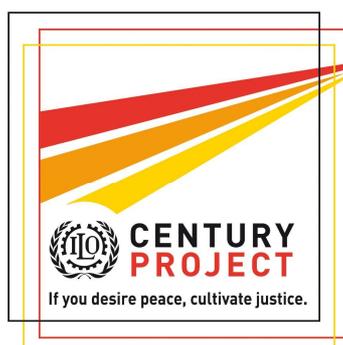


International Labour Organization Century Project

From Workplace Rights to Constitutional Rights in South Africa

The role and actions of the tripartite ILO constituency in the challenge to apartheid and the transition to democracy



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Background

“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.”¹

The International Labour Organization (ILO) has embarked on a history project to document the institution’s role in contributing towards social, political and economic development since its inception in 1919. This includes taking a closer look at the ILO’s work and impact at the field level, as the testing ground for its policy advice.

The project’s roundtable activities kick off in South Africa (SA) with a discussion to explore and highlight the ILO’s involvement with its constituents, trade union formations and employers’ organizations, as well as the various liberation movements in South Africa during apartheid. Of particular interest is the role the Organization played throughout this period which eventually brought unions and employers together in challenging the apartheid state. Hearing from the key actors of that time period will allow the Project to humanize history. It also provides a means to trace ILO methodology and its unique tripartite constituency and standard setting mechanism in the journey from workplace rights to constitutional rights in South Africa.

This background document, aimed at stimulating debate, covers the period of South Africa’s initial involvement in the ILO during its formation leading up to South Africa’s withdrawing from the ILO in 1964; the apartheid years and the ILO’s role during that period including its interaction with the liberation movements and the unions in exile; the role of the unions and other formations to challenge the apartheid state; the emerging relationship between organized business and labour leading up to the 1994 elections and finally, the ILO’s role during the transition period.

The early years: 1919–1963

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 as it engaged in debates around key conventions² and ratified a number including Convention No. 41 concerning employment of women during the night; Convention No. 2 concerning unemployment; Draft Convention concerning equality of treatment for national and foreign workers as regards workmen’s compensation for accidents; Convention No. 26 concerning the creation of minimum wage fixing machinery; Convention No. 45 concerning the employment of women on

¹ ILO at a glance, published by the ILO

² South Africa made input on a number of conventions including: Draft Convention concerning the night work of young persons employed in industry; Recommendation concerning the prevention of unemployment in agriculture; Recommendation concerning the protection, before and after childbirth, of women-wage earners in agriculture; Recommendation concerning the night work of women in agriculture; Draft Convention concerning the age for admission of children to employment in agriculture; Recommendation concerning night work of children and young persons in agriculture; and Recommendation concerning social insurance in agriculture.

underground work in mines of all kinds. By 1939, the SA government had ratified 8 ILO Conventions while 21 had been voted on but not yet ratified by the government.

SA became a leading member in both the ILO and League of Nations but even by then, “the essential foundations of a racially exclusive constitutional, economic and industrial society were already firmly in place”³ while the ILO “may have from time to time exercised some influence over some elements of working conditions in some sectors of the economy.”

Rubin⁴ points out that it would perhaps be unfair to characterise the ILO’s approach as one of indifference as “in the earlier part of the period, there was a great degree of caution within the League of Nations and the ILO over the degree to which, if at all, it was permissible to infringe the sovereignty of any State, let alone those that were themselves members of these international organizations.”

The post war years saw the establishment of the United Nations – with South Africa yet again becoming a founding member. It was only after the Nationalist Party (NP) came to power in 1948 and formally adopted the policy of apartheid that the relationship between the ILO and SA began to sour and deteriorated from there as the NP intensified its discriminatory policies. This became particularly marked when in the post war years, 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 International Labour Conference (ILC) in Philadelphia, South Africa was against the Recommendation on Minimum Standards of Social Policy in Dependent Territories, due to its race policy.

During this period, South Africa faced rising pressure in the United Nations while 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.

Despite the growing distance, SA still continued to ratify a number of conventions, including Convention No. 89 concerning the night work of women and Convention No. 42 concerning workmen’s compensation.

Meanwhile, the ILO began to oppose apartheid in various ways including practical assistance to apartheid opponents and positions taken by its governing bodies on SA’s discriminatory system. Initially, the ILO’s actions formed part of a joint initiative between it and the United Nations but as time went on, the ILO moved away from the joint initiative and developed its own, distinct approach to apartheid taking advantage of its unique tripartite constituency. As part of a joint initiative with the UN, an Ad-Hoc Committee on Forced Labour was set up which in 1953 reported on a number of issues in

³ Rubin, N: From pressure principle to measured militancy -The ILO in the campaign against apartheid. ILO Century Project. International Institute for Labour Studies.

⁴ *ibid*

relation to the apartheid state's policies. The Committee argued, amongst others, that its policies had the indirect effect of channelling the bulk of indigenous people into agriculture and manual labour. It reported that this created a permanent, abundant and cheap labour force that was tantamount to forced labour. The Committee concluded that in view of its existing policies (including legislation such as the Suppression of Communism Act, 1950⁵), "a system of forced labour of significance to the national economy appears to exist in the Union of South Africa (Report of the *Ad-Hoc* Committee, pages 79-80)". In response, the SA government contended that neither the UN nor the ILO had any right to intervene in its domestic affairs. In 1959, the Committee re-examined its observations on these policies and concluded that its findings from 1953 remained valid.

Meanwhile, both the ILO 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. Some of the cases from the Committee on Freedom of Association included: Obstruction of exercise of trade union rights in food, beverage and tobacco and hospitality industries – complaint lodged by Trade Unions International of Workers of the Food, Tobacco and Beverage Industries and Hotel, Café and Restaurant Workers (Trade Department of the World Federation of Trade Unions, WFTU), South African Congress Of Trade Unions (SACTU), WFTU; Arrest of more than 100 members of "freedom movement" and trade union leaders and militants under Public Security Act (1953) – complaint lodged by WFTU and South African government to prohibit on 29 March 1961 all gatherings by or under the auspices of or for the promotion of the interests or objects of the South African Congress of Trade Unions for the period 31 March 1961 to 30 June 1961 – complaint lodged by WFTU and SACTU.

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. In turn, following the advancement of these and other discriminatory and repressive policies, the ILO hardened its approach to South Africa.

⁵ The Act, amended by Act No. 50 of 1951, prescribes various penalties up to ten years' imprisonment for offences against its main provisions, such as furthering the achievement of any of the objects of communism. The South African Government states that under the Act the propagation of the doctrine of communism is a criminal offence but that no attempt is made to influence the opinion of any offender while he is serving his sentence, and that the number of convictions under these Acts has been so insignificant that "it could not conceivably be suggested that it plays any part at all in the economy of the country" (Extract from ILO official bulletins 1959)

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 45th session of the ILC stated that: "The Republic of South Africa, in spite of its long association with the ILO, accepts and practices the policy of *apartheid*, which said policy subjects indigenous African citizens to racial discrimination to their economic and social disadvantage, in contravention of the principles, aims and purposes of the ILO."

The resolution was adopted with 163 votes; however, the 89 abstentions showed that there still was hesitation among the ILO's constituents. In turn, South Africa itself made no move to leave at that time despite the fact that the general council resolved that the ILO's Governing Body (GB) should request the SA government to "withdraw from membership of the Organisation until such time as the Government of the said Republic abandons *apartheid* which is against the declared principles embodied in the Constitution of the International Labour Organisation, and further requests the Governing Body to ensure speedy implementation of this resolution."

A decisive change took place at the 1963 ILC Conference, where the threat of preventing the South African government from taking the floor brought the Conference close to a constitutional crisis. This, Rubin explains came about as a result of the fact that for the first time there was a "significant and cohesive bloc of African member States" and that in addition to "tactics deployed with support from Arab and Soviet bloc members, had resulted in a major crisis that even threatened the continued functioning of the ILO."

As a result of what transpired, the ILO Director-General proposed a set of measures to deal with SA – some of which formed the basis of a campaign which was to be sustained until the end of apartheid and the election of a new government in 1994. These included the banning of SA from participating in most ILO meetings; the adoption of two proposed amendments to the ILO constitution⁶ and the unanimous adoption in 1964 of the Declaration Concerning the Policy of Apartheid of the Republic of South Africa which was accompanied by the Programme of Action for the elimination of apartheid in the field of labour.

The Declaration reasserted the principle of equal opportunity, stating that South Africa was 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 the ILO of its own accord in March 1964.

⁶ These amendments related to respectively empowering the ILC to suspend Members found by the UN to be following a declared policy of racial discrimination or to expel or suspend Members *expelled or suspended by the UN*. Even without entering into the separate question of the existence or otherwise of the UN's capacity to undertake the steps made a necessary condition for ILO projected action, the ILO constitutional amendments, although carried by the ILC, were themselves subject to requirement under the ILO Constitution of requiring ratification by two-thirds of Member governments (including five of the ten States of chief industrial importance) before they could come into effect. That requirement has never been met.

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.

The apartheid years: 1964-1989

Following the formal withdrawal of the SA government from the ILO, the Organization entered a new phase of action against apartheid. It should be noted that at this stage the SA employer delegation continued to attend the ILO conferences until 1983 when the IOE changed its constitution to state that employers could only be IOE members if the government was a member of the ILO. Concurrently, trade union formations such as Union Council of South Africa (TUCSA) continued to send delegates, as observers. In 1970, following discussions between SACTU and the workers delegation within the ILO, it was also given observer status. In 1975 SACTU was accorded recognition in the ILO and other specialized agencies of the United Nations and its new Secretary General, John Gaetsewe, was allowed for the first time to address the plenary session of the ILC on behalf of his federation. Just prior to 1994 the IOE again changed its constitution, which allowed for the employers to become members even before the government was readmitted.

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 within the Organization. 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 1981, 1988 and 1991 and rescinded with the adoption of the Resolution concerning post-apartheid South Africa in 1994 – instructed the Director-General to submit a special report to the International Labour Conference every year (started in 1965 and continued until 1994) on the application of the Declaration, including recommendations on measures which could bring to an end the policy of apartheid. According to Rubin, these reports were an “acute analysis of the major features of the apartheid system and developments affecting labour.” He adds that the ILO’s clear willingness to associate itself with the UN in its activities against apartheid and the regular monitoring accomplished through the annual Special Reports, established its position in the forefront of the agencies and enabled it to work more closely with the institutions⁷ that were charged with encouraging further international action.”

ILO action had moved from initial recommendations to an unwilling South African government, to mobilizing international opinion against apartheid, and to the isolation of the South African government until it abolished apartheid. The organization mobilized for material and political support for South Africa’s liberation movements and later for the democratic trade unions and employers’ organizations acting against apartheid. However, in those early years the ILO’s work concentrated on information and analysis of the labour and social situation in South Africa. By the mid to late 1970’s it was to shift to provide direct technical assistance to the victims of apartheid.

In 1971 – coinciding with the International Year for Action to Combat Racism and Racial Discrimination - the ILO adopted another resolution on apartheid urging the ratification of the constitutional amendment passed in 1964 so as to pursue further activities to challenge the apartheid state. This led to the setting up of the Committee on Action against Apartheid in 1974.

1973 in South Africa marked a return to black worker resistance whilst the United Nations stepped up its pressure against SA with the adoption of the International Convention on the Suppression and Punishment of the Crime of Apartheid, which made apartheid a crime under international law. And by the following year, South African delegates were excluded from the UN’s General Assembly deliberations.

The origins of the emerging trade union movement have been linked to the outbreak of strikes in 1973 - starting in Durban – and spreading across the country. In the aftermath of the 1973 strikes various trade union formations emerged separate from the established registered unions of the day such as the Trade Union Council of SA (TUCSA) and the exclusively white South African Confederation of Labour (SACOL).⁸ These trade union

⁷ These institutions were later to include the Special Committee Against Apartheid created by the UN General Assembly, the Centre within the UN Secretariat and subsidiary bodies such as the Working Group of Experts which examined labour and trade union situations in South Africa.

⁸ Early trade unions were often for whites only, with organizations like the South African Confederation of Labour (SACoL) favouring employment policies based on racial discrimination. Unions organizing blacks appeared by 1917 and within two years the Industrial and Commercial Workers' Unions of Africa had been formed by people living on the streets of Cape Town. By the 1930s the South African Trades and Labour Council (SATLC) had united much of the country. The SATLC maintained an explicitly non-racial stance, and accepted affiliation of black trade unions, as well as calling for full legal rights for black trade unionists. Some black unions joined SATLC, while in the 1940s others affiliated with the Council of Non-European Trade Unions. In 1946, the CNETU with the ANC and the SACP pushed for the African Mine Workers' strike to embark on a General Strike. The strike was broken by

formations emerged from different groups of activists⁹ or political tendencies culminating in the formation of the Federation of South African Trade Unions (FOSATU)¹⁰ in 1979 and the following year the Council of Unions of South Africa (CUSA). Whilst FOSATU – which claimed a membership of 45 000 with three registered and nine unregistered unions - was formed out of various structures such as the Institute of Industrial Education (IIE), CUSA¹¹ had its origins in the Consultative Committee of Black Trade Unions (CCOBTU) unions, which emerged out of the Urban Training Project (UTP)¹². However, a number of unions linked to the CCOBTU, the UTP and some parallel unions from TUCSA, affiliated themselves to FOSATU.

police brutality during the rule of Jan Smuts's United Party. By 1954 SATLC was disbanded, and with the formation of TUCSA union membership included white, coloured, and Asians, with blacks in dependent organizations. Independent black unions were excluded from affiliation and 14 previous unions from SATLC founded the South African Congress of Trade Unions (SACTU). SACTU merged with the Council of Non-European Trade Unions and became the trade union arm of the ANC.

⁹ Ndlovu, S, Sithole, J: The road to democracy in SA: Revival of the labour movement: There were various groups from which the emerging black unions originated. The first group were activists from church bodies, some of whom had previously worked with established trade unions such as TUCSA and who broke with tradition and began to organize black workers in the early 1970s. Working closely with religious groups such as the Catholic Church, they were able to establish the Urban Training Project (UTP). Those involved included Loet Douwes-Dekker, Eric Taycke, Emma Mashinini, Joe Foster, Les Kettleas to name but a few. The second group was made up of a large number of white activists who not only participated in black trade unions that were formed in the wake of the 1973 strikes, but also served in different positions in these unions. Among them were mainly former National Union of South African Students (NUSAS) activists, including Jeanette Curtis, Gavin Anderson, Halton Cheadle, Alec Erwin, John Copelyn. The third group is the Black Consciousness Movement (BCM), mainly former South African Student Organisation (SASO) activists, whose contribution to the revival of trade unions in the 1970s is often downplayed in existing scholarship dominated by former activists in NUSAS, from whom BCM split in the late 1960s. The fourth group consisted of SACTU leaders and activists. Internally, they consisted either of activists who had been recently released from Robben Island or of people who had kept low profiles at the height of state repression in the mid-1960s. Among them were John Nkadimeng, Marius Schoon, Eli Weinberg, and Oscar Mpetha, Harry Gwala and John Nene. In addition, SACTU leaders who went abroad during the 1960s spent the next decade lobbying the international working class movement to engage in solidarity work with South African workers. They simultaneously became heavily involved in efforts to establish and strengthen existing trade unions throughout the African continent. The fifth group consisted of young union recruits (not SACTU veterans), such as Luke 'Storey' Mazwembe, Siphon Kubheka, Sydney Mufamadi, Matthew Oliphant, Bangumzi Sifingo and Sisa Njikelana.

¹⁰ The future in the hands of the workers: A history of Fosatu published in 2011. "a group of university-based Marxist academics in several centres throughout the country began to debate a way forward. In Natal, the Institute of Industrial Education (IIE) and the General Workers Benefit Fund (GFWBF) were formed. Workers linked to the GFWBF began to set up unions such as the Metal and Allied Workers Union (MAWU) and the National Union of Textile Workers (NUTW). In Johannesburg, the Industrial Aid Society (IAS), founded by NUSAS, linked Wages Commission students and academics and former SACTU black trade unionists. In the Cape, UCT-based academics created the Western Province Workers Advice Bureau (WPWAB). All these bodies aimed both to educate and to organise workers. Following the explosion of strikes in Natal, however, employer reprisals and police repression mounted. Many workers who found themselves vulnerable to dismissal or worse in this new climate left the fledgling unions. A new strategy was hammered out in response. Firstly, the unions retreated into a smaller number of factories in which department based shop stewards played the leading role. Secondly, in October 1973, the Trade Union Advisory Coordinating Council (TUACC) was formed to create a tight, unified and defensive structure. The formation of TUACC marked an important step in the development of workers' democracy and workers' control. It provided a forum where workers from different trade unions could share ideas and compare tactics, and it helped them to develop common policies. TUACC was crucial in creating a vision of a tight trade union federation which focused on the development of strong shop floor structures. Shop stewards as the key organisers on factory floors was the brainchild of TUACC. The council recognised the vulnerability of the emerging trade union movement. Without tight organisation, the unions would be unable to sustain any growth in membership. One of the key decisions of the TUACC was also to insist that only 'open' trade unions could become members. It defined 'open' trade unions as those that accepted all workers, '... regardless of race, religion or sex', challenging the widespread practice of organising black and white workers into separate 'parallel' trade unions. The TUACC unions stressed the need for democratic, non-racial trade unions, and insisted that workers at all levels control any new federation. It was out of this thinking that FOSATU was to emerge in 1979.

¹¹ CUSA had its origins in the Urban Training Project (UTP) and the CCOBTU unions which did not affiliate with FOSATU. It was launched in September 1980 with nine affiliates and a membership of 30,000. The Commercial, Catering and Allied Workers Union (CCAUSA) remained independent. Unlike FOSATU, CUSA was a loosely organised coordinating body and initially did not promote militant industrial action. It recognised the need to consolidate democratic decision making structures and to develop effective leadership. CUSA was seen as a Black Consciousness union as it championed a policy of black leadership. This had its antecedents in the UTP which committed itself to the formation of black-run unions. Its most militant affiliate was the National Union of Mineworkers (NUM) which was launched in 1982.

¹² The intention of UTP – established by Loet Douwes-Dekker and Eric Taycke - was mainly to provide worker education and out of those worker education workshops people who emerged from them began to establish unions eg Jane Thlogwane, Agnes Molefe (who later approached Anglo American for recognition at Highveld steel). Jane herself was a young Christian worker representative and that was the link Eric Tag had with the church (interview with Camay).

Despite the linkages between the two union formations, “friction emerged between the CUSA and FOSATU unions.”¹³ On the surface, the tension might have been attributed to politics and the different political tendencies of the leaders but often it was linked to “personalities”; access to resources (which had an international dynamic to it and very much depended on where people got their money from) as well as the poaching of members.

As these developments were unfolding in SA, in Geneva the first Trade Union Conference on Apartheid was held in 1973, sponsored by the UN Centre Against Apartheid and all major international trade union organizations. This meeting highlighted the importance of the participation of the trade union movement in the international campaign against apartheid. The conference unanimously passed a resolution calling on governments to sever political, cultural, commercial and diplomatic ties with South Africa and stop public and private investments there.¹⁴ Rubin says the decisions and recommendations emerging from this conference “were brought to bear on the future activity of the ILO as was a resolution in similar vein adopted by the executive of the International Organisation of Employers.” Delegates from TUCSA sought unsuccessfully to oppose the resolution around the boycott of SA.

Following even more violence at the hands of South African security forces in their oppression of black people as highlighted in the 1976 Soweto riots, the Second International Trade Union Conference for Action against Apartheid, took place in the Palais des Nations in Geneva in 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. 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.

Emerging out of discussions at the ILC in June 1980, a Tripartite Conference Committee on Apartheid was established - which gave rise to the Governing Body convening an International Tripartite Meeting on Apartheid in Lusaka, Zambia, in May 1981. This meeting made proposals for the updated Declaration on Apartheid that was adopted by the ILC a month later. Subsequently, in 1983 the Workers' Group of the ILO Governing Body and the UN Special Committee Against Apartheid organized an International Conference of Trade Unions on sanctions and other actions against the apartheid regime in South Africa, in cooperation with the UN Council for Namibia, the OAU and the Organization of African Trade Union Unity.

¹³ Interview with the former general secretary of CUSA, Piroshaw Camay.

¹⁴ Organized labour was urged to pressurise their governments to refuse to supply arms or any other form of military assistance to South Africa and to close their ports and airports to South African ships and aircrafts. The conference also passed a resolution which condemned apartheid policies, notably job reservation, and deplored the exclusion of African workers from trade unions. The conference reiterated its opposition to the emigration of skilled Western labour to South Africa. Further resolutions called upon international labour to pressurise economic and industrial countries that were collaborating with the apartheid regime to cease such collaboration, to boycott the loading and unloading of goods from and to South Africa and Namibia as well as from South African aircrafts and ships. There was also a call for a consumer boycott of all South African goods imported into their countries.

The updated Declaration on Action against Apartheid became the blue print for the ILO's Anti-Apartheid Technical Cooperation (TC) Programme which had two main objectives: To assist those in exile (skill development and the like) and to assist front-line and neighbouring states to decrease their economic and social dependence on South Africa, and to strengthening the planning and administrative capacity of national liberation movements and trade unions for the transition to democracy in South Africa (and this also applied to Namibia)

TC Support to liberation movements included:

- Assisting those who went into exile (victims of apartheid) in frontlines States to become self-reliant such as through skills development, entrepreneurship training and small enterprise development. For example, the ANC Solomon Mahlangu Freedom College (SOMAFCO) and its ILO-assisted vocational training centre at Dakawa in the eastern region of Morogoro, provided living and educational facilities, and operated production units established by the ANC to meet the needs of the community in agriculture, clothing, furniture, building and construction, transport, and health. To reinforce technical cooperation the early 1980s saw the appointment of ILO Associate Experts in Dar-es-Salaam, Lusaka and Luanda funded by Norwegian, Dutch and Belgian governments to establish proximity and closer and more strategic engagement with the liberation movements.
- The ILO/SATEP programme sought to provide individuals in the liberation movements with the technical skills to gather and analyse data on their country's economic and social structures, on which to base policies to meet employment needs and equitable economic growth. Of those who participated, two representatives from the ANC, one became chairman of the ANC's economic unit and the other headed a research unit in the South African Congress of Trade Unions (SACTU), while the PAC fellow took further studies in manpower planning. Former ILO Deputy Regional Director for Africa, Judica Amri-Lawson states: "The head of the ANC's economic department through the 1980s has stressed the contribution made by the programme's research activities and the provision of fellowships, to economic planning capacity."¹⁵
- In response to the ANC's request for ILO assistance in building capacity of its Department of Manpower, two seminars were held organised jointly by SATEP and the ANC in 1986 and 1988. These were followed in 1989 by a seminar on "Manpower Development in a Future South Africa", held in Harare and attended by 36 participants (33 of whom came from within South Africa) to identify priority research and training needs in the field of human resources development, and to establish a working structure to co-ordinate manpower development programmes within South Africa.

¹⁵ "One of the most important aspects of collaboration with the ILO was the facilitation of access to research and researchers all over the world, and the assistance and encouragement to research which enabled ANC to formulate economic policy issues in the 1980s, before majority rule...for example, on migrant labour. We worked closely with SATEP, which provided scholarships, and much of the assistance was innovative. An important aspect was the workshops that were organised on economic and labour issues – these were not only valuable for their content, but they enabled us to make contact with people inside the country, again facilitating the process of policy formulation. Most remarkable was the commitment – it was more than a recipient/donor relationship." (Max Sisulu, formerly chairperson of the ANC's Economic Department)¹⁵

- Various office management courses were provided to ANC staff during 1985-1989.

The ILO's support of labour during that period initially 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 SACTU¹⁶ 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.

Until this point, SACTU had dominated the terrain internationally and built up strong international links and campaigned in forums such as the ILO and WFTU¹⁷ “to persuade workers internationally to express solidarity with South African workers in their efforts to secure trade union rights; improve wages and working conditions in general.” SACTU launched numerous campaigns to highlight the plight of SA including the demand for the release of trade unionists languishing in South African jails and of other political leaders, for the lifting of banning orders and house arrests imposed on trade unionists and political leaders” as well as numerous other campaigns. As part of its extensive international network – SACTU did not only built relations with Western labour movements but also those in the East and Arab countries. Its activities were extensive and in its efforts to unite international labour formations behind the anti-apartheid struggle, SACTU got caught up in the cold war tensions at the level of the international trade union formations.

With the rise of the emerging trade union movement in SA – it began to confront the South African state but also began to build relations internationally which began to challenge the long-standing relationship that SACTU had built up internationally. As these developments unfolded coupled with the fact that there were numerous SACTU critics within the emerging labour movement¹⁸, SACTU became increasingly side-lined (and no longer acted as the gate-keeper) in the administration and maintenance of linkages. In terms of actual support to the labour movement:

- a number of members of SACTU were given one-year scholarships to study labour relations at Ruskin College in Oxford.
- The ILO held a series of workshops/seminars for both members of liberation movements and SACTU as well as targeting the independent trade unions in SA between 1983-1986 on a range of different topics.

¹⁶ In 1990 SACTU, which had continued underground activities from exile, dissolved and advised its members to join COSATU.

¹⁷ Ndlovu, S, Sithole, J: *The Revival of the Labour Movement, 1970–1980* published in the *Road to Democracy*, Volume 2 (1970-1980), pages 220-224.

¹⁸ *Road to Democracy*, volume 2 (1970-1980), pp. 194-195.

- The ILO held a workers' education session in March 1984 with representatives from numerous independent trade unions.
- A series of seminars held in Harare and Lusaka dealing with the labour market in strategic sectors of the South African economy. These included the metal, transport, agricultural and manufacturing sectors. The project on the manufacturing sector concerned the overall skills capacity in the manufacturing sector throughout the country as well as some specialised studies of the chemical, mining and metal sectors. Lawson says, "it was to the credit of the trade unions (and the urgent need for this type of dialogue) that they persevered with the programme, despite the intense intimidation of participants by the apartheid government. The ILO's organization of the various seminars was sensitive and discreet... It was also important for networking and provided an opportunity for the more politically minded participants to make contact with the ANC and SACTU." In addition, these seminars, she points out, were "helpful in raising the level of understanding of trade unionists from the problems of the shop floor to the economic and structural problems in the sectors as a whole."

By this stage, the SA employer body, South African Employers' Consultative Committee on Labour Affairs (SACCOLA), no longer had access to the ILO – following interventions by the African bloc, 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 as the state instituted one state of emergency after another. Unity talks between unions began in 1981 despite existing tensions between different trade union groupings as highlighted above. The various groupings – including FOSATU and CUSA and some independent unions – began meeting in 1981. Initially these meetings focused on the governments' proposed amendments to the labour legislation.

The former CUSA General Secretary Phiroshaw Camay recalls: "In 1979 the government made some initial changes to the Industrial Conciliation Act and then in 1981, the Department of Labour produced a draft trying to control the unions and block them. CUSA made some representation to the department as we were not happy. In addition, I wrote to FOSATU's first General Secretary Alec Erwin to suggest the two organisations get together to talk about the amendments as we felt that we could not tackle this issue alone. I got hammered by my executive for approaching FOSATU because of the competition and tension between the two groupings. But there were suspicions on both sides."¹⁹

¹⁹ Interview with Phiroshaw Camay (former General Secretary of CUSA) as part of writing of biography on former NUM president James Motlatsi

This period (which saw the start of the unity talks between the various trade union formations) was seen by some as a “symbolic time when unions came together”²⁰ as evident in the demonstrations which marked the death of trade unionist Neil Aggett²¹ on 5 February 1982. The unity talks process eventually led to the formation of COSATU in December 1985.

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 stadium was surrounded by police. 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 while there were increased calls for the release of political prisoners and trade unionists placed under detention. The ILO International Labour Conference was addressed in 1986 by Oliver Tambo, the President of the ANC in exile.

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. By this time, employers and unions had begun to meet formally 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. However, it should be noted that some key progressive employers who sought to build relations with their union counterparts had been meeting union officials on an on-going basis since even before the formation of FOSATU.

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.

Meanwhile, the ILO had established a Committee of Independent Experts to follow up and monitor the implementation of sanctions and other actions taken against apartheid. In addition, as talks between the unions and employer body stepped up, the ILO began to fund some of these interactions and began to assist the parties on advice around legislative reform as well as building capacity concerning 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

²⁰ Interview with Camay

²¹ In February 1982 t Dr Neil Aggett, an official of the Food and Canning Workers Union, was found hanged to death in his prison cell at police headquarters in Johannesburg. He had been detained 70 days earlier by the security police and was the 51 st detainee (and the first white) to have died in police custody in South Africa since 1963.

Apartheid maintained the international pressure for change and assisted in building the basis for reform.

The transition years: 1990 and beyond

The unbanning 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) which was born out of the 1991 anti-VAT strikes called for by COSATU.

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 International Labour 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.

As Rubin points out, the position on SA was not settled as Mandela made clear in his presentation to the ILO: “after thanking the ILO for the support it had provided during the period of his imprisonment, his message was that this support was still required as matters moved forward to negotiations over the future.”

Rubin added that this approach was mirrored at the last tripartite conference on apartheid, which took place in Harare in 1992 – that continued pressure was required, including urging that sanctions be applied, even as negotiations continued on the basis for a new constitution based on majority rule.” The conference also concluded with 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.

Meanwhile, 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. It 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 who 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 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, 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 1993, the ILO sent a multi-disciplinary mission to SA to prepare a plan of action in support of the transition to full democracy. The aims of the mission were a continuation of those that had guided the activities of the anti-apartheid programme: to assist the country in the formulation of its labour law and labour relations, and to provide support

to workers' and employers' organisations for affirmative action and equality of rights, employment and human resources development, and social protection.

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.

In November 1994, 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 ILO's Eighth African Regional Conference. On that occasion, the Workers specifically requested that resources be given to voter education – something which the International Labour Office did not, however, agree to.

Within a year after the elections, an agreement was struck between the SA government and the ILO in Geneva which provided for the opening of an ILO office in Pretoria which would cover the Southern African region.

Once South Africa re-joined the ILO, the Organization 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 – in which COSATU had agreed in the late 1980's to participate, following agreement to restructure it. This council was a key institution in post-apartheid South Africa which sought to entrench participatory democracy. It 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 – by which time the ILO had officially set up an office in Pretoria. The ILO was critically involved in the process which led to the setting up of the Presidential Commission of Investigation into labour market policy which 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 which was a critical element in assisting the country during this period. In addition, some of the very first post-Apartheid TC Programmes sought to consolidate democracy by supporting South Africa in establishing relevant institutions (e.g. NEDLAC) and supporting the experience sharing of South Africa with that of neighbouring States.

In conclusion, some of the ILO's assistance was obvious – in the form of organising workshops/seminars pre and post-apartheid and providing technical expertise where required. However, there are also a lot of invisibles – the institutions' behind the scenes activities which influenced peoples' thinking as to how to shape the post-apartheid terrain.