevertheless an irony that while industrial relations in South Africa is undergoing extensive and generally positive reformation, particularly in so far as policy framework is concerned, the same institutions in the other countries which had been negatively influenced by the former are yet to fully overcome the problem of legitimacy, internal weakness and what appears to be an uncertain public policy direction. It should not surprise the observer to discover, therefore, that labour relations practice in Southern Africa is highly adversarial. This seems to be the result of the legacy of apartheid in countries such as Namibia and South Africa.

Adversarialism also prevail in the other countries where apartheid labour policies have had an infectious effect on employers operating elsewhere in the region, and also probably because post-independent labour policies in these countries have not been too accommodating of trade unions. An important effect of these is that generally in Southern Africa, the labour market is highly segregated on race, occupation and gender lines, which pits one side of industry against other. Recent detailed reports on the labour market in South Africa, for example, presents the effect of this segregation on wages and other

employment conditions.² The impact of this phenomenon on industrial relations is enormous, particularly where the issues of discussion have remained doggedly focussed on the violation of workers rights and distributive issues of employment relations.

Two views, respectively of workers and employers in the South African workplace capture this adversarialism:³

We [workers] work under pressure. Workers are dismissed for no good reasons. We are afraid even to talk anything because workers are being dismissed at a rate of six per day. We are very afraid. We are not happy.

I [manager] have adopted a more authoritarian style of management at this stage of the fight, because the shop stewards oppose everything we suggest. Although we sit around and talk once a month, it still seems as though they are anti-management. They must keep face with the workers, but if we allow them to be popular, we will close down.

Adversarialism as manifested in labour and management relations in the workplace also extends to the labour and government relationship. Indeed, one of the outstanding features of labour relations in Southern Africa is the pronounced state of union-government conflict as the unions seek to force, often reluctant governments, to change unfavourable labour policies towards their members, or in response to what they consider to be unfavourable environmental effect on their living conditions. The frequent occurrence of stay-away (a euphemism for national strike) in the region is indicative of fundamental differences between the two sides on the nature and scope of the change called for by the profound economic and political developments in the region.

Thus the strike or stay-away has been used to induce or stimulate bipartite dialogue between government and labour in the region. In a situation such as this, the reaction of the state has equally been harsh as governments have typically gone outside the existing industrial relations framework to invoke highly punitive measures by which workers fundamental rights to associate and participate in decisions affecting them are considerably circumscribed. Nevertheless, not only are these approaches unsustainable over time, they do not contribute to stability in labour relations both at the national level and at the workplace.

²See, for example, Guy Standing et al, *Restructuring the Labour Market: The South African Challenge*. Geneva, International Labour Office, 1996 and Liv Torres, *South African Workers Speak*. Oslo, Forskningsstiftelsen FAFO, 1995.

³Judy Maller, ■ Worker Participation and Trade Unionism: Case Studies of Workplace Democracy in South Africa ■ *Economic and Industrial Democracy*, Vol. 15, 1994, p.244.

While these outcomes reflect prevailing positions of the parties in the industrial relations system, it is important to bear in mind that the reform of industrial relations is on-going in all the countries in the region. There is gradual and noticeable change taking place in the countries, both with respect to labour-management relations and the relationship between government and trade unions. In addition, as the study cited above points out, there are employers who have recognized the critical role of good labour relations in the workplace. Thus, a study of labour relations situation in a Volkswagen plant in South Africa reveals more cooperative relations with a distinctive pluralist approach which recognizes the central role of the union. Maller concludes that this approach, coupled with a strong union, has enabled the union in the plant to acquire many rights and facilities which strengthens its independence and enables it to play a critical role in workplace governance.⁴ As is argued in the present study, this is one of the key challenges facing the industrial relations actors in the process of economic and political transformation in Southern Africa.

Changing Political and Economic Environment

In spite of the differences in the development of industrial relations across the region, all the countries are confronted equally with the challenge posed by the monumental changes and transformation in the economic and political spheres which are taking place throughout the continent and which are radically influencing industrial relations in Southern Africa. Though the pace at which the countries in the region are responding to the environmental changes vary from country to country, there can be no doubt that internal and external pressures are inducing the stakeholders in industrial relations to adapt to the changing environment. This study takes the view that the pressures that are inducing the on-going changes have come from two broad and fundamentally important external forces: the democratization process and economic reforms both of which are in various ways influencing the principles, practice and indeed the behaviour of the key industrial relations actors in the labour market, as well as their response to developments in the product market. An understanding of how these external forces are impacting on industrial relations is important to an appreciation of the challenges facing the key actors and the nature of responses required of them.

⁴Maller, *op. cit.*, p. 249.

Democratization and Public Policy Reform.

The democratization process has been widespread in the countries of the region, perhaps at a pace far greater than what obtains elsewhere in the African continent. Undoubtedly, the democratic change in South Africa by which the apartheid policy of separate development and minority rule was dismantled in favour of multi-party democracy constitutes the major political reform in the region in the present decade. Thus, in 1994, a fully democratic government elected by *all* South Africans was sworn into office. Accompanying this historic achievement were other associated reforms, including the industrial relations issues which will be highlighted in this study. Earlier, in 1990, Namibia, similarly afflicted by the apartheid rule, achieved independence and brought about a democratically elected government.

In Malawi and Zambia authoritarian or one party regimes collapsed in 1991 and 1993 respectively, in favour of multi-party democracies. In Mozambique, seventeen years of civil war ended in 1994 ushering in an era of democracy and economic reconstruction. Zimbabwe, which attained independence in 1980 abandoned plans to introduce a *de jure* one party state, following the introduction of economic liberalization in 1991. In Lesotho and Swaziland, two countries which had attained political independence since the mid-1960s continue to trotter in the process of political reform. But, while Lesotho operates under a pluralist political system, albeit inadequate, Swaziland is discovering that the democratization process is practically irreversible.

The impact of this externality on industrial relations is far more dramatic in South Africa than in the other countries and this is highly significant, given the influential role of industrial relations practices in that country on the prevailing practice in the region as a whole. In South Africa the speed with which legislative and institutional reforms are taking place derive from democratization and the high level of development of the civil society groups which brings the realization that separate development is not sustainable. This awareness has brought into surface the unacceptable state of labour relations, and the need to reverse as quickly as possible the legacy of apartheid and thereby empower the disadvantaged majority with their rights to free association in trade unions, bargain collectively on employment conditions that affect them, and generally participate in the social and economic development of the country. Today, the industrial relations situation in South Africa is fundamentally different from what existed 5 years earlier.

For example, among the key legislative reforms that will be examined in this study are the revolutionary Labour Relations Act and the Basic Conditions of Employment Act. In addition, a number of institutional reforms have been introduced in the country, with the creation of such bodies as the Commission for Conciliation, Mediation and Arbitration, CCMA, and the National Economic Development and Labour Council, NEDLAC. These are but a few of the extensive legislative and institutional reforms that are changing the face of industrial relations in South Africa today.

Similar progressive reforms are taking place in the other countries in the region, although such reforms have not totally succeeded to cast away the yoke of the apartheid era influence. Thus, while countries such as Lesotho, Malawi and Swaziland, for example, have introduced legislative reforms in labour relations, questions remain as to the extent to which the legislative framework in these countries adequately address the enormous labour relations anomalies brought about by the legacy of apartheid, dictatorship and autocratic rule. In Swaziland, for example, the government and the trade unions remain, as at the time of writing, in acrimonious relationship over the need to reform the Industrial Relations Act of 1996 in a way that makes public policy more protective of workers rights to assemble, form independent organizations and free of encumbrances in the exercise of their rights as workers.

The difficulty with reforms in some of the countries has less to do with the introduction of policy itself, but with their implementation. This difficulty may have arisen partly because in most countries in the region, about 70 per cent of the major employers in the formal sector have links with South African businesses. Partly, the small size of the industrial base and wage employment prevailing in some of the countries, say in Lesotho, Malawi and Swaziland may inhibit the forthrightness of public policy or its enforcement. In any event, these factors are certainly important in understanding the dynamics of industrial relations in the region.

One important issue brought to light by democratization and which calls for attention in *all* the countries of Southern Africa is what the appropriate role of government should be in the industrial relations environment. Should this role, in the context of fundamental political and economic transformations that are taking place in the countries, continue to be interventionist through which the state dictates and enforces the rules of industrial relations? Or, should it be primarily facilitative, that is, providing a sound and conducive enabling environment for the direct actors to relate among themselves as independently as possible, as well as operating as cooperating partners in socio-economic development?

Economic Reforms and Liberalization.

The introduction of fundamental macro economic reform policies, popularly referred to as Structural Adjustment Programme (SAP), has spread across African countries for nearly two decades now. In the Southern African region, all countries but Botswana and South Africa have introduced SAP measures.⁵ Generally, these policies are intended to modify the structure of an economy so that it can maintain sustained growth

⁵In the two countries there are in place economic reform policies which share some of the objectives of SAP.

rate, through stabilizing the macro economic environment, including balance of payments, and alteration in the pattern of production, resource allocation and the structure of demand. Policies of SAP includes, for example, privatization of state-owned businesses, deregulation and trade liberalization, by which prevailing state controls and intervention are replaced with market forces. These policies have had profound effect on labour relations policies and practices in the Southern Africa region.

There are many ways by which economic reform policies and globalization impact on the labour market and specifically on industrial relations. Economic restructuring of the type embodied in SAP imply a major change in the role, strategy and behaviour of the key partners in industrial relations, as well as the institutions they use to regulate their relationship in so far as employment conditions are concerned. A particular example is the wage rate which is determined usually through the collective bargaining process for organized workers, and sometimes indirectly for other groups of workers. Other employment issues which are affected by macro economic reforms include non-wage issues, such as the structure of bargaining itself, the dispute resolution machinery, and other forms of bipartite and tripartite cooperation. In all these areas, policies based on SAP and the influential effects of globalization have and continue to influence the nature and structure of the labour market, as well as the methods of industrial relations practice.

A striking feature of these policies in Southern Africa is the heightened integration of the economies of the region through the Southern African Development Community (SADC), in trade and financial markets with the rest of the world. But whether globalization has enhanced economic performance in Africa is outside the scope of the present survey. One point seems clear, as a recent IMF report states: ■the pressure of globalization...has served to accentuate the benefits of good policies and the cost of bad policies■⁶. Whatever the effect, these policies have focussed more attention to issues of the labour market, migration, productivity and competitiveness, as well as workers■ protection policies in which the role of labour standards form a major part.

Privatization and Workforce Reduction. It is beyond this study to assess the full impact of privatisation on labour, and so our effort at this point would be to give a broad overview of the effect of workforce reduction due to privatization on employment, which in turn has an important bearing on industrial relations. Even at this level, our characterization of the phenomenon can hardly be said to represent the full scale account of this challenge. In any event, there is perhaps no element of economic reform policies that has impacted most severely on industrial relations than efforts by states to restructure their economies, including public sector rationalization of employment aimed at achieving the goal of efficiency and balanced budget. In the private sector, restructuring is undertaken as a necessary corporate exercise to improve productivity, efficiency and

⁶*Globalization. Opportunities and Challenges.* World Economic Outlook. International Monetary Fund, Washington, DC., May 1997, p. 72.

competitiveness.

As a result of these policies, the privatization of formerly state enterprises has led to massive retrenchment of workers in both the private and public sectors. Table 1 presents an illustration of retrenchment in Botswana during 1991-95. The table reveals the gradual decline in formal sector employment. It is important to bear in mind, as the Ministry of Labour warns, that the figures in this table are based on reported cases only. In other words, the evidence is more than likely to understate the gravity of the problem. However, given the comparatively prosperous state of the Botswana economy, the country's experience can only point to a more severe case of employment loss in the less prosperous economies in the region. This observation is probably also true of South Africa. In that country's highly important mining industry, over 55,000 jobs were lost between 1997 and the first half of 1998 due to restructuring and closures.

Table 1: Distribution of Reported Retrenchment in Botswana, 1991-1995

INDUSTRY	NUMBER OF EMPLOYEES					TOTAL FOR INDUSTRY
	1991	1992	1993	1994	1995	
Building; Construction	699	2,003	1,664	1,840	1,337	7,543
Exploration; Mining; and Quarrying.	244	18	26	29	-	317
Manufacturing; Service; and Repair.	129	3,184	918	1,139	1,139	6,509
Retail and Wholesale	33	13	54	104	215	419
Garage, Motor Trade and Road Transport.	-	-	-	54	854	908
Hotel; Catering and Entertainment	26	12	40	95	206	379
TOTAL PER YEAR	1,131	5,230	2,702	3,261	3,751	16,075
CUMULATIVE TOTAL	1,131	6,361	9,063	12,324	16,075	-

Source: *Eleventh Annual Report of the Department of Labour and Social Security, Botswana, 1995.*

In Mozambique where the socialist orientation favoured state ownership of business, the privatization of such enterprises started with the promulgation of a decree (Decreto No. 21/89 of 23 May, 1989), and subsequent facilitating laws. Available records reveal that between 1989 and 1993, a total of 239 state-owned small and medium-sized enterprises were privatized, 165 of which were outright sales; 24 were joint ventures with private partners, while 50 were leasing agreements.⁷ Yet, both the private and public sectors are continuing in a restructuring that is intended to reduce the level of overstaffing, estimated at between 25 per cent and 50 per cent of the desired level.

In the other countries, only estimates of the intensity of retrenchment due to privatization and industrial restructuring exists. In Zimbabwe, for example, conservative estimates indicate that under the Economic Structural Adjustment Programme (ESAP), over 20,000 workers would be retrenched as a result of industrial restructuring and closure of businesses. As a matter of fact, casual empiricism suggest that this figure is a highly conservative estimation. In the country's civil service, it is also projected that as many as 25 per cent of the civil servants would be retrenched, in addition to more than 20,000 workers from parastatals.

Whichever way one looks at this problem, the privatization of state-owned business, and generally all measures of workforce reduction have had adverse effects on labour relations in most countries, not only in the context of whether or not there is consensus on which organizations should be privatized and who should buy,⁸ but also the process by which privatization is implemented. In most countries, with particular reference to Zambia and Zimbabwe, the social partners argue that consultation is inadequate and when made, it is meant to rubber-stamp the policy. Also at the enterprise level, consultation is often meant to *inform* workers. As a result, disputes have arisen as to the manner of implementation, the quantum of separation package, and in some cases, the non-payment of the package whether agreed or imposed.

There are other labour relations issues associated with privatization. In practically all cases, the 'new' owners of privatized businesses have the least interest in the development or promotion of labour relations policies in their businesses; they often do not want to become members of the existing employers' organization concerned with labour issues, preferring instead, the all-purpose chambers of commerce or the like, which are concerned with trade and commercial interests of business. Thus it is argued that, the

⁷Giovanni Gnechi-Ruscione, *Mozambique Private Sector Review*. Washington, D.C. International Finance Corporation, May 1994.

⁸For example, in some countries, such as Lesotho, Zambia and Zimbabwe, ownership problems have been highlighted because most indigenes have no means to purchase the enterprise being sold. Aside from the fact that such a policy will not contribute effectively to poverty reduction, problems of this nature tend to heighten social discontent.

new employers in several countries are taking advantage of liberalization policies of government to introduce new employment conditions which are, for the most part, sub-standard and usually at variance with national legislation.

Informalization of Work. A related effect which is associated with economic reform policies and liberalization is the enormous increase in the scale of informal employment. Though this sector has been a major characteristic of African economies for a long time, economic reform policies have tended to aggravate the informalization of the labour market. As the formal sector continues to shrink owing to economic reform and liberalization policies, the informal sector is correspondingly growing.

Various accounts on the informal sector have encountered difficulty in defining the concept, scope and size of the sector, and so we can do no more than bear this dilemma in mind as we describe this phenomenon. Table 2 presents some rough estimates of the size of the sector in Southern Africa. While in South Africa, it represents only 17 per cent of the total employment in 1995, the sector accounted for 62 of total employment in Lesotho 1996, 85 per cent in Mozambique in 1990 and 83 per cent in Malawi in 1987. If one considers the age of the figures from Malawi and Zimbabwe, the best that can be said is that the records on the informal sector in the countries are probably underestimated.

In Africa generally, the ILO estimates that the informal sector accounts for 61 per cent of the urban labour force.⁹ The annual rate of expansion was 6.7 per cent between 1980 and 1990, which is far much higher than in Latin America where the growth rate during 1990-1994 was 4.7 per cent. According to ILO estimates, the sector is expected to generate 93 per cent of all additional jobs in the present decade.

Compounding the problem associated with the informalization of the labour market is the growth of atypical or irregular forms of employment, such as part-time work, contract labour, homework, casual work, unregistered self employment, family businesses and the like. Though these forms have grown in most cases from industrial restructuring, they also share some of the characteristics of the informal sector, such as poor wage and other inferior employment conditions. In countries such as Namibia where extensive family businesses are prevalent, the highly pervasive agricultural and fishing industries are in this category. Such businesses tend to have a conservative view of unionism.

⁹*Industrial Relations, Democracy and Social Stability.* World Labour Report 1997-98. Geneva, International Labour Office, 1997, pp. 178-179.

Overall Employment Under Economic Reform. It is extremely difficult to give a fair and objective data description of the impact of economic reforms and liberalization on employment in Southern Africa. Apart from the paucity of data and also its unreliability, there is no consensus on the extent and scope of unemployment associated with economic reforms and liberalization. Moreover, the statistics often do not capture all forms of employment, particularly the new types, many of which are not susceptible to accurate enumeration mechanisms. Additionally, there is serious measurement problem, particularly since attempts to provide overall data for each country on a comparative basis inevitably mean that the data have to be obtained from widely disparate sources. Bearing these shortcomings in mind, the data presented in Table 3 below must be seen as illustrating the likely direction of employment in the countries.

Table 2: Employment in the Informal Sector

Country	Total Informal Sector 1	Wage earners 2	Own account 3	1 as % of Total employed 4
South Africa (1995)	1.7m	.4m	1.3m	17
Zimbabwe (1987)	.23m	na	na	8
Zambia (1993)	2.02m	na	na	72
Lesotho (1996) *	.31m	na	.2	62
Malawi (1987)	2.8m	na	na	83
Mozambique (1990) ++	2.9m	na	na	85

Notes: +4,500 people did not state whether they were informal or formal employment.

++ There is a discrepancy of about 8,000 people unaccounted for in the employment data.

* includes migrant workers in South Africa

Sources: *South Africa:* based on October Household Survey, 1995 reproduced in NEDLAC Annual Report 1997, pp.78-85; *Zimbabwe:* Labour Force Survey, 19986-87. Harare Central Statistics Office; *Zambia:* Social Dimensions of Adjustment: Priority Survey; Lusaka Central Statistical Office; *Malawi:* Population Census; *Lesotho:* ILO/UNDP Employment Policy Project Phase I; *Mozambique:* Mozambique Public Sector Pay and Employment Review. World Bank, 1991.

As the table reveals, while it appears that employment has grown in all countries on which data is available between 1990 and 1995, with the sole exception of Swaziland, the proportion of growth is quite small. In Malawi, paid employment increased by 19 per cent between 1990 and 1995, but the labour force increased by 35 per cent during the same period. Also in Mozambique, the increase of 34 per cent in employment contrasts with 57 per cent growth of the labour force during the same period. In that country, whereas 78 per cent of the economically active population is in agriculture, an estimated 60 per cent of the economically active population (ages 15-64) of 8.5 million people were unemployed in 1995.¹⁰ Of this, 52.1 per cent were looking for their first job in 1995, and had no work experience. Yet, only 106,276 of the unemployed people registered in employment centres in 1995.¹¹ The Mozambican case is particularly instructive, because the country is undergoing tremendous transformation as a result of the abandonment of socialist policies in favour of a market driven economic system.

Table 3: Employment and the Labour Force in Southern Africa, 1990-95

	Employment (E)*		Labour Force (LF)		E as % of LF	
	1990	1995	1990	1995	1990	1995
Botswana	209.0	232.6	445.64	633.0	47	37
Lesotho			808.32	806.0		
Malawi	473.37.0	563.9	3494.9	4736.0	14	12
Mozambique	1038.0	1394.0	5411.0	8471.0	19	16
Namibia		192.7+	537.25	641.0		30
Swaziland	92.0	87.04	306.35	318.0	30	27
South Africa	5301.5	8496.0	12434.3	16187.0	43	52
Zambia	359.6+	484.9	2643.7	3741.0	14	13
Zimbabwe	1192.2	1239.6	3920.9	5031.0	30	25

Sources: Various, including the ILO *Year Book of Statistics*, *World Tables* of the World Bank, ILO *World Labour Reports*, *Labour Force and Establishments Survey* of the various countries.

* Refers to paid employment; +1994 figures.

¹⁰UNDP/ILO Project on the Employment Component of the Integrative Programme for Vulnerable Groups. See also Joao Loforte, *Structural Adjustment and Job Creation in Mozambique*. AEPRIMO/ILO Seminar on Employment Policy in Mozambique. Maputo, 17 June, 1997.

¹¹UNDP/ILO Project on the Employment Component of the Integrative Programme for Vulnerable Groups.

In other words, what Table 3 reveals is that, excepting the case of South Africa where paid employment as a proportion of the labour force has increased during the 1990-95 period, the rate of increase in the labour force substantially outstripped that of paid employment in all countries during the period. This can only mean one of three things; that wage employment has been falling either as a result of slow employment growth, extensive retrenchments, or both. This is not to say that all sides in industry are oblivious of the inevitability of employment reduction, at least in the short run, as part of the process of assuring long-term economic growth. The trade unions, for example, no doubt appreciate the inevitability of employment loss. Recently, the Deputy General Secretary of COSATU, Mr Vavi, acknowledged this in explaining the obvious reduction in the propensity of workers to go on strike. He observed that ■ workers also understand that certain companies - electronics and textiles - are being devastated by over-hasty tariff reductions ■.¹²

Nevertheless, we need to bear in mind that apart from the negative impact of economic reform, including liberalization, on the level of formal employment, it has tended to aggravate wage inequality, contradicting the assumption that liberalization would raise the relative wage in low-wage countries.¹³ Unless appropriate policy measures are in place, the overall impact of these environmental pressures on industrial relations is to increase labour and management conflict, and intensify adversarial relationships.

The Challenge for Industrial Relations

The foregoing outline of aspects of the prevailing labour markets in the countries of Southern Africa presents a number of challenges for the key actors as they situate themselves within the framework of the changes and transformations inherent in the environmental forces which are influencing industrial relations. The reform of the legislative framework and the labour market are redefining both the institutions and processes of industrial relations. The role of the parties, including the state is changing, as is their status and strategic approach to industrial relations.

For example, the commutative effect of years of interventionist policies was to give enormous power to the state in industrial relations. This, to an extent, has tended to nurture the adversarial relationship that is now inimical to sustained socio-economic development. While it is true that this picture is, to a considerable extent, a natural result of the long spell of deprivation of workers ■ basic right to organize and participate in

¹²*Financial Mail*, January 23, 1998.

¹³*National Policies in a Global Context*. World Employment Report 1996/97. Geneva, International Labour Office, 1996, p. 189.

decisions affecting their working conditions, the question might be asked whether or not the contending parties are adequately or appropriately responding to the changing environment around them.

The point of view of this study is that in spite of the marked differences in the level of development of industrial relations systems in Southern Africa, they share many important characteristics which have reflected the long-spell of anti-labour policies and practices in the region. However, a fundamentally changing economic and political environment is inducing changes in industrial relations institutions and processes. The after effect of changing environmental and institutional framework poses important challenges for the partners.

Following the foregoing brief analysis of what we consider to be the key environmental forces, the study proceeds with an examination of the changing status and role of the social partners and identifies certain decision options which they face in the process of responding to the economic and political environment. In Chapter 3 the evolving labour-management relations and the growing decentralization of collective bargaining are presented. It is suggested that this trend will enhance the role of the parties in the workplace in the regulation of their relationship. Chapter 4 examines the critical role of tripartite cooperation in dealing with the subjects of social and labour issues, but notes that existing tripartite machinery is generally inadequate in dealing with the numerous social and economic issues of today.

In Chapter 5, the changing role of the state in industrial relations is examined, and the chapter argues that public policy is changing from a controlling or interventionist perspective, to providing a favourable public policy environment. In other words, the emerging direction of public policy is towards facilitating the system through which the parties will have a sizeable role to play in labour relations, particularly at the enterprise level. The critical role of international labour codes as an important instrument for establishing the positive role of the state in social protection is also emphasized. In the final Chapter (6), a summary of the important trends in industrial relations, however tentative, is presented. Some ideas on how collaboration with the International Labour Office can strengthen existing reforms are considered.

*Chapter Two***CHANGING STATUS OF THE SOCIAL PARTNERS**

The introduction of social and economic reforms favouring a market driven economic system, as well as political transformation to multi-party democracy in Southern Africa have begun to change the status and role of workers and employers organizations, and have further underscored the importance and challenge of sound labour relations in the region. The task facing the trade union movement and the employers' organizations as partners in labour relations is daunting and enormous. For them, particularly the trade unions, the challenge of removing the scars of decades of apartheid, dictatorship or unilateralism, as the case may be, is by no means a simple one as they seek to jettison old strategies, methods and policies in favour of member-oriented services, and a move towards non-adversarial and clearly developmental approach to labour relations under the prevailing dispensation in each of the countries.

Challenges Facing Trade Unions

Trade unions were a critical force in bringing about the collapse of apartheid, dictatorship and authoritarian one-party rule, and all indications are that they will continue to maintain a powerful force in the countries of Southern Africa. Generally, trade unionism remains an indispensable institution for the protection of workers rights and employment conditions. However, this strength of trade unions will be greatly enhanced by the extent of their representativity and internal cohesion, their grasp of the pressing issues of macro and micro economic conditions, and the extent to which they can evolve a proactive strategic role for themselves as partners in national development.

The struggle for legitimacy, recognition and consultation as a respectable partner in socio-economic development and nation-building has, in varying degrees of emphasis, been fought and, to a large extent, won. Public policy has generally recognized the legitimacy of trade unions. However, a favourable public policy is one thing, and its faithful enforcement is clearly another. In some countries, such as Swaziland, there still remains considerable scope for a legislative and political environment in which the trade union movement can claim to freely operate as partner in economic development. In that country, the primary legislation on labour relations, the Industrial Relations Act, 1996, remains a source of a long-drawn controversy and acrimony between labour and the government. Our perception of the challenge facing trade unions concerns three broad areas, namely size and representation, role in national development and internal cohesion.

Enlarging the Orbit of Union Influence. One of the major challenges facing trade unions as an important economic and social force, particularly in the era of economic reforms and

liberalization has to do with the twin issue of broadening their representativeness in the labour market, that is to say, how to arrest a growing erosion of their traditional organizational base and also extend union organization to the unorganized informal sector workers. The need for trade unions in the region to spread their net wide enough to cover the large constituency of unrepresented workers is certainly one of the key challenges facing trade unionism today. Theoretically, the numerical representation of trade unions is one of their greatest assets. Even among the highly skilled occupational workers, the larger the membership the greater their effectiveness. The importance of numerical strength becomes clearer because more often than not, it is positively correlated with the fortunes of any union. As a Namibian trade unionist recently admitted, ■ strength is rooted in ..bargaining power, which is a result of a well-organised mass basis within the working class ■.¹⁴

Table 4 below provides some evidence on the representation of trade unions in the labour force in countries of the region. Inadequacy of the data makes a firm conclusion hazardous. In any event, it can be seen that where some information is available, union membership did not increase during the 1990-95 period. The cases of Botswana and Zambia illustrates the phenomenal decline in union membership. In the latter country, the decline in union membership represented 42 per cent during the period! Our guess is that in the countries where we lack data, the state of unions is similar to these two countries. As the table reveals, the exception is South Africa which attained an 8 per cent increase in union membership during the period 1990-95. However, like other trade union movements in the region, South African unions represented a declining fraction of the labour force during the period.

The explanation for this decline in union membership can, to a considerable extent, be attributed to prevailing economic policies and liberalization which, as shown earlier in Chapter 1, have reduced the size and growth of the workforce in what is generally known as the formal sector. On the other hand, it would appear that some trade union movements in the region have been complacent, tending to ignore the critical need to engage in continuous organization of workers, particularly in the formal sector. Bearing this in mind, the evidence that trade union membership in South Africa has increased steadily in recent years must be underlined by the euphoria associated with the democratization process in that country. The dawn of a new era actually contributed to accentuate the surge in union membership in South Africa, often without much organizing effort on the part of the benefitting unions.

¹⁴H. Melber, ■ Trade Unions in Namibia. Which Way and Where To? ■ *Political and Economic Monthly*. (Sapem Review), Vol. 7, No. 1, October 1993, p. 63.

As a recent report explains this phenomenon: ■ Only in a few cases have affiliates conducted well-planned and targeted recruitment drives. In the late 1980s unions were so overwhelmed by workers flocking to join that they frequently neglected to actively recruit and organise ■.¹⁵ However, such gains can be considered as ephemeral and of a transient nature, as only deliberate and continuous organizing drive can sustain workers attachment to unions.

Table 4: Trade Union Membership, 1990-95
(■000)

Country	No.of central unions	No. of National unions	Total Membership		Membership as % of labour force	
			1990	1995	1990	1995
Botswana	1	25	53	45*	12	7
Lesotho	3	36		3	na	4
Malawi	1	12		61	na	13
Mozambique	2	18	na	222	na	3
Namibia	1	26		55*	na	21
South Africa	3+	213	2900	3154*	23	19
Swaziland	3	26	na	21*	na	7
Zambia	1	21	477	274	18	7
Zimbabwe	1	34	na	250*	na	5

+Representing the 3 largest union centres, i.e. COSATU, FEDSAL and NACTU.

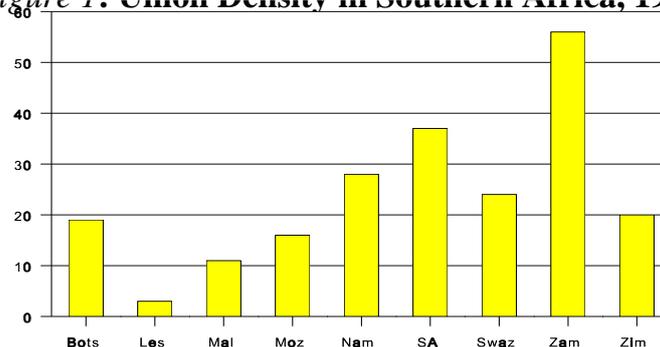
Source: All figures, except those in asterisk are based on figures available with the author. Asterisk figures from *Industrial Relations, Democracy and Social Stability*. World Labour Report 1997-98. Geneva, ILO, 1997, p.235

¹⁵*Unions in Transition. COSATU at the Dawn of Democracy*. Johannesburg, National Labour and Economic Development Institute, 1994, p. 20.

However, the implicit conclusion arising from Chapter 1 and supported by Table 4 that economic policies have had adverse effects on union membership is only a part, because union representation in the formal sector in most economies in the region is appallingly low. As Figure 1 below shows, union density, defined as union organization of workers in formal or paid employment is, with the exception of Zambia, below 40 per cent for all countries. Zambia has the highest union density of 56 per cent, a record which is only surpassed by Cote d'Ivoire's 79 per cent in Africa as a whole. Union density in Zambia, and also in South Africa (40%) compares favourably with those of some South American countries, and is considerably higher than what obtains in many advanced industrialized countries, such as the United States and Canada.¹⁶ Namibia, Swaziland and Zimbabwe also have a high rate of unionization which can be explained, in the same way as in South Africa, by the long period of denial of workers rights.

In the case of unions in Malawi and Mozambique, they are in their 'formative' stage. In Malawi, unions were forcefully repressed during the more than 3 decades of the Banda dictatorship, and while the return to democracy has spurred union organization, this drive is yet to convince the frustrated workforce which has gone through decades of low wages and poor working conditions. On the other hand, trade unionism in Mozambique is undergoing a transition from 'total unionization' under socialism to free association in a deregulated market economy, under which the unions have to embark on aggressive recruitment of members.

Figure 1: Union Density in Southern Africa, 1995



Source: Computed from Tables 3 and 4.

In summary, what the evidence in Figure 1 imply is that the other side of the argument, namely that trade unions have not done well in organizing workers in their

¹⁶In these two countries, for example, union density is 14.2% and 37.4% respectively. See *Industrial Relations, Democracy and Social Stability*. World Labour Report 1997-98. Geneva, ILO, 1997, p. 237.

traditional constituency is correct. In Botswana, for example, the trade union movement membership of roughly 45,000 is less than a quarter of the potential of over 200,000 workers. Admittedly, there can be no denying the fact that the environment for union organizing has not been particularly favourable, in part because of the sometimes unfavourable legal framework and in part because of employers' hostility. On the other hand, several union organizations have not come to terms with the obvious fact that they need to turn these difficulties to opportunities and a justification for aggressive organizing strategies so as to forestall any design the employer might have to undermine the union effort.

The formal sector apart, another constituency of unorganized workers is the small-scale enterprises sector, as well as the informal sector. The size of this combined sector is not susceptible to accurate or equivocal statistical precision but, as shown in Chapter 1 and generally understood, this is the growth sector, or the sponge which has served as the ultimate source of employment particularly for workers who lost their jobs in the formal sector as well as new entrants who cannot find wage employment in the era of economic reforms.

The need for trade union representation in this sector can be justified from many standpoints. First, as noted, it is the growth sector such that the impetus for trade union organization is potentially great. Second, being the major source of employment, trade union representation is extremely necessary so as to protect the employment conditions of workers in the sector. Indeed, organizing this sector will strengthen workers' voice in the socio-economic decision making process.¹⁷ Third, it may well be that union survival as a social force depends largely on its ability to bring on board this large category of workers, so as to enhance the representativeness of the unions and thereby enjoy respectability and attention of the other partners.

To forestall any misunderstanding of the suggestion that unions are insensitive to the challenge of representativity, it must be added that several unions in the region are, in varying degrees, scope and commitment, addressing the task of enlarging their orbit of operation to include workers in informal employment and in the small-scale enterprises sector. The example of Zambia Congress of Trade Unions (ZCTU), is illustrative of this commitment of unions in the region. Thus, alarmed at the growing informalization of the labour market in Zambia, the ZCTU has developed a policy designed to protect the informal sector, including the self-employed and workers in small enterprises. The Congress amended its constitution in 1994 by which it now covers the informal sector workers as part of its organizing and representational constituency.

On the basis of this, the Congress has developed a two-pronged approach specifically for this category of workers as a prelude to organizing them into trade unions.

¹⁷Henk Thomas, 'Challenges Facing Trade Unions' in *Globalization and Third World Trade Unions*. London, Zed Press, 1995, p. 242.

For the self-employed workers, the Congress seeks to help them to improve the running of their businesses by providing training, legal advice and sourcing of funds. As regards to workers in micro and small-scale enterprises whose earnings and employment conditions are, according to the Congress, not good, the latter seeks to extend to the workers traditional trade union protection, such benefits as social security, and create in them the awareness of occupational safety and health issues.

It is useful to mention that this plan, as indeed with most trade union movements, remain largely on the drawing board. Probably due to internal organizational inadequacies or shortcomings, most trade union movements have not gone beyond outlining their vision of how to organize and represent workers in this crucial sector. In the Zambian case, for example, the Congress is handicapped mainly by the disaffiliation of some of the key unions which has destabilized the labour centre, because some of the disaffiliated unions are among the largest in the trade union movement.

Unions and Socio-economic Development.

There is always a tendency, even among unionists, to see the trade union as narrowly concerned with the bread and butter issues of its members. While it is true that, as representative organizations primarily concerned with the promotion of sectoral interests of their members, trade unions are indirectly promoting societal good, particularly if they represent the broad spectrum of the working people. In several countries, such as South Africa, Namibia and Malawi, trade unions have fought for their legitimacy, recognition, and have contributed immensely to the emergence of favourable political environment in which the human rights of workers and the citizenry as a whole are recognized and respected.

However, there is merit in the idea that, in the contemporary environment, the trade union movement must be seen to be playing an important role in the life of industry as well as in the overall national development process. Unions in Southern Africa have played this role creditably and will no doubt continue to do so in the foreseeable future, particularly where deliberate effort is made on the part of the state to enlist their participation in the economic life of the country. In this regard, trade unions in the region need to make strenuous effort to consolidate past achievements and channel their energies and resources to strengthen their status and role as a partner in the socio-economic transformation of society.

Of necessity unions will have to see their interest beyond the bread and butter issues and extend their preoccupation to those of national development within which they must protect their members' interest. There is no doubt that some trade union movements in the region are consciously channelling their energies in this direction. In South Africa, for example, on-going debate has tended to project the trade union movement along what

has been vaguely described as a ■social unionism■. As understood, this model of unionism emphasizes an important role for labour in economic reform and transformation, and social development. The philosophy of social unionism requires,

a commitment to economic growth and wealth creation as well as equitable redistribution. It requires the democratisation of the workplace, participation in tripartite bodies such as the National Economic, Development and Labour Council (NEDLAC), and a skilled staff inside the organisation.¹⁸

There is hardly any doubt that South African unions recognize the compelling need to play a clearly developmental role and partnership in socio-economic development in the country. At a recent press conference, the Deputy General Secretary of COSATU, the largest of the 3 main union centres in the country remarked thus:

I want useless strikes to stop....But I also want more militancy about the real issues: a living wage, work place restructuring, health and safety, job grading, and closing the apartheid wage gap■.¹⁹

Also in Zimbabwe, the ZCTU has, though to the displeasure of government, taken a broader view of their role in the socio-economic sphere. In 1997, the Congress intensified its claim as the main vanguard of protests against increased government levies and taxes which the workers regarded as adverse to their social well-being. As perhaps the only major institution for broadening democratic participation in a country such as Zimbabwe, the ZCTU will perhaps continue to be seen as a key player in the socio-economic decision-making process.

While our overall assessment of a trend such as these is that the unions do recognize their role in the new economic and political environment in the various countries of Southern Africa, any affirmative conclusion of perception in union of their broader role in development must be regarded as tentative. In fact, COSATU, a declared partner of the African National Congress (ANC), has fundamentally differed from the latter on the government■s major macro economic initiative titled Growth, Employment and Redistribution (GEAR), as inadequate for a strategy designed to alleviate the large unemployment in the country.

Internal Organizational Cohesion

¹⁸Eddie Webster In ■Union debate requires economic vision■ *Business Day*. September 17, 1997, p. 13

¹⁹Cited in *Financial Mail*, January 23, 1998.

The question might be asked whether, on the basis of their present level of organization, the trade union movements in the Southern African region possess the organizational resources needed to deal effectively with the enormous task before them? Trade union organizations in the region need to embark on organizational revitalization with particular attention to human resource development in order to strengthen their capacity to deal with the complex nature of issues of socio-economic management in which they crave a meaningful role. In effect this concern falls into three parts.

The first has to do with the noticeable change in the workplace, with increasing decentralization taking place in which the role of the union at the enterprise level is assuming greater importance. Trade unions face a greater challenge as a result of this because the process of enterprise level bargaining may likely intensify. This will have the effect of the local union leaders assuming more influence in the substantive issues of labour relations which may lead to a corresponding reduction in the influence of national union leaders. This will in turn augment the internal political relationship with the union. However, how union bosses at the national level respond to this inevitable internal power relationship will determine the extent to which they appreciate the thrust of the reforms taking place in labour relations in industry.

The second concerns the extent of internal organizational cohesion within the trade union movement; a cohesion which seems indispensable if the role of labour in social and economic transformation is to have greater significance. Some of the union movements in the region are faced with internal division and squabbles to the extent that their ability to effectively protect and promote members' interests is severely hampered; let alone being able to effectively deal with issues of national socio-economic development.

One illustrative case of this internal organizational anomaly is Lesotho where the trade union movement has hardly seen unity since independence. Division in the union movement undermines whatever role unions can play in improving the socio-economic life of their members. A less threatening case is that of the Zambia Congress of Trade Union, historically a united, strong and influential labour movement. Unfortunately, at the Congress' conference in 1991, 5 of its affiliated unions, including the powerful Mineworkers Union of Zambia, teachers, financial institutions, commercial workers, and building and general workers union²⁰ withdrew over internal squabbles caused by disagreement on a proposal by the leaders of the Mineworkers to get the ZCTU affiliated with the MMD, as well as the failure of the General Secretary of the particular union to get elected as Chairman-General of the Congress.²¹ These five unions accounted for

²⁰As at the time of this research, two of the disaffiliated unions, i.e. Zambian Union of Teachers and the Commercial Workers Union have rejoined the ZCTU. So also has a faction of the banks and financial institutions workers unions.

²¹The five unions made an abortive attempt to form the Confederation of Free Trade Unions (CFFTU), but this federation failed to find an identity and eventually disappeared.

142,484 of the 304,614 total ZCTU membership, or a loss of 47 per cent of the total membership in 1994. It is however instructive that when unions are thus divided, they can hardly use tripartite means to advance the interest of protecting workers or contribute meaningfully to national socio-economic development.

The third organizational challenge is of capacity nature and concerns the alarming rate of leadership depletion in trade unions over the years. In a number of the trade union movements, the leadership has been seriously depleted as a result of a number of factors, including retrenchment, promotion and retirement. For some trade union movements, particularly in Malawi, Namibia and South Africa, political liberalization has induced trade union leaders to seek better fortunes in public administration, politics and industry.²²

The seriousness of this problem cannot be gauged as no comprehensive country by country record of this brain drain exists. However, as one report shows, 80 experienced South African unionists left for other employment in 1994 alone.²³ In the country's public sector, it has been reported that 70 per cent of the SADTU (principally a teachers' union) leadership moved to government employment by 1996.²⁴

Thus, the need for training of union leadership at both the local and national levels cannot be overstated. The type of training that is needed is of a technical nature, which will help to develop and strengthen the technical competencies of the emerging leaders in order to effectively participate at enterprise level and in dealing with national level issues. In other words, training for union leadership should transcend traditional union educational focus, to incorporate issues such as macro economic management, planning and other thematic issues. Even in the so-called traditional 'labour issues', workers representatives need to be armed with technical knowledge in the field such as of safety and health, social security, employment, effects of macro economic policies on these subjects and on the labour market, including the operation of collective bargaining.

Moreover, the training of union leaders, especially at the enterprise level is essential so as to complement other efforts of government and employers in promoting preventive policies in the workplace. In the area of industrial relations, as well as in safety and health, for example, training will strengthen the capacity of trade union leaders to settle grievances at the enterprise level, while training in occupational safety and health issues will complement the work of the factory inspectorate of government which, in

²²It should be borne in mind that this capacity deficit can also be found in a number of labour administration systems in the region, notably Malawi where years of inactivity led to low morale and consequently depletion of experienced officers rank in the Ministry of Labour.

²³Baskin, op. cit., p. 34.

²⁴Philippa Garson, 'New Ties, New Challenges. Labour Relations in the Education Sector' *South African Labour Bulletin*, Vol. 21, No. 3, June 1997, p. 21.

many countries in the region, is inadequately funded.

In all countries in the region, trade unions recognize the imperative of intense training, and are already embarking, in varying degrees and intensity, on capacity development of their leaders to acquire the technical skills they need to analyse complex problems of enterprise and national economy, including skills in collective bargaining and problem solving, to adequately represent the interest of their members, and relate on equal strength with the other partners.²⁵ The foregoing issues are of critical importance to trade unions throughout the region, and can be the subject of regional cooperation through the Southern Africa Trade Union Coordinating Council (SATUCC), and indeed the tripartite forum of SADC.

Employers ■ Organizations: Responding to Change?

Several of the observations made in the foregoing section in respect to trade unions are equally relevant to employers and their organizations. In some countries, such as Malawi, Namibia and South Africa where the rights of workers to freedom of association and representation had been denied or restricted, public policy of the period tended to strengthen those employers who were unwilling to recognize workers ■ organizations or consult on matters that were of interest to them, and so they employed unilateral means to determine conditions of work, to the disadvantage of their workers.

In the era of reforms, there is a concern over whether some employers recognize the critical role of human resources as a vital and strategic corporate asset. In countries such as Zambia, Lesotho, Namibia and Zambia, where South African-based companies predominate, many employers particularly the new ones, hardly regard the human resource management function as an important corporate issue. The tendency to de-emphasize the personnel function reinforces the anti-union posture of such employers. In some cases, under the guise of restructuring, companies have converted personnel managers to sales managers! In one situation in Zambia, one large South African supermarket chain in 3 years of entering the country had no human resource manager, preferring to handle critical personnel issues directly from South Africa. In some other cases, even where local personnel is identified, there is the tendency to keep the highly capable personnel to the Headquarters in South Africa. As a result, second-rate managers whose knowledge of labour relations is either poor or non-existence tend to develop authoritarian and anti-union approach, reinforcing employers ■ indifference or the lack of a well-articulated personnel policy.

²⁵COSATU, the largest of the trade union centres in South Africa, had developed an elaborate training programme for its leadership at both the enterprise and national levels. See Jeremy Baskin, ed., *Unions in Transition. COSATU at the Dawn of Democracy*. Johannesburg, National Labour and Economic Development Institute, 1994, p. 41.

Part of the explanation for this state of affairs is that, in a number of countries, the employers' organizations are organizationally weak, and thus are unable to effectively promote the culture of good industrial relations among their members. For some reasons, they are unable to attract new members, even from their traditional constituency of the comparatively large employment sector. For example, organizations such as the Namibia Employers Federation (NEF), which was founded in 1992, represents only 30 members out of a potential membership of 260 organizations. The federation was managed by a volunteer manager until it employed its only full-time staff in 1994. Also in Mozambique, the employers are yet to re-group following the introduction of market-oriented economic system. On the other hand, several employers' organizations in the region have suffered membership loss as a result of closures and liquidation. No accurate record of such contraction is available, but the compensating effect of privatization - which should increase membership - has been marginal, as several new owners have shown little inclination towards concertation.

The foregoing observations suggest, therefore, that employers' organizations need to be alert to the challenge brought about by economic and political reforms now taking place across the region. Old non-union policies which were in some cases tacitly encouraged by public policy need to be abandoned in favour of positive policies which see trade unionism as the legitimate expression of workers rights to participate in decisions affecting their members, and also as a vehicle for contributing to corporate life. In other words, employers face the inevitability of respecting the right of workers to union representation and play their rightful role in workplace governance.

In the same vein, the environmental changes taking place across the region imply that employers and their organizations need internal organizational enhancement to strengthen their coverage in terms of spread and services provided, so as to make the organizations more appealing to as large a constituency as possible, particularly among the small and medium-sized enterprises. Some employers' organizations tend to be complacent, failing to make genuine effort in launching themselves into the expansive small and medium-scale employment sector. One might then ask, what strategic plans are in place to encourage small employers to join their organizations? Are the services presently provided by employers' organizations relevant to the needs of such group of employers? How might the former assist small employers to strengthen their capacities?

In countries where the employers' organizations have not actively recruited employers, particularly the 'new' ones, it becomes difficult to see how they can promote the stability of industrial relations, or develop in them the culture of good relations with the workers union and consulting with them on employment issues which are mutually beneficial to the organization and the stakeholders. In some countries, notably South Africa, the experience is however the opposite. In that country employers are highly

organized in various categories of associations which are in turn affiliated to peak employers organizations.²⁶

However, for employers' associations to sustain the interest of small employers in their fold, they need to package their services to make them attractive to this group of businesses. Such services could include human resource development and capacity building activities designed to strengthen the managerial capacity of small employers. It may also include micro and small entrepreneurial development training and strategies, and providing information to employers on good employment and labour standards, occupational safety in small business, and so forth.

The example of the BOCCIM of Botswana highlights the type of services being offered by some employers organizations. In that country, the organization is helping to 'empower' the small and indigenous businessmen, especially in the era of liberalization and the onslaught of 'new' foreign investors in all areas of business endeavour. To this end, BOCCIM provides skills development to micro enterprises, helps them in drawing up business plans and to raise bank loans. The confederation has also reached agreement with government to the effect that 30 per cent of all government procurements should be given to local producers and manufacturers.

Another task before employers' organizations, brought about mainly by the abolition of apartheid, is the urgent need to create multi-racial employers' organizations which would serve as the overall rallying point for all employers, and assist them in information gathering and dissemination, and in critical negotiation at national level. Thus, the racial composition of employers' organizations constitutes another important challenge for employers in some countries in Southern Africa. In these countries, notably South Africa, Namibia and Zimbabwe, there exists a dichotomy between 'white' and 'black' employers or organizations, a division which is likely to inhibit labour and management consultation and cooperation and the overall goal of achieving corporate effectiveness and competitiveness.

²⁶Ian Macum and Eddie Webster, 'General Overview of the Outcome of Collective Bargaining in 1997 and Prospects for 1998 - Some Preliminary Observations' Presented at the IRASA Conference, Johannesburg, 4 November, 1997.

One illustrative case of the need to create multi-racial employers' body is South Africa where the Business South Africa (BSA), created in 1994 seeks to serve as the rallying point for all employers, as a multi-racial organization. However, at the time of writing, few of its nearly 20 affiliated employers' organizations represent black businesses. In fact, one of two black employers' bodies affiliated to it in 1994 - the National African Federated Chambers of Commerce and Industry (NAFCOC), pulled out later to become an autonomous employers' federation.²⁷ Currently the BSA and NAFCOC are the two leading peak organizations of employers in the country, but they are organized mainly along the racial divide. While this development conforms with the right to choose or freedom of association, the two organizations still desire a reasonable measure of racial mix so as to bring all shades of employers into their folds. Only in this way can they be truly the 'voice' of *all* employers, thereby strengthen employers' role in social and economic issues in the country.

One of the problems faced by employers organizations in bringing more members into their fold is the relatively high membership fee. In Lesotho where the employers organization can hardly expand without bringing in the small employers, the membership fee, as well as the structure of services provided are not in favour of small employers. Also in South Africa, the annual fee of R12,700 for membership in the BSA is considered too high by the small and medium sized businesses.²⁸ The alternative would be to set fees in proportion to size or create fee bands for various categories of employer-members. In the case of the BSA or NAFCOC, if the goal is to be the voice of the majority of employers, particularly in the black business community, it has to make deliberate effort to woo such businesses. It is not simply for the purpose of the claim as a representative organization, it is also the case that only in this way can the organization be seen by the other partners in the new South Africa.

Finally, another important challenge facing employers and their organizations in the region has to do with the growing importance of enterprise level bargaining. This subject will be treated in detail in the next Chapter, but it is useful to mention here that this natural consequence of liberalization implies two inter-related challenges for employers and their organizations. For the individual employers, the importance of improving labour relations in the workplace is that it is at this level that the effects of globalization, public policy, e.g. laws are felt, and at which management and union strategies are tested and put into practice. It is at this level that impact directly on the worker and at which the overall state of labour relations can be measured.

The enhanced role for workplace industrial relations naturally place enormous

²⁷ The other organization is the Foundation for African Business and Consumer Services, (FABCOS).

²⁸ Guy Standing et. al., op. cit., p. 173.

responsibility on management at this level, a responsibility which several managements, accustomed to unilateral or authoritarian style may have difficulty to overcome without the help of peak organizations of employers. Typically the capacity of the managerial staff at the enterprise level is not particularly great. As the comparatively advanced industrial relations practice in the South African mines indicates, experience of the recent major negotiation in the industry reveals that the capacity to effectively bargain at the enterprise level is lacking in some workplaces.²⁹ However, competitive pressures on enterprises imply that employers at this level will have to develop new and innovative forms of workplace relations through which the resources of both parties in the enterprise are harnessed in order to survive.

A related issue is the concern about the trend towards decentralized bargaining which enhances the importance of enterprise level labour relations relative to sectoral bargaining.³⁰ This issue will be developed in the next Chapter, but is important to point out here that one of the advantages of decentralization is that organizations can achieve a reasonable measure of flexibility for workplace relations. In so far as sectoral employers' organizations are concerned, the evidence appears to be developing in some countries that when faced with a declining role in collective bargaining matters, employers' organizations have taken on hitherto undeveloped functions, such as helping members to develop their human resource potentials, and providing expertise advice on innovative forms of compensation in member-organizations. Also, the advisory and information gathering and dissemination functions of these associations cannot be underestimated because enterprise-level managers usually neither have the expertise or time, nor often the interest to engage in this otherwise crucial issues, such as past practice, comparative experience, or some other issues that have important implications for or impinge on enterprise labour relations.

²⁹F.S. Barker, Wage Initiatives in Mining: A New Mould for Industrial Relations? ■ Presented at the IRASA Conference, Johannesburg, 4 November, 1997.

³⁰This concern is also shared by the trade unions, though for political reasons that it will reduce the power of national leaders vis-a-vis local officials. See for example, the concern of small unions in South Africa, as detailed in *Unions in Transition*, op. cit., p. 21

*Chapter Three***LABOUR RELATIONS AND COLLECTIVE BARGAINING****The Foundation of Labour Relations**

It is in the area of labour relations and collective bargaining that the differences in industrial relations among the countries in the region are more pronounced. On the one hand, there is what can be categorized as the relatively more advanced systems, such as South Africa and Swaziland, Zambia and Zimbabwe where, in spite of institutional or external impediments, collective bargaining has attained wide acceptance. Within this small group, the South African system is unrivalled, both in terms of its spread, sophistication and complexity of the collective bargaining process. However, it is important to bear in mind as has been stated earlier that, until recently, the South African industrial relations was based neither on equality nor equity.

Table 5 illustrates the extent of collective bargaining in Swaziland. It can be seen that collective bargaining is playing a prominent role in the country's major industries, such as agriculture, sugar manufacturing, transportation and hotels and catering. In South Africa, the major sectors, such as mining, automobile, commercial, banks are all unionized and are therefore covered by collective bargaining. As Figure 2 shows, there were 99 bargaining councils registered in 1996, 196 employers' organizations and 334 trade unions registered in 1996. As at December 1997, the number of bargaining councils rose by 72 per cent - to over 170, including 60 councils which are statutory, while the majority have been established more recently when the Labour Relations Act came into effect. A total of 775,583 workers and 53,636 employers were covered by bargaining council agreements in 1997,³¹ corroborating the evidence given in Figure 1 on union density in South Africa.

In Botswana, only a few industries, notably mining and banks are highly unionized and are reasonably using collective bargaining for employment regulation. In the other sectors, such as commercial and construction, there is little bargaining, but there exist a tradition among employers in such sectors to follow the key agreements, particularly in the mining sector. On the other hand, it must be borne in mind that in that country, extensive use of this machinery is very recent, dating to 1991. Before then, incomes policy regulations which were introduced in 1972 required that 'wages and salaries in the private and parastatals should conform to...comparable grades of public employees...' ³² In other

³¹Department of Labour (of South Africa). Pretoria, *unpublished records*, 1998.

³²M. Mogalakwe, *The State and Organized Labour in Botswana*. Hants, Ashgate Publishing Ltd., 1997, p. 56.

words, until liberalization of wage bargains in 1991, government played the dominant role in the determination of wages in both sectors of the economy.

Table 5: Extent of Collective Bargaining in Swaziland, 1994

Industry	No of agreements	% of key employers covered
Sugar manufacturing*	3	100
Agriculture*	6	50
Forestry*	3	50
Transportation	3-5	80
Financial Institutions	5	60
Hotels and Catering	1-7	60-70
Commercial and distributive	3	50
Manufacturing	11	60
Public sector (Govt.)	**	40

*Agreement with one multi-disciplinary union, SAPWU.

**Although no ■ collective agreement ■ is usually signed between the two unions (SNAT and SNACS) and government, they have agreed on some issues.

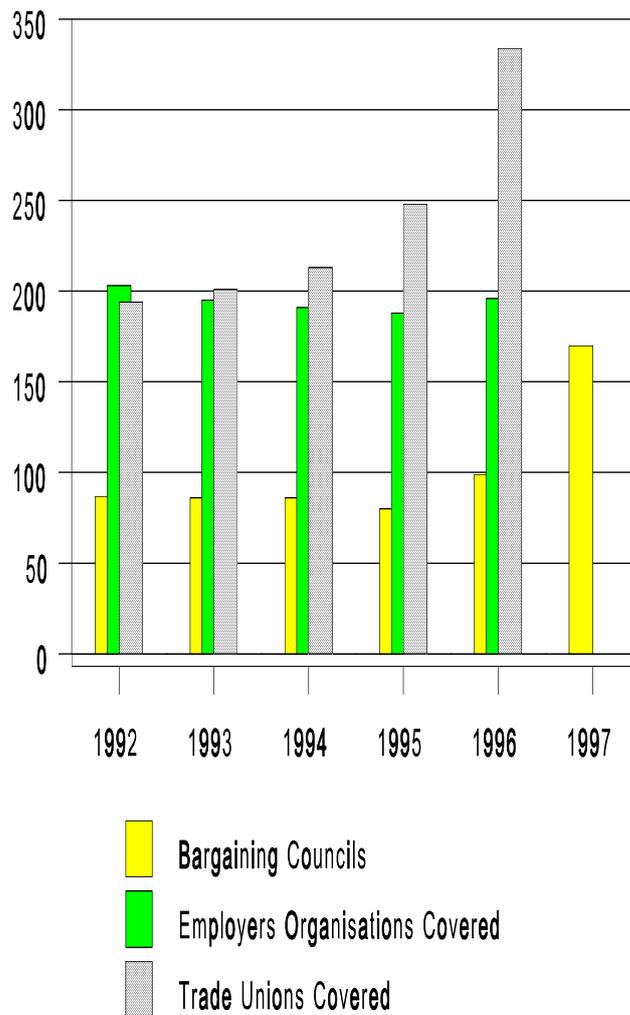
The conclusion of the spread of collective bargaining must be seen in the context that, even in those countries, collective bargaining faces serious internal and external obstacles to its development. In Swaziland, despite the entrenchment of bargaining in the key industries, there are cases of employers unwillingness to recognize unions. In that country, even where a union has attained the mandatory 40 per cent or more organization, employers still use tactics of intimidation, transfers and layoffs of union-prone workers to frustrate unionization. In some cases, employers use outright termination of workers.

In the other countries in the region, such as Malawi, Namibia, Lesotho, Mozambique, collective bargaining does not exist in the real sense, as a result of internal or external obstacles. One can only say that the potential for collective bargaining is bright, although the industrial base is very low in each case, and employers are often not totally receptive to the idea of engaging in formal negotiating relations with workers.

On the other hand, as liberalization intensifies and public policy become more forceful, such employers may see the advantage of developing formal relationships with the workers, not only to regulate terms and conditions of employment, but also to enlist the support and cooperation of workers in measures designed to improve efficiency,

productivity and competitiveness.

Figure 2: Bargaining Councils and Coverage in South Africa 1992-1997



Source: Department of Labour Annual Report 1996. Pretoria, 1997 and unpublished reports.

As part of the effort to promote consultation in the workplace, national labour policies in countries such as Swaziland and Zimbabwe have promoted works councils and their equivalence, officially as a mechanism for giving workers a 'voice', particularly where the union is either weak or non-existent. In practice, however, some employers have seen the works council as a substitute for the union. In one medium-sized enterprise in Swaziland, workers had made three attempts to join a union but their employer had consistently resisted such a move. During the last effort, several of the workers considered to be the ringleaders had their appointments terminated and, naturally, the workers gave up their interest in the union.

The poor development of labour relations in some workplaces in the region is associated in large part with legacy of apartheid, autocratic rule and anti-union policies of employers. Throughout the region, the vestiges of these dysfunctions still reign in

the workplace. In the Republic of South Africa, one of the serious problems facing labour relations is how to get some employers to accept the democratic change and the principle of labour relations at the enterprise level.³³ It can only be anticipated that in time workplace governance as enshrined in the new Labour Relations Act will serve as a desirable mechanism for promoting good labour relations at this level in the country.

Given the resistance to labour in South Africa particularly during the apartheid era, it does not appear totally surprising that South African-based business operating elsewhere in the region have remained dogmatic in their dislike for trade unions and are unwilling to develop formal relationship with their workers. Such employers are insensitive to the enormous transformation of labour relations in South Africa. In any event, the strengthening of labour relations in workplaces in South Africa will continue to induce employers in the neighbouring countries to develop a realistic labour relations policy, more so, in view of the extensive influence of South African businesses in the region.

Two factors continue to reinforce employers' hostility in labour relations. The first factor, which may be considered to be changing positively, is public policy. For quite a long time in a number of countries, public policy was biased in favour of employers. The case of Botswana has been mentioned above. Another illustrative case is Malawi, where over thirty years of authoritarian rule of the Banda era pitted the trade unions against a combined hostility of the autocratic government and private employers who were totally opposed to trade unionism and labour relations. This hostile environment drove the unions underground and allowed employers' total control of employment issues. Thus, little can be said about collective bargaining in Malawi because labour relations during the three decades ending in 1994 was characterized by a generally unfavourable environment, including deliberate undermining of the unions and tacit support for employers' unilateral powers. Even today, new investors who are generally opposed to dealing with trade unions or negotiation of any kind, have been tacitly helped by the absence of determined enforcement of existing legislation on such investors, not only in Malawi but also in some others.

Another factor is the internal problems in some trade union organizations, and this is important because, historically, unions have been the main protagonists in collective bargaining. The weakness in trade unions has contributed to or reinforced the poor development and growth of collective bargaining in the region. In Lesotho, for example, the trade union movement has experienced an endemic internal division throughout its history, which has disoriented union leadership reinforcing, as it does, employers' contemptuous attitude towards unions and what they stand for. In Namibia, on the other hand, while there exists a highly cohesive and united trade union movement, the capacity to engage in beneficial collective bargaining is lacking on both sides of industry. In-

³³Macum and Webster, loc cit.

between these two is the Botswana case where the unions have failed to organize themselves for a serious collective bargaining relationship. A similar observation can be made in the case of Mozambique, which has only recently emerged from nearly two decades of internal conflict. In that country, trade unions are underdeveloped; the employers are only marginally better. Nor can the Ministry of Labour, long accustomed to command economic approach be expected to provide leadership in labour relations.

A final thought is that, as shown in earlier chapters of this report, despite the marked differences in the acceptance of and approach to collective bargaining in the region, it is the case that in all the countries of the region, except Botswana, South Africa and Zimbabwe, the employment base, which is the traditional source of union organization for collective bargaining, is extremely weak and insignificant in some countries. As Table 3 makes clear, the base of modern sector employment in many countries is less than a quarter of the labour force such that the acceptance of collective bargaining is not seen as a necessity. This is buttressed by the comparatively large unemployment, also shown in Table 3, that is prevalent in the region. In Mozambique, for example, about 60 per cent of the labour force of 8.5 million people is unemployed or under-employed. In an environment such as this, the support for collective bargaining is usually half-hearted, indeed among all the parties to industrial relations.

The Case of the Public Sector

The foregoing observations are more pertinent to the private sector where, for various historical reasons, unions and progressive employers tend to regard collective bargaining as a normal part of their relationship. The public sector is different. In the whole of Southern Africa, and indeed possibly the entire African continent, Zambia appears unrivalled in the extent of use of collective bargaining in regulating employment conditions since independence. Thus, there has been a long history of collective bargaining in the country's public sector, much earlier than any country in the region. Generally in this sector, there are comparatively large unions.³⁴

In South Africa, while collective bargaining was used by white public sector workers during the apartheid era, the right of all public employees to negotiate was recognized only as from 1993, first under the Education Labour Relations Act of that year, and then with the passage of the Public Service Labour Act, 1994, which, for the first time, has extended collective bargaining to all government employees. These positive policies have been reinforced under the Labour Relations Act, 1995. Thus, as at February 1998, there were 25 Bargaining Councils in local governments, 5 provincial Bargaining

³⁴For example, the National Union of Public Service Workers had 35,000 non-pensionable members, while the Civil Servants Union of Zambia, had 25,000 pensionable members in 1996. Both unions negotiate 1 ■ national ■ agreement.

councils, and 19 national public service Bargaining Councils in South Africa.

In Botswana, while the national constitution guarantees freedom of association, the right of public sector workers to form trade unions is denied by another provision in the same constitution. Thus, the continued use of the Salaries Review Commission for determining wages for public sector workers has tended to inhibit the development of collective bargaining in the country. Interestingly, however, the denial of public servants of their rights has not prevented the occurrence of industrial action and strikes in the sector.³⁵ In Lesotho and Zimbabwe, labour relations in the public service is evolving. While the Lesotho Union of Public Employees was registered only in 1994, and has embarked on a number of industrial actions, this pressure is very likely to induce government to commence negotiations with public servants.³⁶ In Zimbabwe, following damaging strikes in the public sector in 1996, the government has started a formal bargaining relationship with the workers. A new law intended to harmonize labour policies in both private and public sectors is in the offing and is expected to create a National Employment Council as the machinery for negotiation in the country's public service.

In summary, it can be said that the environment for collective bargaining in public employment is improving. This is certainly a desirable trend which will instill democratic principles in labour and management relations in the sector and promote consensus building in labour relations in public life. At the same time, it must be noted that the public employer has not totally abandoned unilateralism in labour relations. Even in Zambia, it is on record that as recent as 1997, trade unions were still questioning the right of the government employer to unilateral take such decisions as workforce reduction and determination of severance packages without consultation with the appropriate unions. In Swaziland, the teachers union was involved in a long-drawn dispute in early 1998 over the wage issue, with the public employers insisting that their own position must prevail. In other words, the public employer has yet to fully accept the principles of joint decision making in dealing with labour issues. On the other hand, intensified education not only on the methods and procedures of collective bargaining in public employment, but also on the principles and logic of bipartite regulation of employment conditions, will help to strengthen collective relations in this sector.

³⁵Monageng Mogalakwe, 'The Resolution of Labour Disputes in Botswana' in Sarah Christie and Lovemore Madhuku, eds., *Labour Disputes Resolution in Southern Africa*. Cape Town, Institute of Development and Labour Law, University of Cape Town and Friedrich Ebert Stiftung, 1996, p. 24. Recently the country ratified Conventions Nos. 87, 98 and 151. It is anticipated that this gesture will lead to a review of the relevant national legislation to allow public service workers to register their unions and bargaining collectively.

³⁶F.M. Khabo, 'Resolving Labour Disputes in Southern Africa: The Case of Lesotho' in Christie and Madhuku, op. cit., p. 29.

Collective Bargaining and its Structure

In spite of the poor development or little use of collective bargaining in some of the countries of Southern Africa, there is in all countries in the region, an acknowledgement that the machinery is the most ideal means of enlisting the participation of the workforce in regulating employment conditions and related issues. This acceptance of the virtue of collective bargaining has enjoyed enhanced support as a result of political liberalization and market-based economic reforms which exists in all the countries in one form or another. Moreover, liberalization is widening the spread of collective bargaining beyond the private sector, to the public service in most countries.

At the risk of over-generalization, the type of collective bargaining that takes place in the region, with South Africa inclusive, is characterized by adversarialism, ostensibly because collective bargaining has remained doggedly focussed on the narrow distributive employment issues in the workplace. The predominance of these types of issues in labour relations is inevitable given the history of anti-labour policies across the region. It may also be a result of the insensitivity of sectoral bargaining to the specific problems in the workplace, particularly if enterprise managers refuse to vary sectoral agreed terms in their businesses. In any event, the prominence of distributive issues has tended to overshadow other broader issues germane to workplace governance. As a recent ILO report suggests, this traditional way of looking at labour relations presents a crisis in workplace collective relations.³⁷

Generally in the Southern African region, collective bargaining takes place at three levels, namely the national level which is not, for the most part, for regulating the substantive terms of employment. The second is the sectoral or industry level at which unions and industrial employers ■ organizations negotiate and agree on specific terms of employment, while the third is the enterprise level for the same purpose as in the latter. The national level bargaining, in nearly all cases, involves the tripartite partners at macro level. Negotiations at this level, such as in NEDLAC of South Africa, usually deals with general policy issues and do not produce the traditional collective agreement.

The spread of tripartism is intensifying consultation in labour relations at the national level, as will be discussed in the next chapter. As a result, national negotiation, in which government on the one hand, and peak organizations of employers (such as the Business South Africa (BSA), Zambia Federation of Employers (ZFE), or the Employers ■ Confederation of Zimbabwe (EMCOZ) and also of workers (such as the National Union of Namibia Workers or COSATU of South Africa) on the other, engage in negotiation or

³⁷*Industrial Relations, Democracy and Social Stability*. World Labour Report 1997-98. Geneva, International Labour Office, 1997, pp. 225-50.

consultation on policy and other general labour and social issues. Other than this, consultation at this level do not as a rule lead to the determination of specific conditions of employment, leaving this responsibility to sectoral or industrial employers associations, where they exist.

There are a few exceptions, as in Botswana, Lesotho and Swaziland, where from time to time national level consultation determine specific issues, such as the national minimum wage. As regards national employers' associations, such as the ZFE (of Zambia), they do not normally get involved in the negotiation of terms of employment. Here again there are a few exceptions. In Lesotho, for example, the Lesotho Employers' Federation from time to time undertakes negotiation, seemingly because it has no strong sectoral associations to perform this function. On the other hand, when it comes to issues such as trade disputes, all employers' organizations, irrespective of the level of organization, are involved in dispute settlement, though generally on informal basis.

Development of Centralized Bargaining

In many African countries, public policy designs had tacitly promoted sectoral or industry level bargaining relationship, ostensibly to create some sort of stability in labour relations. Moreover, the encouragement of sectoral or industrial type unions by public policy, a deliberate design primarily made to redress the factional tendency in trade unions has tended to reinforce centralized bargaining. Undoubtedly, such arrangement assures a degree of orderliness in a country's industrial relations practice and strengthens national organizations of workers and of employers. It also has the potential of promoting stability in employment conditions, at least at the industry level.

As a result, the thrust of labour legislation of the post independence period was to encourage sectoral or industry bargaining. Examples of this thrust of public policy can be found in Swaziland where the Industrial Relations Act of 1996 is deliberately in favour of industry level bargaining through the joint industrial council (JIC); in Zambia where the law was deliberately in support of industry-level bargaining, and in Botswana under the Trade Unions and Employers Organizations Act, 1969 which provides for the setting up of the sectoral organizations of workers and employers.

In South Africa, earlier attempts by unions to negotiate at the plant level was fiercely resisted by the employers who were members of employers associations.³⁸ However, the advent of NEDLAC, which gives prominence to the role of centralized and national organizations of employers and workers has removed unions' resistance, and there appears to be a resurgence of interest in centralized voluntary bargaining in the country. As a further entrenchment of the centralized bargaining in that country, the Labour Relations Act of 1995 has the promotion of sectoral level bargaining through the bargaining councils as one of its objectives. As previously noted, nearly 200 of such councils existed in South Africa in 1997.

Also in Zimbabwe, industry or sectoral bargaining through the National Employment Council (NEC), has been a major feature of collective bargaining in that country. As at 1997, there were 45 NECs, each covering a particular sector or industry. The exceptions are a few NECs which are exclusive to government monopoly companies, such as in the electric power company and telecommunications company.³⁹ There are enterprise level negotiations, through Works Councils but, unlike the comparable arrangement in the South African mines, the relationship between the two levels of negotiation is blurred under current legislation.

However, despite the unequivocal support of public policy for centralized bargaining, it is important to bear in mind that enterprise level bargaining exists, particularly in less complex systems, typically between an enterprise management on the one hand, and the industrial or sectoral union on the other. This is the structure of bargaining prevalent in countries such as Botswana, Lesotho, Mozambique and Namibia, and to a considerable extent Swaziland.

In Namibia, for example, negotiation is at the level of the enterprise, including the comparatively large mines. While there exists an employers association, the Chambers of Mines, it does very little in the field of labour relations, at least presently. In construction, on the other hand, collective bargaining takes place at the industry level. In banking, where the banking federation groups all the 9 or 10 banks in the country, there is no industry level bargaining, and in the fishing industry, there is also no employers association. As might be expected, there is no industry-level negotiation, although there appears to be an interest in one. There is an agricultural employers' union which has about 4,500 members in commercial farms. Here again, there is no centralized bargaining, and it is a bit of a messy arrangement because the employers are very small in most cases.

³⁸Sonia Bendix, *Industrial Relations in the New South Africa*. Kenwyn, Juta & Co Limited, 1996, p. 237.

³⁹There are also a few NECs in the local government authorities which are engaged in collective bargaining. As earlier noted, there is as yet no collective bargaining at the provincial and national level in the public sector, although this situation is likely to change as government further reform labour legislation allowing public servants the right to collective bargaining.

Towards Decentralization

Despite the resolve of states to promote centralized bargaining whatever the reason, the forces of liberalization are already impacting on the bargaining structure in the region.

In a number of cases which we shall examine presently, employers (and in some cases workers) are defining a specific role for the enterprise in employment decisions. The trend towards enterprise-level bargaining in Southern Africa has thus intensified with the employers (and workers) recognizing the need to have more flexibility in the design of pay for productivity and competitiveness. Flexibility in non-wage issues of work processes and organization is no less important to enterprise management. Consistent with this trend, there has been interesting developments in the structure of bargaining in the region in recent times.

Our documentation of the evolving structure begins with the case of the banking industry in Zambia. This industry has gone through a dramatic shift from the traditional sectoral level bargaining that has become familiar in most industries in Zambia. Until 1997, industry level negotiation took place under a Joint Industrial Council agreement which applied to all workers in the particular industry, irrespective of whether or not a particular employer is party to the agreement. This provision had been unsettling in the employers' circle and also in government quarters where interest was growing to modify this 'principle of extension'. On the other hand, the need to make extension appear to have justification in such industries as construction, where some employers try to undercut others by paying below the industry wage or offering substandard working conditions.

As noted, it is true that for several reasons, including the fear that union leaders at the enterprise level do not have the technical expertise to make a good agreement, trade unions in Zambia prefer industry-level or sectoral bargaining. This sharply contrast employers' who have in recent years been advocating enterprise level negotiation. For example, at the February 1997 meeting of the Tripartite Labour Consultative Council, employers' representatives vigorously pleaded for the abrogation of the Joint Industrial Council (industry-level) agreements, so as to confine negotiation to the enterprise level which they argued would allow them the flexibility to relate labour relations policies to the vicissitudes of the market.

While the Zambian government has not abrogated the JIC, the employers' objective for enterprise negotiation has recently materialized in the country's banking and financial sector. This comparatively large sector has about 17 banks and financial institutions under the industry-wide bargaining arrangements between, on the one hand, the Zambia Union of Financial and Allied Workers and, on the other, the Bankers Association of Zambia (BAZ). They negotiated on industry basis until mid-1997,

excluding new banking institutions which had emerged following liberalization. Often the new banks operate with single office location, were not members of the association and never wanted to be bound by any sectoral agreement, nor were the new banks interested in trade union activity. In any event, in mid-1997 the influential BAZ which represent banks and financial institutions in the country was voluntarily dissolved by the members.

The dissolution of BAZ effectively put an end to sectoral level bargaining, as employers in the industry opted to dealing with labour issues on individual basis. Coincidentally, the workers in the industry had only shortly before then regrouped themselves from the large Zambia Union of Financial and Allied Workers to form the Zambia Bank Workers Union which now serve as an exclusive bargaining agent for bank workers in the country. These structural changes in the banking industry in Zambia have been the most important development in collective bargaining in the country's private sector in recent times.

In Botswana, a development similar to that of Zambia is already emerging. Three banks - Standard, Barclays and BCC dominate the banking business until the appearance of new and comparatively smaller banks in the past few years. Hitherto, the three banks operated a sectoral agreement which regulated all employment conditions in the sector, and was also influential in what employers in other industries did. A few years ago, the BCC was bought by the First National Bank of South Africa and soon served notice of disinterest in sectoral bargaining. Thus in 1997, the three banks dissolved their sectoral bargaining arrangement in favour of individual bargaining. As can be seen, this development arose as a result of the appearance of new investors who were unwilling to be part of the sectoral bargaining relationship.

In Zimbabwe, while sectoral bargaining under the National Employment Councils prevail, bargaining at the works council in the enterprise has recently gained momentum. Perhaps more important is that works councils tend to deal with all issues which were previously exclusive to the NECs, contrary to the division of responsibility between the two levels of bargaining.⁴⁰ It needs to be borne in mind that this trend is only emerging in Zimbabwe, although it appears to be the beginning of decentralized bargaining, as employers in the country continue to feel the impact of market pressures. Indeed, one can regard the works council as providing for an element of flexibility for individual employers. What this amounts to is that the tradition of sectoral bargaining through the NEC may be under threat, while the prospect for enhanced bargaining at the enterprise level seems to be getting stronger.

Finally, the development in South Africa, while recognizing the sanctity of sectoral

⁴⁰What appears to be a jurisdictional confusion has tacitly been created by the vagueness of the subsisting Labour Relations Act. This law is under review and may make a clearer demarcation of bargainable issues between the NEC at the sectoral level and the works council at the enterprise level.

bargaining, integrates enterprise level bargaining as an important mechanism for achieving workplace governance by the parties themselves. Our examples of this development are derived first, from the Labour Relations Act of 1995 which provides for Workplace Forum with clearly defined issues for consultation and negotiation, and second from the mining industry where a sectoral agreement was concluded in 1997. The Workplace Forum (which will be discussed in detail in Chapter 5) is designed to widen employee participation beyond union members at the enterprise level. Contrary to what critics argue, it is neither intended to substitute collective bargaining nor in any way undermine the union. With regard to the centralized agreement in the mining industry, the agreement deals primarily with wages and applies to all employers in the industry. Of particular importance, however, is the provision that supplementary agreements are to be negotiated at the level of individual mines and dealing with all other issues, particularly productivity for competitiveness.

The parties ensure that these two sets of negotiation are linked and interrelated in the sense that the implementation of the central wage agreement is contingent upon enterprise level agreement on productivity.⁴¹ The enterprise level agreements are detailed and are fashioned according to the specific situation of the individual mines. In other words, there is every possibility that, in South Africa, a combination of centralized and decentralized structure, based on issues may evolve, particularly as centralization provides a highly desirable stability in the key issue of industrial relations, while decentralization allows individual employers to adjust aspects of labour relations to company needs.

In conclusion, the developments with respect to the bargaining structure in Southern Africa appear to be taking its queue from the international trend. Thus, on the basis of worldwide review, the ILO has recently summarized the trend toward decentralization as follows:

...almost everywhere, individual firms are tending to exert greater influence in the conduct of industrial relations and in personnel management decisions, while obviously also responding to the specific demands of employees as they arise..⁴²

The developments in Southern Africa illustrates the evolving industrial relations policies and processes as the parties in industry respond to internal and external pressures of economic reform and liberalization. These changes in bargaining structure are in themselves very significant because their impact often has far more important and fundamental implications than the substantive change in wage rates or other employment conditions. It is this that explains the concern, particularly in trade union circles, that

⁴¹F.S. Barker, loc. cit.

⁴²*Industrial Relations, Democracy and Social Stability*. World Labour Report 1997-98. Geneva, International Labour Office, 1997, p. 225.

unrestricted enterprise level relations may threaten the foundation of collective bargaining. Nevertheless, the trend towards decentralization is likely to continue, not only in the four countries reviewed here, but also in the others, as the pressure on companies to gain a stronger control of their internal human resource management intensify.

Trade Dispute Resolution

An important element of a sound labour relations system is the provision of an effective and practical dispute settlement machinery for dealing with the inevitable disagreement between workers and their employers. In the contemporary environment, the dispute machinery can be said to be appropriate if it allows the parties to take adequate responsibility for resolving their disagreement, preferably without resort to strike or work stoppages, and the procedures for dispute resolution is not cumbersome. Above all, a dispute settlement procedure should be based on the tenets of industrial democracy, as extension of popular democracy, and in this respect should allow the active participation of the parties, as only this can assure sustained industrial peace.

Recent environmental changes have warranted the need to take a closer look at the efficacy and sometimes appropriateness of existing dispute resolution processes in the countries. Until now dispute resolution in all countries have been dominated by the state via the Ministry of Labour, usually through its conciliation and mediation services. Thus, third party intervention had played and continues to play a role in dispute resolution. In all countries labour courts have been established to resolve disputes that could not be settled by the government machinery. One exception is South Africa which has used independent and non-governmental conciliation and arbitration to resolve labour disputes.⁴³

However, probably as a result of economic reform policies which have reduced both the size and quality of manpower, as well as other resources in labour administrations, government conciliation services have become generally inadequate. In several cases, the pool of labour officials has been reduced below tolerable proportion due to resignations, separations and also due to the lack of career prospects. On the other hand, the question might be asked whether the dispute resolution machinery in the countries meet present-day needs of enhancing the participatory roles of the stakeholders or in taking direct responsibility for regulating their affairs? There is the issue, also, whether the traditional mode of dispute resolution in which the Ministry play the leading role is sufficiently efficient, adequate or appropriate for enlisting the cooperation of the parties in the workplace. This point is particularly relevant in the case of Zimbabwe

⁴³Sue King, ■ Disputes Settlement in South Africa ■ In Sarah Christie and Lovemore Madhuku eds., *Labour Dispute Resolution in Southern Africa*. Cape Town, Institute of Development and Law, University of Cape Town and Friedrich Ebert Stiftung, 1996, pp. 58-84.

where the ease with which parties in industry, particularly employers resort to obtaining the ■ show cause ■ order has had the effect of not only creating a dependency syndrome, but has strengthened government interventionist role and thereby has the tendency to undermine internal enterprise-level bipartite settlement procedures.

In some countries, at the level of the Ministry of Labour, the procedures for settling disputes are not well-defined, and are not well-known to the labour officers themselves; nor is there consistency in the methods used. Report of settled disputes are hardly kept, the only time such record is kept is when a dispute is not settled and had to be referred to other levels of authority in the dispute machinery. As a result, the Ministry lacks basic statistics on its operation in this area. In other words, the conciliation services of government are inefficient, bureaucratic and often insensitive to the nature of the grievances. In several cases, the labour court which is usually the ultimate final authority in the dispute settlement is over-burdened by too many premature referrals.

Most trade disputes in Southern Africa involve disputes of right, such as wrongful dismissal, nonpayment of wages, non-recognition of union and non-payment of severance pay. In Swaziland, the evidence show that between 1987 and 1992, 68 per cent of all disputes (781 in number) was related to unfair dismissal.⁴⁴ In South Africa, 87 per cent of man-days lost was due to wages and grievances and disciplinary issues accounted for 12 per cent in 1995.⁴⁵ Furthermore, of all strikes that occurred in that country in 1996, 57.4 per cent were due to wage disputes.⁴⁶ Apart from confirming the narrow focus of labour relations in these countries, the disputes suggest either that the machinery in place is not effective or that no avenue exist for joint dispute settlement at the enterprise level.

In Botswana where a large number of disputes are interest disputes, such as disagreement over wage issues, there is no provision in the Trade Disputes Act for dealing with this type of disputes, and the Industrial Court ■ has had to assume a quasi-legislative role in order to fill these gaps ■.⁴⁷ However, an important innovation of the law was the amendment to the Trade Disputes Act in 1992, by which the power of the Commissioner of Labour to make binding award was removed and vested in a new Industrial Court created under the law. The court is presided over by a judge who sits with assessors

⁴⁴Maziya Muhawu, ■Resolving Labour Disputes in Southern Africa: The Case of Swaziland■ in Christie and Lovemore Madhuku, op. Cit., p. 86.

⁴⁵Alistair Smith, ■Collective Bargaining. From Adversarialism to Cooperation?■ *South African Labour Bulletin*, Vol. 21, No. 3, June 1997, p. 72.

⁴⁶*Department of Labour Annual Report 1996*. Pretoria, 1997, p. 32.

⁴⁷Andrew Briscoe, ■Botswana■s New Trade Dispute Legislation and Industrial Court■ in Christie and Madhuku, op. cit., p. 22.

nominated by the social partners. Available evidence, as shown in Table 6 below, indicates that the court has experienced an upsurge in the number of cases brought to it over the 4 years period. Of particular interest is that the court enjoys the confidence of the partners who see it as another instrument for advancing their collective interest.

Similarly in South Africa, among the innovative industrial relations institutions recently created are the Commission for Conciliation, Mediation and Arbitration (CCMA), the Labour Courts, Essential Services Committee, bargaining councils and statutory councils, all of which were created under the Labour Relations Act of 1995. These institutions have been created to promote better labour relations for workplace stability and industrial democracy.

Table 6: Cases Before the Industrial Court of Botswana, 1994-98*

	1994	1995	1996	1997	1998(March)
Cases registered	40	118	221	92	20
Cases decided during the year	11	46	55	9	1
Cases carried over or abandoned	19	72	166	83	na

*Although total the total number of cases decided, 176 do not correspond to the figures in this table, this is because more than one award had been given in particular cases.

Source: Records of the Industrial Court, Gaborone.

The CCMA has statutory responsibility for conciliating a dispute within 30 days, subject to extension. It could also determine the most appropriate machinery for speedy resolution of disputes; these could either be mediation, fact-finding or arbitration. In that country, a noticeable decline in the number of ■unnecessary■ strikes is attributable to the progressive legislation, particularly the path-breaking Labour Relations Act, which has forcefully protected workers ■ rights in the workplace.⁴⁸ Thus, it is reported that in 1997, union strike actions fell from 1.7 million to 650,000, or by a margin of 64 per cent.

As Table 7 illustrates, the CCMA has achieved impressive results in less than two years of operation. Unfortunately, there is no suitable data for the preceding period for comparison. However, the record of the Conciliation Board system under the old law indicates that during 1996, Conciliation Boards received 22,823 cases, of which 16,311 boards were actually established. The boards settled 2936 cases, or 18 per cent; 3388 cases or 21 per cent were deadlocked, and 2044 cases, or 13 per cent were pending at the

⁴⁸*Financial Mail*, January 23, 1998.

end of 1996.⁴⁹

Table 7: CCMA Operations, Nov. 1996-Dec. 1997

	1997
A. Cases referred to CCMA	60,246
No. handled by CCMA	30,068
Cases closed	39,939
Collective mutual interest disputes	164
settled in conciliation:	73
B. Conciliation	
No. settled or withdrawn by referring party	29,868
	19,872
C. Arbitration	
No. of cases referred	8,852
No. of cases arbitrated/settled	5,961

Source: Information Department, Commission for Conciliation, Mediation and Arbitration.

⁴⁹*Department of Labour Annual Report 1996*. Pretoria, 1997, p. 20.

*Chapter Four***TRIPARTITE COOPERATION**

The importance of tripartite cooperation in dealing with the enormous environmental changes in the economies of Africa can hardly be exaggerated. In the Southern Africa region, there appears to be an understanding among governments and the social partners on the vital role of tripartite cooperation for consensus building both in regard to the initiation and implementation of social policy. Indeed, African countries have, on achieving independence, introduced tripartite framework of one type or another, usually soon after becoming ILO members. As a result, institutional framework such as the Labour Advisory Council (or board or committee) have emerged in practically all English-Speaking African countries in the post-independence period.⁵⁰

Generally, therefore, governments and the social partners regard tripartite consultation as an indispensable mechanism for achieving good labour relations, increased productivity as well as a means of building consensus on socio-economic issues affecting their economies. For illustration, at a recent meeting of a new consultative body in Zimbabwe, the government admitted that the first phase of the country's economic reform policy failed because ■there was a serious breach in the sense that the economic document called ESAP was not discussed by the nation ■.⁵¹

As a result, labour legislation has been introduced incorporating the role of tripartite consultation, in some cases elaborating its institutional framework, functions, representation and mode of operation, as is the case with the relatively new Namibia's Labour Relations Act of 1994. An important function of tripartite machinery is the consideration of labour legislation, including the ratification of international labour standards by the partners. It is noteworthy that these labour advisory bodies have been very effective in dealing with issues of ratification of international labour standards, as well as the review of national legislation, although they have been less useful in dealing with other issues, such as those of broader macro economic importance.

The essential role of consultation with the partners in policy formulation and implementation can be illustrated by the disagreement over the ratification of Conventions 87 and 98 by government in 1995, with the Zambia Congress of Trade Unions protesting

⁵⁰See Tayo Fashoyin, *The National Labour Advisory Council in English-speaking African Countries*. Proceedings of the Regional Tripartite Seminar on Social Dialogue. Johannesburg, 2-4 December, 1997.

⁵¹This body, the National Economic Consultative Forum is discussed below. See *The Herald*, February 13, 1998, p. 1.

over the lack of consultation as required under Convention 144 which the country has ratified. While the trade union movement had fought for years for the ratification of these core conventions, it was natural for it to expect to be consulted before ratification. The absence of this created apprehension in union circles as to the true intent of government. This development not only worsened the already strained relationship between government and labour over the disaffiliation of 5 unions, it undermined the stability of industrial relations which was anticipated after a highly acclaimed democratic transformation in which the trade union movement played a key role.

In any event, the spread of tripartism for social consensus building is one of the notable results of the reforms taking place in Southern Africa. For example, until the enactment of the Labour Relations Act of 1996 in Malawi, no legislative provision existed in that country for tripartite consultation on general labour issues. It is true that in the post-independence period, the government created the National Labour Policy Committee in 1969, but it met irregularly to enforce a wage and salary restraints policy. Representation of employers and workers was necessary only when their companies or organizations had a matter before the committee. As might be expected, this administrative arrangement was short-lived; it lapsed into oblivion by 1971. However, under the new law a Tripartite Labour Consultative Council has been established, and provides for equal membership of 4 for each of the 3 partners, one of whom is appointed as Chairperson. This tripartite council is advisory on labour, employment and human resource development issues, including the review of labour laws and consideration of international labour standards.

Generally, most of the tripartite machinery in the region share common albeit disabling characteristics, namely their advisory nature which tends to discourage effective participation among the social partners, particularly the trade unions. It also has the tendency to confine consultation to pre-determined ■labour issues■. Moreover, a number of internal and organizational lapses are responsible for the failure of tripartite machinery to serve as regular and effective consensus building machinery. Often the trade unions (and less so the employers) are too weak to make effective use of tripartite consultative machinery.

In Lesotho, for example, the fractional division that has engulfed the trade union movement in that country for a long time has weakened its ability to effectively use tripartism to advantage and, for the same reason, the trade unions suffer from capacity deficiency which has deprived them of effective participation in tripartite consultation. This latter weakness, though, is not peculiar to Lesotho; it is shared in varying degrees of seriousness by the trade union movements in the region. In Mozambique, where all the industrial relations partners are in transition from a command economic system and generally lack the capacity to use tripartite means effectively, this inadequacy is more apparent in the trade union movement.

Certainly as a result of the ineffectiveness of existing tripartite machinery for building real consensus and cooperation, *ad hoc* machinery are regularly set up to arrive at some understanding among the partners, usually in response to a specific crisis, at which time the goal is no other than finding an immediate solution to an emergency. Usually, *ad hoc* mechanisms operate outside the legal or institutional framework, and while they solve problems, they are incapable of creating a culture of consensus building. If anything, they are platitudes to assuage interested parties that consultation takes place. Furthermore, while it can be said that *ad hoc* means has the advantage of flexibility, it does not necessarily lead to the development of capacity of the parties for sustained consultation.

The exception to the familiar institutional framework to tripartism in the region, perhaps the only one of its kind in Africa, is the South Africa's National Economic Development and Labour Council, (NEDLAC), which was established by an Act of Parliament in 1993. NEDLAC comprises the traditional partners in labour and social policy, as well as community representation. In spite of its multi-representational status, there is no doubt that it gives the social partners a sense of ownership of this institution. Unlike its counterparts in the region, NEDLAC is both a negotiating and decision-making institution. It is also an advisory body particularly where legislation is concerned, in which case the ultimate legislative authority is the Parliament.

While NEDLAC represents an innovative framework uncommon in Africa, it is important to bear in mind that concern has been voiced over whether the institution has legal right to share the powers of Parliament, or to what extent should decisions of the agency be seen as part of the legislative or governmental process.⁵² Moreover, the protracted negotiation of the newly enacted Basic Conditions of Employment Act of 1997, which took over a year at the chambers of NEDLAC give credence to critics' argument that the agency could hold the government or the legislative authority to ransom.⁵³ As a new experiment in social concertation, there is no doubt that these concerns have merit and are good grounds for a review of the institution, provided that any desirable modification do not undermine its role in promoting meaningful dialogue in the country. In this respect, one can hardly disagree with the conclusion of an American observer that,

While South Africa trails the United States in using negotiation processes to resolve labour-management disputes, it leads the United States in using tripartite processes to reach consensus on critical issues. The new government...is very committed to tripartite

⁵²See Proceedings of the ILO/NEDLAC Tripartite Seminar on Social Dialogue. Johannesburg, 2-4 December, 1997.

⁵³To press its demands for a 40-hour work week and 6 months maternity leave, among others, COSATU staged a series of work stoppages in major cities of South Africa in August 1997. See *The Star* newspaper, August 13, 1997. Ultimately, the bill was removed from NEDLAC for the final consideration and approval of Parliament in November 1997.

processes to achieve consensus among the ■ social partners ■ on public policy questions ■.⁵⁴

There is hardly any doubt that the NEDLAC experiment is an innovation in consensus building among the stakeholders. During the few years of its existence, the institution has an impressive record of achievements, having been responsible for such important legislation as the Labour Relations Act, of 1995 and the Basic Conditions of Employment Act of 1997, as well as the ratification of core Conventions, such as Conventions Nos. 29, 87, 98, 105 and 111.

Tripartism for Decisive Purpose

An important characteristic of the majority of tripartite consultative machinery in Africa is the fact of their *advisory status to the Minister of Labour*. The law setting them up is explicit in this regard. A typical provision is ■to make such investigations as it may deem necessary, and to advise the Minister generally or in respect of particular case ... ■. Literally, it follows that it is up to the Minister of Labour to accept or reject the advice of the forum. If he rejects the advice, the entire exercise is thus ended. But, here is the dilemma; what happens if he accepts the conclusions of the advisory council? The dilemma is not caused by the fact that consultative bodies are advisory. Clearly, however, the Minister can implement only those conclusions that relate to the labour issues and are within his authority. But what happens when the conclusions touch on issues outside his authority? The dilemma is that, in countries where advisory bodies exist, it is exclusive mainly to the Ministry of Labour, on the government side. But as is generally known, particularly in the era of profound economic reforms, the so-called ■labour issues ■ are a manifestation of a more fundamental macro economic phenomena.

The case of Swaziland presents clear evidence of the inadequacy of labour advisory councils in dealing with the national labour policy. The controversial Industrial Relations Act of 1996 was the subject of intense protests led by the powerful Swaziland Federation of Trade Unions (SFTU), during 1996-97, over demands for social and political reforms, incorporating what was later to be known as the ■27 labour demands ■. During 1995-97, several conclusions were reached at the tripartite Labour Advisory Board, particularly on the review of the industrial relations law. Probably, these conclusions were not endorsed by top level authority in government (which was not part of the negotiation). The frustration associated with this dilemma led the unions to stage several damaging stay-away strikes in the country during 1996-97, intended to force government to accede to the wishes of the tripartite partners.

⁵⁴Jerome T. Barrett, ■Trade Unions in South Africa: Dramatic Change after Apartheid Ends ■ *Monthly Labor Review*, May 1996, p. 38.

This kind of situation usually projects a poor image of the Labour Ministry which often genuinely support tripartism but is too weak to secure the support of the higher government authority for the tripartite agenda. What this amounts to is that a meaningful tripartite cooperation requires the participation of *all* arms of government which are directly concerned with policies that have direct or indirect effect on labour issues. Failure to achieve this level of representation has tended to create instability in industrial relations as trade unions (and less so employers) are frustrated by the inability to secure favourable approval of top government authorities for the conclusions of tripartite bodies.

Another illustrative example can be drawn from Zimbabwe where an effort to set up a body similar to NEDLAC was abandoned in 1997, and the country saw the emergence of the National Economic Consultative Forum (NECF) which was established in July 1997, as a multi-party forum for discussion of national socio-economic issues. It has the President as Chairman and brings several interest groups, government, employers, labour, student, university, community people, to discuss issues of national interest. It is a consultative group, which has no decision making power, a feature which has created a chill in trade union participation in the Forum's first conference held in January 1998. Issues such as these have always been a source of disagreement between labour and government authorities, as the former insist that tripartite machinery should be seen to make decisions or, as the employers would say, there should be a relationship between conclusions of tripartite consultation and eventual policy decisions.

The NEDLAC experiment, regardless of any shortcomings it might have, has proved to be a veritable institutional mechanism for regulating social policy by providing social 'voice' to the partners, without which national social and political objectives can be undermined.⁵⁵ The Mozambican and Zambian approach to consultation come closer to this, but they are too new to be adjudged as the sustainable machinery. In the former, the conclusions of the Consultative Labour Commission (CLC), are sent to the Council of Ministers which normally adopts such conclusions. In Zambia, the conclusions of the Tripartite Labour Consultative Council are tabled before the cabinet, which may or may not adopt such conclusions. But, unlike the CLC, there is no statutory requirements for other government departments to participate in the TLCC.

⁵⁵Guy Standing, et. al., *Restructuring the Labour Market: The South African Challenge*. Geneva, International Labour Office, 1996, pp. 177-179.

The issue of the scope of tripartite consultation and membership of the institutional framework set up for that purpose is directly linked to the foregoing. As shown earlier, one of the major weaknesses of tripartite machinery as they exist in all countries except South Africa and very recently Mozambique, is the fact that the mandate of such machinery tend to confine their deliberation to the ■labour■ issues, such as wages, employment, trade disputes, collective bargaining and so forth. Under the Namibia Labour Act of 1992, for example, the functions of the Labour Advisory Council include the ■ formulation and implementation of a national policy relating to basic conditions of employment, promotion of collective bargaining, enactment and amendment to labour acts, matters relating to International Labour Organization, and publication and dissemination of statistics and information.⁵⁶

A consultative or advisory mechanism can only be seen to contribute meaningfully to consensus building when its members have the technical and legal mandate to deal with the subject at hand. This is possible only when membership of tripartite consultation reflect the various authorities concerned with macro economic or social policy. The awareness that changing labour relations issues have deep-rooted origin in the macro economic policy framework has intensified the demand for a broadened mandate of tripartite machinery by which the forces that shape industrial relations policies, at both the national and industry levels should be subject of consultation or negotiation by the key stakeholders.

⁵⁶See Section 8 of Part III of the Act.

*Chapter Five***THE ROLE OF THE STATE**

The role of the state in industrial relations has always been a subject of intense debate, both in academic circles and among practitioners alike. In the post-independence period, not only in Africa but throughout the developing world, governments tended to define the role of labour as primarily a vehicle for stimulating productivity and nation-building in which sectoral interests of trade unions should be subsidiary to national interest.⁵⁷ Based on this conception government became the most important player in industrial relations, controlling and dictating policies and conditions which the social partners were obliged to adopt and follow. In other words, other stakeholders were considerably subordinated.

This perspective has been responsible for the control or restrictive tendency of public policy up to the advent of structural economic reforms and liberalization.⁵⁸ Thus, the labour legislation of the period before reforms gave considerable power to government functionaries in regulating labour-management relations, such as the settlement of trade disputes, registration (and deregistration) of trade unions, including enormous power to revoke the certificate of unions. For example, in Botswana where the rights of workers to form trade unions was recognized, the right to collective bargaining was not particularly recognized, and so government alone determined the going wage rates, both for public and private sector workers. In matters relating to tripartite consultation under the auspices of the labour advisory board or council, public policy in several countries gave enormous power to public authorities as to which case can be brought before the tripartite machinery, and what becomes of any conclusion the partners might arrive at.

⁵⁷See, for example, Everett M. Kassalow, *Trade Unions and Industrial Relations: An International Comparison*. New York, Random House, 1969.

⁵⁸ Alan Gladstone, ■ Trade Unions, Growth and Development ■ *Labour and Society*, Vol. 5, No. 1, 1980, pp. 49-68.

However in recent years, the forces of liberalization and democratization have compelled governments of one country after another to deregulate labour relations and adopt free market oriented policies. What is discernible in this process is that the role of government is changing from active controls to promoting partnership and establishing an enabling environment in which the partners in industry can operate flexibly to improve productivity and corporate effectiveness. In Southern Africa, the evolving thrust of public policy is therefore beginning to emphasize an industrial relations system in which the social partners, particularly the trade unions, are seen as free and independent partners in the process of economic development. Thus, the promotion of good labour relations, labour-management cooperation, especially at the workplace, and providing an enabling environment for overall effectiveness of the social partners to play their part in the workplace governance and thereby contributing to economic development are the main thrust of public policy today.

As a result of this development, revolutionary legislative reforms are taking place in several countries in the region, changes which are already altering the nature of labour relations. In South Africa, for example, the package of labour legislation that has been introduced since 1994, including the path-breaking Labour Relations Act, 1995 and the Basic Conditions of Employment Act, 1997 are of monumental importance for labour and management relations. The Labour Relations Act, for example, outlines a new approach in which bargaining rights are extended to all workers, strengthening of the organizational rights of trade unions, encouraging the parties to use collective bargaining means to find solutions to their problems and modernising the system of dispute resolution for effective, speedy settlement and strengthening workplace governance through bargaining and workplace forum.

In Malawi, a country which though not directly afflicted by the evils of apartheid, but nevertheless operated an authoritarian regime for 3 decades, has embarked on major reforms. In August 1993 the new government published a *Policy Statement on Labour* encouraging the formation of trade unions and the right to collective bargaining. A number of legislative reforms have followed, with the enactment in 1996 of the Labour Relations Act and the Employment Act of the following year. Like the South African labour act, the Malawian legislative agenda calls for a totally new but progressive approach to labour relations. Both countries have anchored their legislative framework on the principles of Conventions 87 and 98.

Also in Mozambique where the state operated a socialist system of government until recently, the government is making fundamental transformation to a market based economy and democratic system. This transformation is leading to the establishment of democratic institutions, particularly in the area of industrial relations, including the review of labour legislation in which the role of the state is redefined.

A Changing Role for the State

Country after country the legislative agenda underscore the important role of the state in industrial relations reform. Of particular importance is that several governments are embracing policies that give public sector workers participation the determination of the terms of conditions of employment. Thus, the legislative and institutional changes that are taking place across Southern Africa are beginning to project the state as the facilitator of the industrial relations system and helping the parties in industry to regulate their affairs within the overall national labour policy.

Several illustrative cases exist in the region to point to this direction of public policy. In South Africa, public policies are reducing the level of government intervention and creating institutions and a process which allows the parties to operate within a framework which have been arrived at a tripartite forum. For example, there exists the NEDLAC at the national level where broad national labour policies, including labour and social legislation are considered. At the sectoral level, there are bargaining councils through which general or specific conditions of employment for the specific sector are determined.

At the enterprise level, a major innovation in public policy is the creation of *Workplace Forums*. This machinery provides for joint consultation and decision-making on some important issues pertaining to enterprise governance, the sharing of information for the purpose of collective bargaining. Among the issues within the consultative framework in the workplace forums are organizational changes, restructuring, workforce reduction, job grading, merit bonuses, investment issues, hiring and firing, and so forth. Issues of joint decision-making includes disciplinary issues, codes of conduct, affirmative action, review of benefit schemes and safety and health issues. It is useful to point out that, unlike other variants of worker participatory schemes, workplace forum provides for substantial union involvement, so the former do not constitute a threat to union authority or legitimacy.⁵⁹ Having said this, it remains to be seen how effective this institution will be in promoting peaceful and cooperative industrial relations in the workplace.

Part of the responsibility of government, as facilitator is ensuring that the parties have adequate knowledge of prevailing labour policies. As the evidence has shown, governments in their quest for new investment and rapid industrial growth tend to ignore

⁵⁹In spite of this interpretation of the objectives of the Workplace Forum, trade unions in South Africa seem at present indifferent to this innovative structure. For example, a statement by the General Secretary of the country's National Union of Mineworkers at the NEDLAC Summit 1998 on 16 May, 1998 was to the effect that the Workforce Forum can wait as the 'unions are not in a hurry' to see them established. Also in Zimbabwe, the ambiguity in the current Labour Relations Act may have influenced unions' indifference to Works Councils. The unions' position might become clearer if the proposed harmonization law in that country make an unambiguous definition of the functions of the works councils.

the vital need for investors to understand and comply with prevailing national labour policies, in so far as the right to join union and bargain collectively without organizational impediments or obstacles is concerned. Thus, in a number of countries in the region, new investors tended to operate their businesses as if there is no labour legislation on employment regulation.

The new investors are often ignorant of the country's labour code, and there appears to be no concerted effort to familiarize them with national labour policy. Normally, it would have been more desirable had the new investors been introduced to the country's labour code at the time of investment negotiation. This implies that the enforcement of public policy and legislation by the appropriate arm of government, particularly in bringing employers who still maintain the anti-union posture should be seen as an important effort of government in promoting cordial and peaceful relations in the work place government.

Public Policy and Labour Standards

There is perhaps no other part of Africa where International Labour Standards have played a greater role in the recognition of workers rights in industrial relations than Southern Africa. The achievement of popular democracy and its natural extension to the workplace, particularly in such countries as Malawi, Namibia, South Africa and Zambia, has been a major objective of ILO technical assistance and cooperation in the region. The most important instrument by which the ILO contributes to the legal framework and practice of industrial relations in member states is the adoption and supervision of international labour standards. These standards aim at ensuring social justice for workers, by protecting their human rights, promoting humane working conditions and generally advancing the social life of workers.

Thus, the consideration of the effect of labour standards as a regulatory instrument in any country, and in Southern Africa in particular must take into account the extent of ratification by member countries, and in turn the extent to which such standards influence national policy and enforcement. As Table 8 makes clear, the commitment of countries to the ratification and implementation of international labour conventions can hardly be disputed. In the aftermath of democratization in the region, the number of ratified conventions has been impressive. For example, the young independent country of Namibia ratified two core Conventions, i.e. Nos. 87 and 98 among the 5 such conventions ratified in January 1995, including the equally important Convention No.144 on tripartite cooperation. This gesture is in recognition of the critical role of free and independent trade unions in promoting social consensus for nation-building and economic transformation. As one respected authority has observed, 'No labour standards are more important in a democratic society than the right to freedom of association and the right to

strike located within it.⁶⁰

However, the ratification of conventions related to labour relations in the region has not been totally satisfactory, as Table 8 shows. While some of the core conventions on industrial relations, such as Conventions 87 and 98, have been ratified by all countries except Zimbabwe which has recently ratified Convention 98. Only one country has ratified Conventions 154 while 3 countries have ratified Convention 150 on labour administration.

As is shown in Table 8, two countries, namely Lesotho and South Africa have not ratified Convention 144. This statute is concerned with mechanism for the ratification of international labour conventions through tripartite means, as a way of ensuring that all partners in labour and social affairs partake the ratification, and working on how national legislation can be brought into line with a specific convention so ratified.

⁶⁰Lord Wedderburn, 'Labour Standards, Global Markets and Labour Laws in Europe' in W. Sengerberger and D. Campbell eds., *International Labour Standards and Economic Interdependence*. Geneva, ILS, 1994, p. 245.

The non-ratification of a convention does not necessarily mean that a country has no legislative framework in support of the basic tenets of the conventions. In this regard, the non-ratification of Convention No. 144 by South Africa, presents an irony. As we have shown in this study, South Africa is one rare example where a uniquely significant experimentation in the use of tripartism in consensus building is taking place. Nevertheless, it remains a fact that the ratification of conventions signifies a public commitment to the importance of improving the quality of labour and strengthens any commitment that a state may have in respect of national legislation, irrespective of periodic change in national government. It instills confidence in a country and strengthens international economic cooperation.⁶¹ In an era of regional integration and globalization, ratification of conventions promotes the possibility of exchange of experience among countries, and encourages innovative practices.

⁶¹See *General Survey on the Labour Administration Convention (No. 150) and Recommendation (No. 158) 1978*. Report III, Part 1B. Geneva, International Labour Conference 1997.t

Table 8: Conventions Ratified by Countries of Southern Africa

COUNTRY	RATIFICATIONS
Botswana (14)	14, 19, 29, 87*, 95, 98*, 100*, 105, 111, 138, 144*, 151*, 173, 176
Lesotho (11)	5, 11, 14, 19, 26, 29, 45, 64, 65, 87*, 98*
Malawi (23)	11, 12, 19, 26, 45, 50, 64, 65, 81*, 86, 89, 97, 98*, 99, 100*, 104, 107, 111, 129, 144*, 149, 158, 159
Mozambique (15)	1, 11, 14, 17, 18, 30*, 81*, 87*, 88, 98*, 100*, 105, 111, 122, 144*
Namibia (5)	87*, 98*, 144*, 150*, 158
South Africa (15)	2, 19, 26, 27, 29, 42, 45, 63, 80, 87*, 89, 98*, 105, 111, 116
Swaziland (31)	5, 11, 12, 14, 19, 26, 29, 45, 50, 59, 64, 65, 81*, 86, 87*, 89, 90, 94, 95, 96, 98*, 99, 100*, 101, 104, 105, 111, 123, 131*, 144*, 160
Zambia (39)	11, 12, 17, 18, 19, 26, 29, 45, 50, 64, 65, 86, 87*, 89, 95, 97, 98*, 99, 100*, 103, 105, 111, 117, 122, 123, 124, 131*, 135, 136, 138, 141, 144*, 148, 149, 150*, 151*, 154*, 158, 159
Zimbabwe (9)	14, 19, 26, 29, 45, 81*, 98*, 99, 100*, 105, 129, 135, 140, 144*, 150*, 159, 170

Notes: (1) Numbers in bracket are the aggregate number of conventions ratified by country.

(2) Asterisk denotes conventions in the field of industrial relations.

*Chapter Six***CONCLUSION: THOUGHTS ON THE FUTURE**

This study has provided a survey of the profound reforms and transformations which are taking place in industrial relations in the countries of Southern Africa. The reforms in industrial relations have been induced primarily by two broad external forces which we are witnessing, the extent and how these environmental forces are impacting on industrial relations actors, institutions and processes in the region.

In spite of some observable emerging trends in the field of industrial relations in the countries of the region, any conclusions at this stage cannot but be provisional in view of the fact that the reforms are on-going in varying momentum among the countries, and also in view of the fluid characteristics of labour relations in the countries. Whether some of the changes that are taking place are ephemeral, transient or permanent cannot be categorically stated at the present time; a lot depends on the forces of change and the changing impact on the parties. At this point, therefore, the safe conclusion that appear to have emerged from this survey is that the environmental forces that have been discussed will continue to induce adjustments of industrial relations among the actors and between them in responding to internal and external pressures.

The South African Effect

Bearing in mind the foregoing caution on the emerging trends, a number of conclusions and possibilities in the industrial relations systems in the Southern African region are discernible from this study. To begin with, there is no doubt that South Africa, the most advanced economy in the region and where industrial relations is equally more advanced will continue to lead the way towards definitive public policy reforms. It will continue to set the pace in influencing the behaviour of the two sides of industry in their response and adjustment to the industrial relations institutions and processes which have been created.

The influencing role of the South African system is however more likely to be in the manner of exerting pressure on those systems which are yet to reach the level of democratic workplace in the region. One key area of such influence is the promotion of social dialogue through the example of NEDLAC as an important instrument of consolidating the democratic process. On the other hand, it can also be concluded that given the growing reforms that are taking place in other countries in the region, the influence of the South Africa will diminish in importance, as each country evolve an industrial relations system most suited to its specific socio-economic conditions.

The reason for these conclusions, as elaborated in this study, derive from the extensive role of the South African economy and the presence of the country's industrial organizations throughout the region. Even in the era of liberalization which has led to extensive privatization in the countries, the involvement of South African businesses in this transformation can only be seen as consolidating, even if only for some time to come, the countries influence in the field of industrial relations.

To forestall any misunderstanding of these conclusions, it should be borne in mind that in no way is there a suggestion here of importation of the South African system, despite the enormous influence of the country's industrial undertakings. On the contrary, there is no particular justification for such transfer because the factors inducing change in South Africa are significantly different from what obtains elsewhere in the region. At best, what can be expected is one system providing possible options or ideas for another on how to make progressive change in industrial relations policies and practice. We are already seeing the usefulness of this comparison in a country such as Swaziland where desirable reforms in labour laws are in conformity with environmental conditions taking place.

A New Role for the State

As environmental forces continue to influence the practice of industrial relations, so will the pressure on the parties to modify their traditional role and strategies, in line with the changing environment. As for the role of the state, there is evidence, as revealed in this report, of a trend towards a more liberal approach and deregulation of labour relations policies in a way that the parties in industry have a substantial role to play. As a recent ILO survey reveals, 'There is a trend now for governments to reduce their level of involvement in labour issues and to allow or invite unions and employers to participate more or to resolve issues themselves'.⁶² This trend is already emerging in all the countries, though at varying degrees and pace.

What appears to be emerging is a transformation in the role and perception of government as adjudicator and lead player in labour relations, to a public policy environment which is designed to facilitate or empower the social partners to play a more decisive role in the labour and management relationship through tripartite cooperation, collective bargaining and workplace relations. The thrust of public policy and the role of government is thus to strengthen flexibility in the workplace by ensuring social protection for workers. In this role it should seek to strengthen institutions of tripartite cooperation for promote job creation, employment protection, improvement in the standard of living of

⁶² 'Labour Relations' *World Labour Report 1992*. No. 5. Geneva, International Labour Office, 1993, p. 57.

workers and economic growth. The effect of this reorientation of the role of the state will continue to have important and significant effect on the institutions and practice of industrial relations.

The role of labour ministries in giving support to the reforms that are now taking place across the region cannot be overstated. Yet this arm of government has been adversely affected, both in terms of financial resources, manpower level and technical capacity, ironically as a result of some of the external pressures that are now changing the face of industrial relations in the region. In nearly all the countries of the region, labour administrations are inadequately staffed to the extent that they are at the moment not in a position to offer all the various services that are within their mandate. This state of affairs has contributed to what is regularly referred to as the ■marginalization■ of labour administration. One assumes that government authorities will recognize the crucial role of labour administration in the overall goal of economic development in an atmosphere of industrial peace and national competitiveness.

Response of the Social Partners

The implication of the foregoing is that labour and employers, particularly at the workplace will be under pressure to broaden the scope of their relationship beyond the traditional issues of bread and butter. In this regard, a number of questions appear pertinent: Does the prevailing state of social relations in the workplace induce workers to want to partake in such an enlarged scope of labour relations? Are workers making the appropriate readjustment in order to be able to deal with a broadened agenda for labour relations? Do the parties, notably the workers, have the wherewithal to meaningfully partake in such discussion? What role can trade unions and employers ■ organizations play in strengthening the capacity of their respective constituents to be able to deal with such issues?

As the forces of liberalization continue to impact on labour and management relations, the parties, notably the employers, will press for a greater influence on industrial relations at the enterprise level to enable them respond more quickly and appropriately to external pressures. One effect of this is that the process of decentralization of industrial relations issues will intensify. The emerging trend towards decentralization may create concern in certain quarters as to what is perceived to be a ■threat■ to collective bargaining. While this concern may be justified in certain cases, this is probably not the intent of public policy. In any event, it is probably true that the view that decentralization will lead to the decline of collective bargaining, in so far as Southern Africa is concerned, is exaggerated. What is more certain is that the role of the parties in the workplace will continue to extend beyond the traditional issues of collective bargaining, particularly in the workplace where unions are firmly established and there is no threat to their survival.

It is understandable to conclude that in some countries of Southern Africa, trade unions face an uphill task in continuing to play their role. The interesting point nevertheless is that unions will remain strategic actors in the world of work. In this role, however, they face formidable challenges in the consolidation of their important role in the economy. For a start, as a major social institution primarily concerned with the social protection of workers rights, they need to ensure that the orbit of their organization is widened beyond the traditional source of recruitment by building alliances with other organizations representing new entrants into the labour market.

This appears inevitable if trade unions are to ensure that their major service, that of offering social protection and promoting the employment rights of workers is extended to the expansive unorganized sector. This may necessitate the ability of unions to ■ reinvent ■ their role, structures and procedures by seeing themselves as change agents. Trade unions would have to proffer solutions that offer workers better conditions in a world which is increasingly uncertain. Also, they need to see beyond the narrow issues of sectoral interests, and see their role in the broader macro economic framework in which they are regarded as important partners. Inescapably, they will be required to adopt a co-operative approach in their relations in place of adversarialism that appear to characterize present labour relations in the region.

With regard to employers, one point seems obvious from the direction of public policy. In spite of what might be regarded as the vacillation of some countries as to whether or not to strengthen the role of workers unions, it is clear that there is no evidence of a policy that can remotely be regarded as creating a union-free environment, not even the export free zones in countries such as Namibia and Zimbabwe.⁶³ In other words, what appears to be emerging is that public policy is not averse to recognizing workers rights to form trade unions of their choice; in fact, the trend, in so far as public policy is concerned, is the explicit recognition of this fundamental right of workers. This thrust of public policy is thus a clear message to employers that they need to develop concrete and specific positive policy towards workers. This implies the obligation to recognize workers ■ unions and negotiating with them on issues that affect their employment and working conditions, and encouraging them to play a decisive role in corporate life and workplace governance. In this way, workers and their unions can be expected to collaborate in achieving corporate effectiveness and productivity improvement.

Employers also have cause to address organizational challenges, such as the need for strategic and practical steps to widen their coverage of all categories of employers, particularly among the small and medium-sized enterprises. This is the way to strengthen

⁶³The enactment of Namibia's Export Processing Zones Act (No. 9) of 1995 providing in section 8 for a union-free environment was stiffly protested by workers and their unions (and also by the Ministry of Labour) and led to the amendment of the law in Act No. 6 of 1996 which recognize the application of the country's Labour Act of 1992 in the EPZs.

the representativeness of employers' organizations and also enhance their role and influence in policy formulation at national tripartite fora. What this amounts to is the need for employers to continue to adopt innovative approaches to the services they offer to the various categories of employers so as to sustain interest among such employers.

ILO Technical Cooperation

The primary role for the ILO in the advancement of industrial relations in Southern Africa is helping the constituents to implement those positive initiatives that are taking place across the region. It also includes helping to strengthen and promote the process of reforms aimed at institutionalizing social protection, by such means as strengthening tripartite consultation on social and economic decision making. This presupposes that trade unions and employers are seen as key partners in national economic transformation and development. It includes also helping to strengthen workplace relationships such that the legitimacy of trade unions are not threatened; in fact, there should be an important role for union in helping to strengthen corporate efficiency and effectiveness. Of particular importance is helping the partners to improve on the dispute resolution process in which the role of the grievance handling process in the workplace is emphasized leading to speed and effective resolution of grievances.

Such role for the ILO will also include information gathering and dissemination among the member countries in the region. Research studies of 'best practice' of a thematic nature, and the dissemination of such findings among member states should be an important technical advisory role of the ILO. The ILO's role is the sensitization of the partners on the importance of International Labour Standards, particularly those relating to workers' rights and labour relations. This includes strengthening the capacity of officials in the area of monitoring and reporting of labour relations activities as a key element of ensuring compliance with international statutes. It includes also helping the parties to improve their understanding of these statute, and their relationship with national labour standards. The ILO has an important role in strengthening the technical capacity of the Ministries of Labour to enable them to perform better in this and other areas. Incidentally, this is a role which the Office is already playing - enhancing the capacity of labour professionals to enable them improve their advisory and support service delivery to the social partners.

As this survey has shown, the challenge for the social partners include strengthening their capacity to provide relevant, timely and efficient services to their members, including the enlargement of their representation. This implies that trade unions and employers' organizations have to develop services that are relevant to this category of businesses. Again, the important role for the ILO will essentially be to provide technical assistance to workers' and employers' organizations to enable them to effectively make

the necessary adjustments occasioned by environmental changes.