



## **ILO History Project**

### **The role of the ILO during and ending apartheid**

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May 2013**

*"In countries such as Poland, Chile and South Africa, the ILO's strong support for trade union rights helped in the fight for democracy and freedom."*<sup>1</sup>

The International Labour Organisation (ILO) has embarked on a history project to properly document the institution's role in contributing towards social, political and economic development since its inception in 1919. The project kicks off in South Africa with a roundtable discussion, which seeks to highlight the ILO's involvement with the various trade union formations and employers' organizations in South Africa during apartheid and the role it played throughout this period, which eventually brought unions and employers together in challenging the apartheid state.

This background document covers the period of South Africa's initial involvement in the ILO during its formation leading up to it withdrawing from the ILO in 1964; the apartheid years and the ILO's role during that period; the role of the unions and other formations to challenge the apartheid state; the emerging relationship between organised business and labour leading up to the 1994 elections and finally, the ILO's role during the transition period.

As an active participant at the Paris Peace Conference following World War I, South Africa became a member of the ILO as well as the League of Nations when they were established in 1919. South Africa's participation in the ILO in the early years was a constructive and active one, but its relationship with the organisation began to sour when South Africa's Nationalist Party (NP) came to power. The relationship continued to deteriorate the more the party intensified its discriminatory legislation. This became particularly marked after World War II, when discrimination became a fundamental human rights issue also in the ILO context, not least due to the process of decolonization and the adoption of the Discrimination Convention 1958 (No. 111). Already at the 1944 ILO Conference in Philadelphia, South Africa was against the Recommendation on Minimum Standards of Social Policy in Dependent Territories, due to its race policy.

Criticism focussed on South Africa in the United Nations especially after 1948 and the official beginning of the apartheid era. In the ILO, the criticism against colonial powers grew significantly as decolonization brought in a large number of new member states, which increasingly forced a change in the ILO's until then relatively accommodating position regarding countries such as South Africa and Portugal.

The ILO opposed apartheid in various ways including practical assistance to apartheid opponents, and positions taken by its governing bodies on this discriminatory system. Initially, the ILO's actions were part of a joint initiative between it and the United Nations. It formed an ad-hoc committee on forced labour which in 1953 reported that apartheid government policies had the indirect effect of channelling the bulk of indigenous people into agriculture and manual

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<sup>1</sup> ILO at a glance, Published by the ILO

labour. It reported that this created a permanent, abundant and cheap labour force that was tantamount to forced labour. In 1957, the committee re-examined its observations on these policies and concluded that its findings from 1953 were still valid.

As time went on, the ILO moved away from the joint initiative and developed its own, distinct approach to apartheid.

Both the Governing Body's Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations found on a number of occasions that the legislation and practice in South Africa discriminated against workers on the grounds of race. It did this particularly in relation to the right to establish and join organisations, and in employment and occupation.

The beginning of the Sixties marked a turning point for South Africa. It was the year of the Sharpeville massacre: on 21 March 1960 police opened fire on a crowd of protestors killing 69 people. The government subsequently banned political parties including the African National Congress (ANC) and Pan-Africanist Congress (PAC), and declared a state of emergency in which about 18 000 people were imprisoned. Following the advancement of these and other discriminatory and repressive policies, the ILO hardened its approach to South Africa.

Starting in June 1961 it made a number of key decisions including not least of all to adopt a resolution condemning South Africa's racist policies, and a call for the country to withdraw from the ILO until it abandoned apartheid. The resolution was adopted with 163 votes; however, the 89 abstentions showed that there still was hesitation among the ILO's constituents, and South Africa itself made no move to leave at that time. A decisive change took place at the 1963 Conference, where the threat of preventing the South African government from taking the floor brought the Conference close to a constitutional crisis. This was solved through a set of measures banning South Africa from participating in most ILO meetings.

In June 1963, the ILO's governing body excluded South Africa from some of its trade committees. The next year, at its 48th session, the International Labour Conference unanimously approved the ILO's Declaration concerning the Policy of Apartheid and its programme for the elimination of apartheid in the field of labour. The Declaration reasserted the principle of equal opportunity, saying South Africa is disturbing international peace and security and "persistently and flagrantly violates this principle by means of legislative, administrative and other measures incompatible with the fundamental rights of man, including freedom from forced labour".

It demanded that South Africa fulfil its undertaking to respect the freedom and dignity of all human beings by renouncing its apartheid policy. To avoid being

officially excluded, South Africa withdrew from ILO of its own accord in March 1964. The ILO was one of the first organisations to impose sanctions on South Africa, and the country remained outside for the next 30 years.

### **Emergence of discrimination as a human rights issue**

Racism was the form of discrimination that first galvanized the international community into action from the ILO's inception till today. This response was partly sparked by the period of the holocaust. Thereafter, there was an intense period of standard-setting activities by the ILO and the United Nations on non-discrimination and equality in the world of work. The inclusion of "race" in the Discrimination Convention as unacceptable grounds for discrimination was a reflection of international commitment to combat racism.

As part of its response to apartheid, the ILO's Constitution and its Discrimination (Employment and Occupation) Convention of 1958, offered a policy framework for eliminating all forms of discrimination at work.

Through the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the United Nations in 1965, the many developing countries that had now joined the United Nations reiterated their condemnation of racism.

The end of colonialism revealed the challenges and problems of unequal development arising from the consequences of regimes that were being dismantled.

Following these events, the Organisation entered a new phase of action against apartheid. As highlighted above, the ILO's Constitution thoroughly legitimized action against apartheid while the Discrimination Convention of 1964 provided the policy framework for it. The ILO could now use measures, which would not have been possible if South Africa had remained. The Declaration against Apartheid was unique in introducing an intense and sustained monitoring and critical analysis of the situation in a single country. Now action focussed on a non-member, which was rapidly becoming an international pariah. The 1964 Declaration – which was later updated in 1988 and 1991 – instructed the Director-General to submit every year to the Conference a special report on the application of the Declaration, including recommendations on measures, which could bring to an end the policy of apartheid.

This sustained action by the ILO underlined the extent to which apartheid was a labour-related issue. ILO action had moved from initial recommendations to an unwilling South African government, to mobilization of international opinion against apartheid, and to the isolation of the South African government until it abolished apartheid. The organisation mobilised for material and political support for South Africa's liberation movements and later for the democratic trade unions and employers' organizations acting against apartheid.

In 1973, the United Nations adopted the International Convention on the Suppression and Punishment of the Crime of Apartheid, which made apartheid a crime under international law. The next year, South African delegates were excluded from the UN's general assembly deliberations. Meanwhile, the International Labour Conference set up a Committee on Action against Apartheid, which monitored developments in SA and decided on activities to challenge the apartheid state. In 1989 a Committee of Independent Experts was established to follow up and monitor the implementation of sanctions and other actions taken against apartheid.

Following even more violence at the hands of South African security forces in their oppression of black people, the Second International Trade Union Conference for Action against Apartheid, took place in the Palais des Nations 1977, organised by the Workers' Group of the ILO. The meeting was convened in cooperation with the United Nations Special Committee against Apartheid. The main aim was to discuss the South African situation and what action needed to be taken in order to put an end to the situation. This meeting was preceded by the first conference, which took place in 1973 which highlighted the importance of the participation of the trade union movement in the international campaign against apartheid. Emerging out of this conference, amongst others, was a request for the Special Committee on Apartheid to liaise with the Preparatory Committee for the International Conference of Trade Unions against Apartheid with a view to promoting maximum participation by the trade unions at the national and international levels in action against apartheid in South Africa. In addition, this would include making unions around the world aware of the situation in SA and to publicize the activities of the trade union movement aimed at the eradication of apartheid.

Much of the ILO's activities regarding South Africa involved the coordination of international anti-apartheid actions and the support of labour and liberation movements in the country. Initially, this involved the SA Congress of Trade Unions (SACTU) which was aligned to the ANC through its involvement in the Congress Alliance. After the banning of the ANC, many of SACTU's members and leadership were recruited into the ANC's military wing, Umkhonto we Sizwe (MK). In addition, a number of SACTU<sup>2</sup> officials were banned so by 1965 it was effectively dead as an internal trade union organisation. However, it set up external missions and began to interact with its international counterparts to challenge the apartheid state. It also participated in the ILO – as it had earlier affiliated to the World Federation of Trade Unions (WFTU) which was an important development as it provided access to the ILO and UN machinery, enabling it to maintain its stance as the most representative body of South African workers.

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<sup>2</sup> In 1990 SACTU, which had continued underground activities from exile, dissolved and advised its members to join COSATU.

1973 marked the return of black-worker resistance (with the Durban strikes) and the formation of independent trade unions – ultimately leading to the launch of the Congress of SA Trade Unions (COSATU) in 1985. Until this point, SACTU had dominated the terrain internationally and got caught up in the cold war tensions at the level of the international trade union formations. However, after 1973, the independent trade union movement not only began to confront the South African state but also began to build relations internationally. SACTU became increasingly side-lined (and no longer acted as the gate-keeper) in the administration and maintenance of linkages and did not have access to resources generated as a result of the contact.

Whilst the employer body, South African Employers' Consultative Committee on Labour Affairs (Saccola), no longer had access to the ILO, it continued to have contact with international employers through this period. South African employers travelled overseas and engaged with their foreign counterparts to inform them of developments in the country and what employers were doing about them.

Political turmoil escalated in the 1980s and so did the emerging labour movement, which began to play a central role in bringing down apartheid. The banning of political parties which began in the 1960s continued into the 1980s and it was a period in which many trade unionists, among other activists, were arrested, tortured and murdered. Unity talks between unions began in the early 1980s, and by 1985 COSATU had been created.

At its launch in Durban, the vice-President of the National Union of Mineworkers (a driving force behind COSATU) Elijah Barayi, tore up his prepared speech openly defying the apartheid state and challenged Prime Minister PW Botha to drop the pass laws requiring black men to carry a pass book at all times. He also challenged Inkatha Freedom Party leader Mangasothu Buthelezi. Barayi did this whilst the police surrounded the stadium. The launch marked a turning point in South African politics and pointed to the line COSATU was to take in the years to come.

The period after COSATU's launch saw an increase in strikes and political stay-aways. The federation began to mobilise its members around both workplace and political issues. The countrywide strikes in 1987 especially that of mineworkers was seen as a direct challenge to the apartheid state and employers. By 1988, COSATU was campaigning against discriminatory changes to the Labour Relations Act (LRA), which ignited countrywide action from workers.

1989 was a busy year for the federation. It held a workers summit and later campaigned for more stay-aways in response to the LRA. This was followed by demonstrations, boycotts, and sit-ins. Meanwhile, employers and unions had by this time been meeting around the LRA as 'more progressive' employers realised that their workplaces had become the site of the broader political struggles which

required them to act. Following two years of discussion a deal was finally struck in 1990 known as the Saccola accord – which was hailed as a model for more cooperative labour relations. As part of this agreement, the parties approached the state together to legislate changes to the LRA, including the enshrinement of a basic set of worker rights.

Dialogue between Saccola and the unions started in the early 1980s and became more formal by 1988 with discussions around amendments to the LRA.

The ILO stepped in and began to fund some of these interactions and began to assist the parties on advice around legislative reform as well as building capacity around collective bargaining and dispute resolution. It also sought over the years to strengthen labour market institutions and during apartheid continued with study tours and workshops and seminars held outside the country. Aside from this direct assistance to the parties, the Committee on Apartheid maintained the international pressure for change and assisted in building the basis for reform.

The un-banning of political parties and the release of Nelson Mandela from prison in 1990 changed South Africa's political terrain. The ANC and its alliance partners – COSATU and the South African Communist Party (SACP) - faced rising pressure to develop key policies and prepare for political negotiations. Within this environment, organised labour and business continued on the path set by the Saccola accord. Their journey was aided by the creation of the National Economic Forum (NEF) that was born out of the 1991 anti-VAT strikes.

As political negotiations began to unfold, the ILO began again to re-evaluate its approach to South Africa and in 1990 it invited Nelson Mandela to speak at the 77th session of the ILO's national conference, where he paid tribute to ILO for its struggle against apartheid.

*"We must...express our deepest appreciation to you all for the struggle you have waged over the years for the release of all South African political prisoners... We thank you for your sense of humanity and your commitment to justice which drove you to reject the very idea that we should be imprisoned and that our people should be in bondage,"* he said.

In early 1992, a meeting took place in Zimbabwe, attended by Saccola, and other bodies representing formal black business and the informal sector. The objective of the meeting was to establish an umbrella organization, which would act as a non-racial employers' federation. The new group, tentatively named the Federation of South African Employers, was designed to provide capital with a unified voice during the transition period, counteract trade union power, and facilitate the participation of an employers' delegation in the ILO. The South African employers and trade unions thus had access to the ILO whereas the Organization could have no dealings with the apartheid Government.

Still in that year, a Fact-Finding and Conciliation Commission on Freedom of Association (FFCC) visited South Africa. It had been appointed by the ILO Governing Body in response to a complaint of trade union rights infringements in South Africa, presented to the ILO in 1988 by COSATU. As South Africa was not a member of the ILO at that time, the FFCC was set up following a request by the United Nations Economic and Social Council to which the ILO first referred the complaint, in accordance with the procedures approved by the UN and the ILO. The conclusions of the FFCC were presented to the Governing Body of the ILO in May 1992.

The commission conducted a full review of South African labour laws within the context of international labour standards on freedom of association. All interested parties including Saccola were encouraged to make representations, which they did. The commission's report published midway through 1992 made recommendations concerning aspects of South African labour law that it felt did not comply with international standards including collective bargaining and the right to strike.

At the International Labour Conference that year the Committee on Action against Apartheid held a session to examine the Declaration against Apartheid and appeared divided on the most effective way of aiding the transition process in South Africa once the dynamics in the country itself had given a new impetus to trade unions and employers' organizations and their interaction, which in the ILO context became an important vehicle for support.

COSATU, the National Council of Trade Unions (Nactu), the ANC, and the PAC had consultative status in the Committee, giving them the opportunity to voice their opinions on ILO activities regarding South Africa.

While both the employer and union representatives in the Committee noted the need to continue to provide technical assistance to democratic trade unions in South Africa, the employers' group also called for assistance to a non-racial employers' group, and especially to the youth in South Africa that have not received adequate training or education. It argued that this should manifest itself within a plan of action, formulated by the director-general of the ILO, which would facilitate "employment creation; labour relations and collective bargaining; productivity; and manpower training and human resource management".

On the other hand the workers' group welcomed the deployment of international observers from the UN and the Commonwealth among other bodies in order to further the objectives of the National Peace Accord. They also drew attention to the initiatives of unions in establishing a Trade Union Violence Monitoring Group to monitor violence and to protect trade union rights. It stressed the need to facilitate "voter education, democratic practice and political tolerance by means of seminars, workshops, mass media campaigns and similar projects in both urban and rural areas".



The Committee eventually included the proposals of both the Workers' and Employers' groups in some form or another within its conclusions to be presented to annual Conference in that year.

In May 1992, the ILO organized a Tripartite Conference on Southern Africa in Harare, Zimbabwe. The conclusions of the Conference included a recommendation to the International Labour Conference to take a decision concerning the preparation of technical assistance projects to South African employers' and workers' organizations on the understanding that these were non-racial, democratic and willing to accept international labour standards.

“As regards apartheid, the future direction of ILO activities would largely depend on whether an interim government or transitional executive council was appointed in the near future. - - if the optimistic scenario held, the Committee (of the Conference) could take stock of the ILO plan of action, dispense with instruments such as the Declaration, and welcome a democratic South Africa back into the fold of the ILO.”<sup>3</sup>

The main point of contention continued to revolve around what to do with the updated Declaration on Action against Apartheid in South Africa - the 1964 document that provided the guiding principles upon which ILO anti-apartheid action was based. A question linked to this was the continued need for the Group of Independent Experts which followed up and monitored the implementation of sanctions and other action against apartheid. The workers' argued that it was premature to repeal the declaration or, indeed, discontinue the Expert Group. They said suspending the declaration needed to be dependent upon the agreement on an election date for a constituent assembly; the establishment of a Transitional Executive Council; an independent Electoral Commission; and an Independent Media Commission. The employers argued that the Expert Group should be abolished and the funds used for technical cooperation. As to the Declaration, they considered that it should remain valid until South Africa re-joined the ILO.

Other organisations joined the debate. Nactu suggested that there was a need to review and amend the document so that it was consistent with the changing nature of the ILO's activities in South Africa. COSATU argued that, while there was still much progress to be made in South Africa, it was important not to take on a position that ignored the realities of what had been accomplished. A Working Party was established to draft the conclusions from the Conference. The part dealing with the Declaration was narrowly voted in as follows: "While welcoming the recent political developments in South Africa, the conference requests the Director General to report to the [ILO's] Governing Body in November 1993 on progress made towards the elimination of apartheid,

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<sup>3</sup> GB.253/PV(Rev.), 253<sup>rd</sup> session, Geneva, May-June 1992.)

including the establishment of a transitional executive council, an electoral commission, an independent media commission and measures taken to hold the general election. The Conference requests the Governing Body, if it is satisfied that conditions exist then that would warrant a reconsideration of the ILO action against apartheid, to put an item on the agenda of the 1994 International Labour Conference concerning the review of the Declaration."

Aside from the Declaration, the workers' and employers' groups were able to agree in principle on everything brought up at the conference. Although the declaration prohibited the ILO from establishing an office (at that point) and initiating widespread programmes within South Africa, the organization still conducted training workshops for non-racial civil organizations and sent a team to make an assessment of the needs of South African organizations participating in non-racial tripartite forums. The ILO constructed a programme of action designed to help these organizations address the socio-economic legacies of apartheid following the implementation of a Transitional Executive Council.

In November 1993, COSATU General Secretary Jay Naidoo, was invited to address the Discrimination Committee of the Governing Body. Following this, the Committee proposed unanimously to the Governing Body the suspension of the Declaration against Apartheid and asked the ILO to implement a plan of action immediately. It also recommended that a tripartite delegation representing the National Manpower Commission (NMC) be invited to attend the Eight African Regional Conference. On that occasion, the Workers specifically requested that resources be given to voter education – something which the Office did not, however, agree to.

After the 1994 elections, South Africa resumed its membership in the ILO and the delegates walked into the Conference to a standing ovation. With South Africa's return to the ILO came the dissolution of the Committee on Action against Apartheid and the final rescission of the Declaration of the same title. The ILO also decided that it would give technical assistance to South Africa in a number of areas. It approved, for example, a special allocation of US\$1,000,000 for technical cooperation assistance to the country.

The following year an agreement struck between the SA government and the ILO in Geneva provided for the opening of an ILO office in Pretoria which would cover the Southern African region.

Once South Africa re-joined the ILO, it aimed to provide technical assistance especially around the drafting of new labour legislation and the creation of the National Economic Development and Labour Council (Nedlac) which was effectively the merger of the NEF and the old NMC – which COSATU had agreed in the late 1980's to participate in following agreement to restructure it. This council was a key institution in post-apartheid South Africa, which sought to

entrench participatory democracy, and was heavily influenced by the notion of tripartism and social dialogue as advocated by the ILO.

In terms of the amendments to the labour laws the ILO provided technical assistance and when drafting new laws the technical team spent significant time in Geneva and wrote their first draft there. Significant elements of the new legislation emerged from interactions with ILO members and people who had been influenced by the ILO thinking.

The ILO provided much funding for these processes and facilitated workshops to assist in the process of drafting of new laws.

The ILO's involvement in the South African labour market did not end there, and the new Minister of Labour Tito Mboweni instituted a comprehensive policy review of the labour market towards the end of 1995. The ILO was critically involved in this process, which led to the setting up of the Presidential Commission of Investigation into labour market policy that released its report in June 2006.

Ultimately, the ILO's role during the transition period has been one of facilitating access to technical expertise, funding and providing a safe space for the social partners in SA to engage and attempt to inculcate a culture of social dialogue that was a critical element in assisting the country during this period.