

International Labour Organisation: Future of Work Initiative

Theme 4: The Governance of Work

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Table of Contents

Introduction

The need for accountable and responsive governance

Responsive to what? The challenges for the future of work in South Africa

‘Labels’ for emerging themes and governance challenges

The primary institutions governing the world of work

NEDLAC

IoDSA

CCMA

Department of Labour

SETAs

Other important labour market institutions

Beyond our borders: Regional governance in the Southern African Development Community

Recommendations and Concluding Remarks

Introduction

1. The purpose of this final paper is to encourage participants in the national dialogue on the future of work to look ahead to the likely impact of the emerging forces in the world of work and to imagine a governance¹ landscape for the future world of work that will promote social justice, economic development and decent work for all.
2. The overarching question underlying this paper is: what should the design and implementation of policy, regulation² and governance look like in the future world of work?
3. These national deliberations should also influence the ILO's response to the future world of work, and the positioning of the ILO to be equipped for promoting the achievement of social justice and to ensure the continued relevance of the ILO in the World of Work into the 21st century.
4. In this paper, we begin by outlining the importance and characteristics of accountable and responsive governance, as well as the challenges facing the future of work in South Africa. Thereafter we briefly discuss some of the institutions (including examples of both public and private³ governance) which are currently operative in South Africa and tentatively recommend ways in which their efficiency and effectiveness may be improved upon. We concede nonetheless, that more work needs to be done, beyond the scope of this project, to address the governance deficits – which are, at times, underpinned by policies which are not 'fit for purpose'.
5. In light of time and space constraints however, it is not possible to describe all of the national institutions affecting the governance of work, and we have therefore selected key high-level institutions that play an important role in this regard and which illustrate some of the difficulties faced by these institutions, and also the potential for these institutions to play a valuable role in the future of work. One of the concerns which we raise in the context of the governance of work is the proliferation of

¹ Various meanings are ascribed to the concept of governance. In the context of this paper, governance will be used in its broadest sense, referring to both public and private governance, and bearing the meaning of 'the exercise of economic, political and administrative authority to manage a country's affairs at all levels. It [governance] comprises the mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences.' (UNDP, 1997, in On-line Glossary on Governance and Public Administration, UN Department of Economic and Social Affairs (available online at <http://www.unpan.org/Directories/UNPublicAdministrationGlossary/tabid/928/language/en-US/Default.aspx>)

² Narrowly understood, regulation is concerned with state law that regulates behaviour. A more expansive definition of regulation however conceives of regulation as 'all forms of social control, whether intentional or not, and whether imposed by the state or other social institutions.' (Morgen and Yeung *An Introduction to Law and Regulation* 2007: 3-4)

³ Private actors that play a role in the regulation of work range from formal institutions such as the Institute of Directors in Southern Africa (IoDSA), who are the custodians of the King Code of Corporate Governance, to civil society movements such as the Ses'khona Peoples Rights Movement that is active in its demands for better conditions in informal settlements and its demands for land and jobs. Another example of civil society movements playing a role in changing conditions of work are the coordinated efforts (using technology) of the FeesMustFall student movement who aligned with outsourced workers at South African Universities to demand insourcing, an objective that was successfully achieved at both the University of Cape Town and the University of Witwatersrand (Wits University).

multiple institutions with overlapping mandates; yet with little co-ordination of functions and therefore resulting in the inefficient use of resources and poor implementation of policy. In our concluding remarks, we therefore suggest that the unifying principle of ‘decent work’⁴ be used to consolidate related institutions and that a singular Decent Work Commission, that is flexible, accountable and responsive to labour market changes be established.

The need for accountable and responsive governance

6. The governance institutions of the world of work, to be ‘fit for purpose,’ being the promotion of social justice, economic development and decent work, within the context of the future world of work, will need to be responsive to the dynamics that have been identified and explored in the preceding papers.
7. As paper 2 points out, goal 8 of the 17 UN Sustainable Development Goals (SDGs), formally adopted in September 2015, is to ‘[p]romote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all’. The SDGs go a step further however and articulate an inclusive mode of governance as one of its goals. More specifically, the purpose of goal 16 is to ‘[p]romote peaceful and inclusive societies for sustainable development, provide access to justice for all and **build effective, accountable and inclusive institutions at all levels**’.⁵ In essence, the SDGs therefore recognise that ‘good governance’, understood in its broadest sense, whether at the global, national or local level, or in the public or private sphere, is an important goal for advancing sustainable development.
8. The role of governance as an enabler for development is elaborated on in the 2015 World Public Sector Report (WPSR)⁶ in which **responsiveness** and **accountability** are identified as ‘two fundamental principles of governance’ that play a ‘key role as cross-cutting enablers of development.’⁷
9. Responsive labour market governance requires extensive collaboration between government, private business and civil society. Defined as a ‘multi-stakeholder partnership model,’ the practice of responsive governance can result in ‘catalysing action and bringing all relevant actors to bear in addressing specific problems.’⁸ In this model, space is created for innovative solutions to complex realities: ‘there can be burden-sharing and enhanced trust between the government and people. Citizens are no longer viewed passively as mere service recipients but also as co-creators of public value.’⁹ On the other hand, ‘[w]hen governance is perceived not to be responsive to

⁴ For more detail on the pillars of decent work, see Paper 2.

⁵ Our emphasis.

⁶ United Nations Department of Economic and Social Affairs *Responsive and Accountable Public Governance* (New York, 2015) ST/ESA/PAD/SER.E/187.

⁷ WPSR, *ibid*, p. 4.

⁸ WPSR, *ibid*, p. 28.

⁹ WPSR, *ibid*, p. 28.

people's needs, trust in government declines and may even threaten political and social stability.'¹⁰

10. Responsive governance requires trust, and for this a competent public service is needed: including 'technical and professional capacities, professionalism, ethics, integrity, transparency, accountability, effectiveness and responsiveness of public servants ... in delivering goods and services'.¹¹ In addition, public servants must have the skills to engage and partner with stakeholders to ensure effective response to identified needs. Furthermore '[e]ven with a competent and diverse public service, responsiveness will be diminished or subverted when public servants behave unethically or engage in outright acts of corruption.'¹²
11. Accountable governance is embedded within the notion of responsiveness and entails transparency: having to give reasons for one's actions or inaction; and furthermore being required to face the consequences of such decisions and actions or inaction. 'Accountability is really about calling and holding institutions and officials to account in undertaking their functions or duties.'¹³ In dealing with these consequences, through enforced formal rules as a process of governance, accountability is linked to responsiveness.
12. Questions of accountability can become complex, particularly where multiple agencies, and even public-private partnerships, share responsibility for achieving desired outcomes, invoking the need for effective mechanisms, that are accessible to all stakeholders, for the tracking and monitoring of progress.
13. In assessing the individual components of effective accountability, five principles for effective accountability are identified and discussed in the WPSR.¹⁴ These may be summarised as follows: (1) Clear roles and responsibilities; (2) Clear performance expectations; (3) Balanced expectations and capacities; (4) Credible and timely reporting; and (5) Reasonable review and adjustments if necessary.
14. Working with the concepts of responsiveness and accountability, the United Nations Committee of Experts on Public Administration, identifies the following seven key areas as 'essential components' for enhancing responsive and accountable governance:¹⁵
 1. *Access to public information*, which is a prerequisite for inclusive participation in problem identification and the solution of problems;

¹⁰ WPSR, *ibid*, p. 31.

¹¹ WPSR, *ibid*, p. 33.

¹² WPSR, *ibid*, p. 36.

¹³ WPSR, *ibid*, p. 51.

¹⁴ These five principles are drawn from the Office of the Auditor General of Canada, "Principles of effective accountability". Available at http://www.oag-bvg.gc.ca/internet/English/att_20041105xe03_e_13289.html.

WPSR, *ibid*, p. 71.

¹⁵ WPSR, *ibid*, p. 21-22.

2. *Innovations in governance* (modernising administration)¹⁶ by, for example, using ICT innovation¹⁷ to connect governance institutions with citizens, and the use of other innovations more generally to avoid institutions becoming stagnant and ineffective as a result of routine and regimented bureaucratic processes;
 3. *Diffusion of local and global best practice for measuring institutional performance in implementing policy* (while using customised performance ‘indicators’ and avoiding a ‘one-size-fits-all approach’);
 4. *Collection of quality data* relevant to the measuring of performance indicators. Well-designed data collection processes are important for the effective implementation of policy;
 5. *‘Local ownership’ / engagement in setting policy objectives* and ‘some combination of horizontal and vertical engagement in planning, implementation and monitoring processes’;¹⁸
 6. *Inclusive political system and processes* including civil society, the private sector and other non-state actors;
 7. *Scaling up of ‘good’ local practice* which reinforces human development, validates local solutions and builds capacity while strengthening governance.
15. These components may be used to model a rubric or framework (a ‘good governance scorecard’ such as that reflected below) to inform the national dialogue: both to assist in assessing the ‘governance deficits’¹⁹ in relation to the institutions that govern the current world of work; and in the creative exercise of imagining a ‘good’ governance landscape (‘fit for purpose’) for the future world of work, which will promote social justice and decent work for all. This is perhaps a role that the ILO may consider: ie. developing a ‘good governance’ framework for assessing the institutions that regulate the world of work. It may be helpful also to gather and analyse comparative scores and to share best practice in this regard. For example, a ‘good governance scorecard’ might look something like this:

<i>Key area of performance:</i>	<i>Indicators of performance:</i>
Access to public information	<ul style="list-style-type: none"> • Ease of access to relevant, reliable and up to date information

¹⁶Modernising administration is a managed process requiring key human resources to manage technological innovation and change and to manage the attitudes and ways of work within administrative bodies; thus fundamentally changing and improving the relationship between administrators and society, while further transitioning to effective e-Government services.

¹⁷ See for example: the centralised web portal (‘one stop solution’) to consolidate public consultation and promote public participation in Moldova, prior to which stakeholders were required to visit 24 different websites of the different ministries and public authorities (WPSR, *ibid*, p.44). the Singapore ‘one-stop’ system for contractors that plan to tender for public sector projects, prior to which contractors would have to register with multiple public agencies (WPSR, *ibid*, p. 68).

¹⁸ WPSR, *ibid*, p. 23.

¹⁹ Consider for example the skills development framework (discussed in the text below) which is fraught with challenges and has failed to equip employees with the necessary skills to take advantage of opportunities in the labour market and failed to deliver skills that would meet the needs of business.

	<ul style="list-style-type: none"> • Availability of assistance to access information
Modernised administration	<ul style="list-style-type: none"> • Automated systems • Ease of use • Reliable and timely response • Availability of assistance
Diffusion of best practice models for measuring performance in implementing policy	<ul style="list-style-type: none"> • Analysis of data and trends and responsiveness to data
Collective of quality data	<ul style="list-style-type: none"> • Adequate capacity and resources to collect and analyse data
Engaged planning, implementation and monitoring processes Accountability – which requires:	<ul style="list-style-type: none"> • Efficient communication and collaboration between stakeholders • Effective management of processes • Responsiveness to data • Clear roles and responsibilities • Clear performance expectations • Balanced expectations and capacities • Credible and timely reporting • Reasonable review and adjustments if necessary
Scaling up of ‘good’ local practice	<ul style="list-style-type: none"> • Identifying good practice and developing policy and standards for rolling-out

16. The existing systems for regulation and governance in South Africa reflect a multiplicity of regulatory models: ranging from the more traditional ‘command-and-control’ state regulation (for example, the legislative provisions of Department of Labour statutes enforced by the labour inspectorate, CCMA and Labour and Labour Appeal Courts) to the ‘apply-or-explain’ corporate governance principles of IoDSA, a form of private regulation. Increasingly also, ‘good’ corporate behaviour that encourages sustainable development is being incentivised.
17. Before assessing the institutions which govern work in South Africa, the question that arises is: what are the emerging forces that these institutions are required to be responsive to?

Responsive to what? The challenges for the future of work in South Africa

18. The governance framework for the future of work must have the capacity to respond to rapid and dynamic changes. In this regard, the ILO identifies as three key drivers of change in the world of work: (1) advances in technology and innovation; (2) the forces of globalisation and the fragmentation of production and work; and (3) the changing nature of employment relationships.
19. These dynamic changes come about in challenging circumstances, but also in circumstances that provide opportunities. The challenges being faced on a global level (which are discussed in the previous Papers) include the impact of the global economic crisis on employment levels and on economic growth; high levels of inequality; regional migration; high levels of informality; and the increasing need for measures to mitigate the impact of climate change. In addition, adjustments in policy and practice are required to accommodate demographic changes and population growth.
20. The three papers which precede this paper convey the emerging picture for the future of work in South Africa. Whereas the focus of paper 1 provides a broad perspective on the relationship between work and society in an era of increased globalisation and digitisation; papers 2 and 3 narrow the focus to the specific dynamics of the South African labour market.
21. Paper 1 identifies major shifts in, as well as tenacious features of, the world of work. Tenacious features include the persistence of informal work and the continued reliance on the labour of 'cheap' migrant workers as well as unpaid work done in households, primarily by women. Unless mitigated (for example, through implementation of an innovative and responsive skills development programme) the impact of future developments is likely to exacerbate the trenchant inequality in South Africa and reinforce the 'urban / rural' divide.
22. Major shifts occurring in the world of work include a change in the norm from a 'single job for life' to 'flexible short term and transient forms of work'; and from a fixed, physical workplace to both virtual and more flexible workspaces. These changes, shaped by the forces of globalisation and technological innovation, challenge the traditional forms of worker representation and limit the ability of trade unions to recruit and organise in the conventional way. Just as technology and innovation fuel the cycle of 'creative destruction', which includes the destruction of traditional jobs and the creation of new opportunities, so too must the traditional forms of collective bargaining undergo changes and reinvention to remain a relevant force in the promotion of decent work for all in the future world of work. Trade unions, should they fail to adapt and to innovate ways of providing services to all workers (and not just a more secure stratum of employees) will see an increasing decline in membership and a decline in their relevance in the future world of work.

23. In the analysis around Decent Jobs for All, in paper 2, particular emphasis is placed on the need for education²⁰ and skills training to articulate with, and be responsive to, the changing demands of the world of work, and hence considerations for the appropriate design and implementation of an adequate skills development framework is an essential consideration for the governance of work.
24. In paper 2, we are urged to conceptualise unemployment as ‘untapped human capital’ and hence the challenge for the governance of work is to facilitate ‘contractual arrangements that involve material rewards’ by developing coherent policy that articulates with the likely future demands and opportunities for work. Notably, in terms of job creation, the care and green economies are highlighted as potential growth sectors. Globally, the health care sector continues to experience growth, particularly as the elderly population expands; and, with concerns over global warming and dwindling fossil fuels, it is likely that job opportunities in alternative and renewable energy will also increase. Of course, many other sectors are likely to provide growth in jobs in the future too – the demand for motor manufacturing technicians continues to strengthen in South Africa; growth in the tourism and hospitality industry should also be encouraged; and the demand for computer programmers, robotics specialists, trade artisans and operations managers is likely to remain in the future. The national dialogue around job growth should however be informed by the shift from manufacturing to service jobs; and the observation, in Paper 2, that ‘it is within the community and social services that employment continues to grow’.²¹
25. It is evident also, from paper 2 and paper 3, that a significant challenge for the governance of work is to design and implement a legal and regulatory framework to facilitate a transition from informal work; and reference is made to ILO Recommendation 204²² in this regard. Recommendation 204 emphasises the need to respect workers’ rights and to provide opportunities for income security; and the need to promote the sustainability of enterprises; to promote the transition of workers and economic units from the informal to the formal economy; and to prevent the informalisation of jobs from the formal to the informal economy.
26. Paper 3 notes the growing complexities in the organisation of work and production. The lines between sectors are becoming increasingly blurred and the shift from the more traditional, physical firm / workplace to production along a value chain and in a ‘virtual environment’ without regard to national boundaries, is increasingly commonplace. To be effective, the governance institutions in the future world of work will need to have the capacity to adapt in order to accommodate these new forms of organising work and production.

²⁰ The education crisis unfortunately begins at the level of primary education. [X-REF to Nicholas Spaul footnote in paper 2]

²¹ Page XYZ

²² Transition from the Informal to the Formal Economy Recommendation 204, 2015. See further X-ref to earlier paper

‘Labels’ for emerging themes and governance challenges

27. To summarise then, the discussion above, and in the preceding papers, has identified a number of factors that emerge from both the current context and the anticipated impact of technological developments and innovation on the future world of work. These factors will influence developments in the governance of work, and should inform the national dialogue in this regard.
28. Rapid changes in technology and innovation require equally dynamic education and training policies and institutions. At the same time, a major challenge in South Africa is to provide (new) skills to the large number of low-skilled unemployed people. However, the skills development framework in the world of work is currently a **fragmented and dysfunctional training system** and needs to be modernised. A ‘fit for purpose’ skills development framework is a **dynamic, technologically innovative, and responsive skills development system** that is capable of responding timeously to technological developments and the ‘skills mismatch’ in the labour market. Education and training policies need to articulate, and provide equitable access to, quality skills development programmes aligned with the constantly changing needs of the world of work in view of advances in technology and innovation. In addition, migration and globalisation are drivers of the need to develop trans-border arrangements for training and internationally recognised qualifications.
29. Technological advances provide opportunities in the changing world of work, and have the potential to play a role in the implementation of policy and regulation, and for promoting ‘good’ governance in the world of work - **technology as regulatory tool**. For example, the role of technology in facilitating the transparent and responsive coordination of policy should be considered; and likewise the use of technology to monitor compliance may offer innovative ways to promote decent work. However, a major barrier to achieving development goals through the use of technology are the cost implications in deploying technology and the need for skills and training in this regard. Co-ordinated efforts are required to implement technology as a tool for achieving decent work and, in this regard, there is an important role to be played by the governance institutions, including the ILO, in promoting decent work in South Africa.
30. Within the world of work, the parallel existence of the so-called ‘standard employment’ as a (receding) form of work as well as the multiple forms of ‘non-standard employment’ in the formal sector occur alongside various forms of work in the informal sector, and in the care economy, which suggests a need for nuanced policy responses for protecting, and promoting, labour rights and income security for all workers, regardless of their status as an employee. **Inclusive policies for the protection of worker’s rights** and a measure of flexibility - **reflexive and responsive regulation** – in the implementation of law and policy is necessary to ensure decent work notwithstanding dynamic changes in the world of work, and to avoid the undermining of worker rights and protection. Further, high levels of

migration and the movement of labour across national borders requires the development of policies and standards that operate across these national borders.

31. Workers who do productive work outside of an employment relationship, including independent contractors, the self-employed, and workers in the informal labour market, should also have equitable access to fundamental labour protections and income security. This will require a conversation on developments in social security and fiscal policy to ensure decent work for all vulnerable groups of workers (**worker access to basic conditions and social security and fiscal policy to facilitate such access**).
32. Linked to the deliberations on the need for reflexive and responsive regulation, in a conversation on the governance of work in the future world of work, the following factors must be taken into account –
 - The parallel existence of the virtual environment and the fragmentation of production along value chains as ‘sites of work,’ that are not bound by national boundaries, alongside the more traditional ‘bricks and mortar’ firms. At the other end of the spectrum are the diverse workplaces of the informal economy, many of which occupy public space. Some of the challenges raised by the existence of **multiple and amorphous workplaces** can be overcome through the innovative use of technological platforms for ensuring participation in governance spaces and the survival of collective action.
 - The impact of the changing world of work on collective bargaining institutions requires reflection and creativity in the design and implementation of mechanisms for collective bargaining. Trade unions need to assess and understand non-standard employment and the situation of workers who are self-employed: the organisation of non-standard workers needs to be promoted, and ‘an experimental approach to representation and bargaining’ needs to be adopted.²³ The current system for collective bargaining, which favours sectoral bargaining, needs rethinking. Workplaces need to be reconceived so that workers who are not employees can still have a voice in the workplaces where they provide services;²⁴ and collective bargaining arrangements that were designed to facilitate sectoral bargaining for industries arranged in vertically integrated factories must adjust to the dynamics of production that takes place in fragmented value chains in which those with economic power are often shielded from the bargaining arrangements. **Responsive institutions for collective bargaining** are needed, and these may be promoted by the work of the ILO: for example, the ILO should consider, as part of the decent work agenda, the ways in which it can facilitate the collaboration/cooperation between the more vulnerable participants in global

²³ See Jan Theron ‘Non-standard employment and labour legislation: The outlines of a strategy’ IDLL Development and Labour Monograph Series 1/2014 at p 25.

²⁴ Ibid.

value chains in order to ensure that the rights of freedom of association and collective bargaining are not curtailed by outdated regulation and systems that are ill-suited for the dynamics of the changing world of work.

- The problem of unemployment and the need for stakeholder partnerships to facilitate the creation of job opportunities. As has been indicated in previous chapters, growth in the care sector and in the green economy, among others, provide scope for decent jobs and it is imperative that policy developments regarding these opportunities for decent work be on the agenda for social dialogue and the development of facilitative governance be encouraged to ensure that these opportunities are harnessed. The importance of the **creation of job opportunities and decent work**, whether in the identified growth sectors or otherwise, cannot be overemphasised. The development and deployment of **job matching technology**²⁵ should also be considered, and its implementation monitored to ensure that the benefits of job matching technology are achieved.

33. Finally, an important role for the primary institutions in the world of work is to address the inter-linked problems of ‘assymetrical information,’ a lack of knowledge about labour rights and decent work, and the skewed perceptions relating to the role, and holistic value, of labour protection and income security. Campaigns in this regard, making use of modern communications technology, should not only educate workers²⁶ and employers on the concept of decent work and on their legal rights and responsibilities but should also make accessible to the public evidenced-based information debunking the perceived inflexibility and the perceived growth inhibiting impact of the fundamental labour rights and on the relationship between the protection of labour rights and economic growth. The timeous **dissemination of information and decent work campaigns** may go a long way in breaking down the distrust that is pervasive in the world of work. Further, the social and economic harm of deep and pervasive inequality needs to be more widely understood (there is a growing body of literature in this regard) and needs to be taken on board by the social partners and should inform arguments on the rigidity of labour regulation and support for ‘deregulation.’ the forms of regulation that materialise in the future must provide a nuanced response to addressing the challenges of inequality. This is a role that could be well-co-ordinated by the ILO at both a global and a domestic level; ideally in a manner that bridges the various institutions, discussed in the section that follows, governing the world of work in South Africa.

²⁵ Job matching technology entails the use of software that matches candidate’s with job vacancies, thus automating and speeding up the recruitment process. While there is much potential that such innovations have to offer, if the digital divide is not bridged these innovations may not be able to assist more vulnerable workers in the labour market. Here too is a role for the ILO to play; both in terms of guidelines for job matching technology (best practice) and also to provide analysis on the impact of the digital divide in the world of work and to provide guidance on ways to overcome the divide.

²⁶ In the South African context, see for example the Solidarity Trade Union ‘Solidarity APP’ at <https://solidariteit.co.za/en/solidarity-app/> which is intended as a tool to provide relevant news and up-to-date information to Solidarity members.

The primary institutions governing the world of work

34. In the South African context numerous institutions, both public and private, govern, and shape, the world of work. One of the concerns for the future governance of work is the tendency for a proliferation of entities, each of which is mandated to regulate certain aspects of work. The proliferation of independent entities, yet with overlapping mandates, results in a fragmented and inefficient approach to governance and one of the strategies we propose to enhance good governance of the future of work is to consolidate these institutions under the unifying principle of decent work. Currently, in terms of state regulation, the Department of Labour, and the numerous institutions established under its auspices, play a dominant role in the regulation of work, alongside the efforts of other public institutions, such as National Treasury and the Department of Trade and Industry. In the context of private regulation, an important source of governance in the formal sector are the corporate governance principles of the Institute of Directors in Southern Africa (IoDSA). In addition to the consolidation of certain public institutions that govern work, greater collaboration and alignment between public and private institutions that regulate should also be considered as a mechanism to advance social justice, economic development and decent work.
35. In the sections below a number of these institutions are identified and described and questions are raised in respect of the ‘readiness’ of these institutions to govern the future world of work. Are these institutions ‘fit-for-purpose’ in view of the challenges identified above?
36. The key public sector institutions involved in the governance of work and which are discussed below include:
- The National Economic Development and Labour Council (NEDLAC), which has been described as ‘South Africa’s premier peak-level social dialogue institution’;²⁷
 - The Commission for Conciliation, Mediation and Arbitration (CCMA), an independent statutory body established by the Labour Relations Act 66 of 1995, that, among other functions, is involved in labour dispute prevention and resolution;²⁸
 - The Department of Labour (DoL), the Ministry in government tasked with regulating the South African labour market;²⁹ and related institutions, including –
 - The Employment Conditions Commission (ECC) established in terms of the Basic Conditions of Employment Act;

²⁷ See <http://column.global-labour-university.org/2014/12/repositioning-social-dialogue-south.html>

²⁸ In addition, the judiciary (the High Courts of South Africa and the Labour and Labour Appeal Courts) are, to varying degrees, involved in the resolution of labour disputes.

²⁹ See <http://www.labour.gov.za/>

- The Commission for Employment Equity (CEE) established in terms of the Employment Equity Act;
- The Employment Services Board, Productivity South Africa and the Supported Employment Enterprises established by the Employment Services Act;
- The Unemployment Insurance Fund (UIF) Board established by the Inemployment Insurance Fund Act and the Compensation Commissioner established by the Compensation for Occupational Injuries and Diseases Act.
- In terms of skills development, education and training –
 - The institutions that are part of the skills development system established in terms of the Skills Development Act 97 of 1998 including the Sector Education and Training Authorities (SETAs), the National Skills Authority (NSA) and the Quality Council for Trades and Occupations (NCTO);
 - The Human Resource Development Council (HRDC) of South Africa that was established in 2010 to develop ‘institutional synergies’ for improving the delivery and outcome of skills development. The HRDC is intended as a longer term strategy that replaced the Joint Initiative on Priority Skills Acquisition (JIPSA) established in 2006 as a ‘short-term skills intervention initiative’ in recognition of the critical role played by education and skills development in driving socio-economic growth.³⁰

37. In addition to the ‘command-and-control’ forms of state regulation of the labour market, labour market behaviour is also governed by incentivising businesses to pursue ‘good practice’. For example by incentivising compliance with the Broad-Based Black Economic Empowerment Act 53 of 2003 (BBEEA) and the Employment Equity Act 55 of 1998 (the EEA) – the reward for compliance being access to state procurement processes; and more recently, incentivising employment of young workers by offering wage subsidies in terms of the Employment tax Incentive Act 26 of 2013.

38. In terms of private sector institutions, a broad spectrum of institutions have power to influence labour market governance and the pace and direction of socio-economic development. These include –

- civil society movements (consider for example the FeesMustFall and related student movements and their alignment with workers to achieve insourcing at various Universities in South Africa)³¹

³⁰ See <http://www.hrdcsa.org.za/>

³¹ The student movements of 2015/2016 provide a powerful illustration of how technology (social media) can be harnessed as a tool to advance social justice.

- Trade union movements and employer organisations that play a critical role in the organisation and representation of business and labour interests in the institutions of collective bargaining and social dialogue
- The Institute of Directors in Southern Africa (IoDSA), a non-profit company, recognised as a professional body, that exists to promote self-regulation /‘soft law’ principles of corporate governance.³²

39. In addition to these domestic institutions, various global initiatives, such as the United Nations Global Compact, a UN strategy for sustainable business that consists of 10 Principles that businesses should uphold, also have the potential to direct and influence the governance of work.³³

40. A brief description of the key institutions and selected observations about these institutions are set out below.

National Economic Development and Labour Council (NEDLAC)

41. NEDLAC,³⁴ an organisation that has been described as ‘corporatist’,³⁵ is a statutorily established council funded by the Department of Labour, consisting of representatives of the state, organised business, organised labour and community and development organisations.

42. The objects of NEDLAC are noble and include the promotion of ‘economic growth, participation in economic decision-making and social equity.’³⁶ The Founding Declaration of NEDLAC declares that ‘[t]he Council shall seek to reach consensus and make agreements on matters pertaining to economic policy. This includes areas such as fiscal and monetary policy, socio-economic programmes, trade and industrial policy and all aspects of labour policy, including training and human resource development.’ The NEDLAC Act further provides that NEDLAC shall ‘consider all proposed labour legislation relating to labour market policy before it is introduced in Parliament.’³⁷

³² See <http://www.iodsa.co.za/>

³³ See <https://www.unglobalcompact.org/what-is-gc/mission/principles>

³⁴ NEDLAC is a council established by the National Economic, Development and Labour Council Act 35 of 1994.

³⁵ See for example Kim and Van der Westhuizen ‘Why Corporatism Collapsed in South Africa: The Significance of Nedlac’ (2015) *African Spectrum* 50, 2, 87-100. Although intended to ‘promote social solidarity and cooperation by allowing societal actors to play an important role in the decision-making process’, the authors or of the opinion that corporatism in South Africa was largely a mechanism of state control in the face of political and economic crises in the transition period. In essence, the critique of the Nedlac experience is the sidelining of the social partners by government

³⁶ As such, NEDLAC considers all proposed labour legislation and policy changes relating to the labour market before they are implemented. NEDLAC is further required to ‘keep abreast of international developments’ and ‘evaluate the effectiveness of legislation and policy’ in the context of social and economic development.

³⁷ Section 5(1)(c) NEDLAC Act.

43. There have been concerns however about the performance of NEDLAC, and in their analysis of NEDLAC, the authors Kim and Van der Westhuizen identify several reasons for this, including ‘labour’s inability to represent a broader constituency beyond the formally employed; ... the lack of technical capacity within the labour movement; and ... NEDLAC’s organisational inefficiency’³⁸ as well as ‘[t]he unilateral attitude of the state, the lack of consultation, and business’s lack of interest in NEDLAC’.³⁹
44. However, in recent months developments at NEDLAC have provided reason for optimism. This is signalled by the contents of a recent Financial Mail report,⁴⁰ in which both the business and labour constituencies recognise the challenges as well as the need for greater collaboration (resulting from interdependency) and, more importantly, that progress in this direction is being achieved. Dennis George, the secretary general of FEDUSA signals this in his statement that “[w]e are working together faster and better now” and, echoing this is Tanya Cohen, the business representative of one of the task teams negotiating a package of labour stability reforms who comments in the report that “for the first time in many years, Nedlac is doing what it’s supposed to be doing.”⁴¹
45. The turnaround in Nedlac’s performance is attributed to the damage caused by the five-month platinum strike in 2014. The Nedlac secretariat has subsequently been overhauled to ensure the social partners are adequately supported and, according to Nedlac spokesperson, Kim Jergensen, whereas ‘[i]n 2012 Nedlac was meeting only about 30% of its performance targets ... [in 2016] it will meet close to 95%.’ Jergensen explains that Nedlac’s internal processes have been fast-tracked and that ‘a maximum turnaround time of six months for any engagement, including on new pieces of legislation’ has been put in place.⁴²
46. Questions about NEDLAC’s governance and concerns regarding the existing and potential role for NEDLAC in the governance of work abound, and include the following:
- What can we learn from the historical record of NEDLAC as a forum for tripartite governance and social dialogue at the national level? In short, how effective is NEDLAC in practice?
 - Does the role of NEDLAC (as advisory body rather than negotiating forum) need to be redefined?

³⁸ Kim and Van der Westhuizen (note 35) at p. 88.

³⁹ Kim and Van der Westhuizen (note 35) at p. 92.

⁴⁰ Financial Mail, FM Feature, ‘Labouring the issue: SA’s social partners are finally co-operating in the national interest, but it may be too late’, October 27 – November 2, 2016.

⁴¹ Ibid.

⁴² Ibid.

- Is there adequate communication and alignment of policies between the various NEDLAC chambers?⁴³
- And are the complaints, that its ability to advance social justice and decent work is marred by inefficiency (‘grandstanding rather than negotiating’), the influence of vested interests, or simply that the forum has run its course, valid?⁴⁴
- And bearing these questions in mind, what part (if any) can the ILO play in the institution’s day-to-day operations and its effectiveness in governing work and advancing social justice?
- Trade unions and employers’ organisations represent their constituencies in NEDLAC and therefore play a role in shaping the council’s decisions and influence in the governance and future of work. Yet, to what extent has the reality of work today affected the membership and thus the legitimacy of these organisations as primary contributors in what ought to be a meaningful and balanced debate about the future and governance of work?
- What is the role of NEDLAC in a conversation about the future of work and the governance of work?
- Does NEDLAC’s mandate indicate that there are ‘constraints’ on its ability to respond to the demands for social justice and decent work in terms of the future of work or is its mandate adequately flexible to adapt to the future context?
- Should the mandate and regulatory framework of NEDLAC be revisited in view of the future of work conversation, and if so, what role should the ILO play in this regard?
- More generally, to what extent does NEDLAC’s way of doing business incorporate the ‘essential components’ for responsive and accountable governance and align with ‘good’ governance principles?

47. Notwithstanding the problems that have been identified, there is a flicker of hope for NEDLAC and an opportunity still for the institution to claim its rightful place as the ‘peak-level social dialogue in South Africa’, as a recent statement from FEDUSA⁴⁵ suggests. FEDUSA released its statement on the occasion of NEDLAC’s 21st Summit, indicating that it is ‘encouraged by the joint commitments of the social partners to advance collaboration, job creation and rapid economic growth’, and that ‘[t]he

⁴³ The chambers of NEDLAC are the Public Finance and Monetary Policy Chamber; the Trade and Industry Chamber; the Labour Market Chamber; and the Development Chamber. The Special Committees and Projects is constituted to manage issues that cut across the different chambers.

⁴⁴ See Hilary Joffe ‘Whither Nedlac? Try harder, change it or chuck it? Business Day, BDLive, 29 October, available online at <http://www.bdlive.co.za/opinion/columnists/2013/10/29/whither-nedlac-try-harder-change-it-or-chuck-it> and see also Jejoo Kim and Janis van der Westhuizen ‘Why Corporatism Collapsed in South Africa: The Significance of NEDLAC’ Africa Spectrum 2/2015: 87 – 100; and Edward Webster et al, ‘External Review: Repositioning Peak-Level Social Dialogue in South Africa: NEDLAC into the Future’, September 2013, commissioned by the ILO .

⁴⁵ The Federation of Unions of South Africa (FEDUSA) is one of the largest trade union federations in South Africa.

platform extended via the NEDLAC mandate ... remains crucial to advance social dialogue through constructive deliberations and collaboration that paves the way for more sound and stable economic and labour relations.’⁴⁶

48. Indeed, in recent months encouraging developments have been observed at NEDLAC arising from the constructive engagement by the parties on matters affecting labour stability at NEDLAC, such as the progress made in respect of a code of good practice on collective bargaining and industrial action as well as the developments toward implementing a national minimum wage. The robust engagement of the parties, while remaining committed to collaboration and the socio-economic development, bodes well for the future of NEDLAC.

Institute of Directors in Southern Africa (IoDSA)

49. IoDSA is a private organisation. It is a non-profit company and professional body⁴⁷ that aims to promote corporate governance and to ‘maintain and enhance the credibility of directorship as a profession’.
50. IoDSA standards therefore are, in effect, a form of private regulation that has the potential to support and shape decent work and the promotion of social justice and is therefore a form of regulation that should not escape the gaze of the participants in a national dialogue on the governance of work.
51. IoDSA owns copyright of the King Report on Corporate Governance and the King Code of Corporate Governance (together the ‘King’ Report). The King Report, which has been described as ‘ground-breaking’, consists of ‘soft law’ principles of corporate governance applicable to all entities. Its emphasis on sustainability and the triple bottom line speaks to its potential for promoting corporate social responsibility (CSR), and by implication social justice and decent work, too.⁴⁸
52. Although not legally binding, compliance with the King Report is a requirement for companies listed on the Johannesburg Stock Exchange (JSE), affording it more than just a semblance of enforceability. In 2016, a draft King IV Report was released for consideration and is likely to be finalised within months.
53. In the context of the governance of work, the following questions, among others that may occur to participants in the national dialogue, arise for consideration:

⁴⁶ Available online at <http://www.polity.org.za/article/fedusa-fedusa-is-encouraged-by-joint-commitments-to-advance-collaboration-job-creation-and-rapid-economic-growth-2016-09-09>.

⁴⁷ Recognised by the South African Qualifications Authority.

⁴⁸ Note that the purposes of the Companies Act 71 of 2008 (provided for in section 7) include the promotion of the economy by ... ‘encouraging transparency and high standards of corporate governance as appropriate, given the significant role of enterprises within the social and economic life of the nation.’

- To what extent does the King Code (and its implementation) align with the SDGs, in particular in so far as they relate to the world of work?
- As positive as the prospects of King IV may be, to what extent can the IoDSA – as an institution informed necessarily but also primarily by business interests (and not intended as a forum for tripartite governance and social dialogue) – be relied upon to advocate for the meaningful and substantive implementation of corporate social responsibility (CSR), specifically in the field of social justice and decent work?
- More generally, what evidence is there of the impact of CSR on social and economic development and on compliance levels with national regulation?
- What role can the ILO play in facilitating:
 - IoDSA's engagement with stakeholders;
 - the promotion of 'good governance' principles in relation to the work of IoDSA;
 - and in promoting the adoption of defensible models of CSR?

54. As a private institution with a mandate to regulate matters of significant public interest, it is important that the national dialogue on the governance of work be cognisant of, and reflect on, the role of IoDSA.

Commission for Conciliation, Mediation and Arbitration (CCMA)

55. The CCMA is an independent statutory body established by the LRA with its primary function being the prevention and resolution of labour disputes (by manner of 'simple procedures'). In that capacity, it has achieved marked success and credibility. However, its statutorily conferred powers and functions extend beyond dispute resolution to include mediation in the public interest, education, and research and training, amongst others. On occasion, it has applied these ancillary functions innovatively and effectively, exemplified by its involvement in the training layoff scheme and related interventions targeting (unnecessarily) large scale retrenchments, following the 2008 economic crisis. Given the need for a more proactive approach to governance and the future of work, the following questions arise:

- How can the CCMA's existing resources be better applied to the proactive promotion of social justice and decent work in South Africa, as well as to the prevention of injustice and indecent work?
- Should the jurisdiction of the CCMA be extended beyond the current definition of an employee so that the CCMA processes are available to an expanded group of vulnerable workers?
- Should the CCMA play a more extensive educative role, both among employers and employees? How might the ILO facilitate the CCMA's role in this regard? For instance, could the CCMA be used as a conduit by the ILO for the dissemination of information and education necessary to counter negative

perceptions about South African labour laws?⁴⁹ And how best could these institutions work together to promote social justice and decent work more generally?

Department of Labour (within the broader context of public administration)

56. While afforded a broad statutory mandate, the South African labour ministry is saddled with the difficulties faced by many ministries in developing countries and regions across the world: a scarcity of resources and arguably the lack of a coherent political environment to effect real change.

57. A national dialogue on the governance of work should include discussions around the extent to which the Department of Labour (DoL) is ‘fit for purpose’ when assessed against a ‘good governance scorecard’; for example:

- has the department modernised the administration of its functions by harnessing ICT innovation?
- does the department collect quality data and utilise this data to measure its performance in implementing policy?
- how effective is the Labour Inspectorate in the enforcement of labour legislation and how can the role of the Inspectorate be adjusted, and enhanced, to accommodate the future developments in the world of work?

58. Questions also arise in relation to the role of the ILO in responding to the governance challenges within the ministry, for instance:

- could the ILO play a greater role in assisting the ministry in making meaningful regulatory changes aligned with the realities of work in today’s global world, taking into account regional developments as well as private forms of regulation?
- is there a role that the ILO could play to assist the DoL with assessing and enhancing ‘good governance’ within the department?
- could the ILO assist the DoL to develop the capacity of the Labour Inspectorate (possibly considering and advising on regional inspectorates and the possibility of private actors playing an enforcement role)? And further advise the DoL on other institutions that could be co-opted by the DoL (working with the ILO) to fill the gaps resulting from the ministry’s resource constraints?

59. It is previously mentioned that education and skills training needs to articulate with, and be responsive to the changing demands of the world of work. The governance institutions that play an important role in this regard are discussed in the section that follows.

⁴⁹ Seemingly, but arguably misguidedly, held by investors and corporates alike. Negative perceptions about labour law influence workplace relationships and have the ability to influence decision-making about whether to do business, or to invest, in South Africa.

Sector Education and Training Authorities (SETAs) and related institutions

60. If South Africa is to achieve socio-economic growth, it is critical for the provision of education and skills training to articulate with the needs of the labour market; and an important conversation that is required in the future of work dialogue is how best to co-ordinate and deliver in this regard.
61. There needs to be reflection on the strategies adopted by the Human Resource Development Council (HRDC) and the performance of the institutions established by the Skills Development Act (the SDA).
62. The SDA establishes a framework that is intended:
- to ensure the quality of education and training in and for the workplace and to develop the skills of the South African workforce, with one of the purposes of this being to promote self-employment;
 - to increase the levels of investment in education and training in the labour market and to improve the return on investment;
 - to encourage employers to use the workplace as an active learning environment and provide opportunities to employees and also persons who find it difficult to be employed;
 - to encourage workers to participate in learnerships and other training programmes;
 - to improve the employment prospects of persons previously disadvantaged by unfair discrimination and to redress those disadvantages through training and education; and
 - to assist work-seekers to find work and employers to find qualified employees.
63. The SETAs are the sector-based training authorities that were shifted from the mandate of the Department of Labour to the Department of Higher Education and Training (DHET) in 2010. Various critiques of the SETA system raise a number of concerns,⁵⁰ but also acknowledge that addressing these concerns is a complex undertaking. Although a number of reviews, and subsequent revision of the SETA system, have taken place over the years, much still needs to be done. A recent critique on the skills development framework suggests that the problems are systemic and will not be resolved easily: '[t]he skills system has been built on the basis of a complex set of stakeholder governance structures which have themselves become part of the problem.'⁵¹
64. Furthermore, the problem arises earlier on in the education system, as 'the general education levels in South Africa remain very low ... [and] it is unrealistic to expect the skills system [which includes the SETAs] to rectify that.'⁵² Apart from having to

⁵⁰ See for example <https://pmg.org.za/committee-meeting/12912/> and, more recently, Mzabalazo Advisory Services, 'The South African Skills Development system: A critique and proposal to build a new, flexible and responsive skills development system', April 2015 (the 'MAS Critique of the Skills Development system')

⁵¹ MAS Critique of the Skills Development system, *ibid* at p. 4.

⁵² MAS Critique of the Skills Development system, *ibid* at p. 5.

bear the burden of the deficits in the education system, other failures of the skills development system which have been identified include:⁵³

- The inaccessibility of the skills system, both geographically and from a stakeholder engagement perspective;
- The lack of responsiveness of the system: '[p]roducts and production processes change more quickly today than in the past and the skills system is unable to respond and make itself relevant to the changes. **There is an over emphasis on meeting current skills needs and not enough focus on future needs.**'⁵⁴
- Serious concerns have been raised about the relevance and quality of the qualifications on offer.
- Governance failures, inefficient processes and structural issues as well as management incompetence and corruption have been identified as systemic problems in the skills development system. These include concerns around: how the levies raised for skills development are being managed within the skills system; the high levels of contestation within the skills system governance structures, and contestation over resources. '[T]he vested interests are deeply entrenched and some of those involved have become expert in blocking any resolution to the problems.'⁵⁵
- In addition, problems in the framework for skills development in the public service have also been identified.

65. It is evident that the skills development system is in crisis, of which it is said that:

'[a]n overall challenge across the system is the lack of coordination, and the absence of processes to address anomalies and inadequacies as they are identified. Obtaining redress when wrong occurs is not generally possible.'⁵⁶

66. Compounding this 'lack of coordination' is the seemingly endless proliferation of institutions that operate independently yet have overlapping mandates in respect of the decent work agenda. In this regard, the institutions that established by the Employment Services Act 4 of 2014 (the ESA), which commenced in August 2015,⁵⁷ deserve mention. The ESA provides a framework for promoting the employment of young and vulnerable workers. In addition, while the ESA intends to 'facilitate the employment of foreign nationals in the South African economy', it seeks to do so in an manner that 'promotes the training of South African citizens and permanent residents.'

67. The ESA establishes three statutory bodies: firstly, the Employment Services Board which is to be established to advise the Minister of Labour on the general

⁵³ The list of concerns below is drawn from the MAS Critique of the Skills Development system, *ibid.*

⁵⁴ MAS Critique of the Skills Development system, *ibid.*, p. 8. Our emphasis.

⁵⁵ MAS Critique of the Skills Development system, *ibid.*, p. 9.

⁵⁶ MAS Critique of the Skills Development system, *ibid.*, p 11.

⁵⁷ Except for s 13 (Registration of private employment agencies) that will commence at a date still to be proclaimed.

implementation of the Act and, more specifically, on the registration and regulation of private employment services and on the promotion of supported work for persons with disabilities. A second institution established by the ESA is Productivity South Africa, which is established as a juristic body (and will replace the Productivity South Africa established by the SDA)⁵⁸ specifically to promote employment growth and productivity. The functions of Productivity South Africa include, among others, ‘the promotion of a culture of productivity in the workplace;’ ‘to measure and evaluate productivity’; to ‘maintain a data-base of productivity’; to ‘undertake productivity-related research’; and ‘to support initiatives aimed at preventing job losses’. In addition to the Employment Services Board and Productivity South Africa, the ESA establishes Supported Employment Enterprises (the SEE,⁵⁹ previously the Sheltered Employment Factories) which is ‘a national government component contemplated in section 7A of the Public Service Act, 1994 ... to promote work and employment opportunities for persons with disabilities.’

68. A vision for the future that maps out the need for ‘a [training and education] system that is made up of a diverse range of educational institutions and institutional types that will expand considerably over the next twenty years’ and which ‘recognises the importance of partnerships between educational institutions and employers’ is articulated in the *White Paper for Post-School Education and Training: Building an Expanded and Effective and Integrated Post-School System*⁶⁰ approved by Cabinet in November 2013. The White Paper outlines ‘a framework that defines the Department’s focus and priorities ... that enables it to shape its strategies and plans for the future’, and the intention is that ‘DHET will elaborate a concrete development plan for the period up to 2030.’⁶¹
69. It is critical that participants in a national dialogue on the future of work engage with the substance of the White Paper and with the DHET, as part of the national dialogue, to ensure the successful design and implementation of a **dynamic and responsive skills development system**. The crisis in education is compounded by the funding crisis at South African Universities which, in the absence of a responsive system, may result in universities recruiting additional students, without regard to the skills needs of the labour market.⁶²

Other important labour market institutions in South Africa

70. As previously mentioned, it is not possible, in the time and space available, to describe all the national institutions that play a role in the governance of work. In

⁵⁸ See <https://www.productivitysa.co.za/>.

⁵⁹ See <http://www.sefonline.co.za/>.

⁶⁰ Available online at <http://www.dhet.gov.za/SiteAssets/Latest%20News/White%20paper%20for%20post-school%20education%20and%20training.pdf>.

⁶¹ Minister’s Preface, p. vii.

⁶² A problem that the South African labour market has is that, notwithstanding high unemployment, there is a shortage of a range of skills, including ‘electricians, carpenters and bricklayers, as well as managers and executives’. Ntsakisi Maswanganyi, ‘Employers seek tradesmen and executives’, 18 October 2016, BusinessDay.

addition to the and to indicate the concerns that they give rise to, a national dialogue in this regard may wish to reflect on the dynamics of certain additional institutions; including, for example:

- the bargaining councils established in terms of the Labour Relations Act 66 of 1995 (the LRA),⁶³ which are increasingly under threat in the private sector as a result of declining trade union membership and litigation that challenges the extension of collective agreements concluded in bargaining councils;
- the workplace forums that were intended to be established in terms of the LRA but which have failed to be taken up by employers and employees alike;⁶⁴
- the Unemployment Insurance Fund (UIF),⁶⁵ that provides income security to workers when they become unemployed but which do not provide security for independent contractors or self-employed workers and workers in the informal economy;
- the South African Social Security Agency (SASSA) that administers social grants in terms of the Social Assistance Act 13 of 2004;⁶⁶
- the Employment Conditions Commission (the ECC) established by the Basic Conditions of Employment Act 75 of 1997 (BCEA);⁶⁷
- the Commission for Employment Equity (the CEE) established by the Employment Equity Act 55 of 1998;⁶⁸

⁶³ Bargaining councils are established in terms of Chapter III, Part C and Part D (bargaining councils in the public sector), of the LRA. For further information, see <http://www.labour.gov.za/DOL/legislation/acts/basic-guides/basic-guide-to-bargaining-councils>; and for the contact details of all the bargaining councils in South Africa see <http://www.labourguide.co.za/bargaining-councils>. While specifically designed to promote central bargaining through the mechanism of extending collective agreements to entire sectors, in recent years, this mechanism has come under threat. Frequent litigation challenging individual extensions as well as the legal mechanism of extensions itself speaks to the conflict between business and labour – a conflict which appears (albeit in different forms) at all levels of their relationship, whether plant, enterprise, central or national and urgently requires redress.

⁶⁴ The framework for establishing a workplace forum is contained in Chapter V of the LRA. It was intended that the workplace forum, like the workers' council in Germany, and several other European countries, would provide an important structure for promoting employee participation in decision-making in the workplace. In practice however very few workplace forums have been established in South Africa, notwithstanding the potential role that these forums may play in the pursuit for decent work.

⁶⁵ Established in terms of the Unemployment Insurance Fund Act 63 of 2001. See further <http://www.labour.gov.za/DOL/legislation/acts/basic-guides/basic-guide-to-uif-unemployment-benefits>.

⁶⁶ The institutions for unemployment insurance, social security, workman's compensation, and other such institutions may provide space for assisting those who are without access to decent work, thus ensuring social justice.

⁶⁷ The ECC is established by Chapter 9 of the BCEA and s 59(2) of the BCEA indicates that its function is to advise the Minister (of Labour) (a) on sectoral determinations in terms of Chapter Eight of the BCEA; (b) on any matter concerning basic conditions of employment; (c) on any matter arising out of the application of this Act; (d) on the effect of the policies of the government on employment; (e) on trends in collective bargaining and whether any of those trends undermine the purpose of this Act; (f) and the Minister for Welfare and Population Development, on any matter concerning the employment of children ...; (g) and the Minister for the Public Service and Administration, on any matter concerning basic conditions of employment in the public service.

⁶⁸ The CEE is established in Chapter IV of the EEA to advise the Minister of Labour on matters concerning employment equity.

- the Compensation Commissioner established in terms of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 to provide for compensation for disability or death caused by occupational injuries or diseases.

71. In addition to the ‘governance of work’ role played by national institutions, as businesses increasingly operate across borders, in particular into the southern African region, questions arise relating to the appropriate approach to governance ‘beyond our borders’, in order to promote development and further opportunities for decent work in the SADC region.

Beyond our borders: Regional governance in the Southern African Development Community (SADC)⁶⁹

72. South African businesses are increasingly doing business in the rest of Africa, which raises the question of SADCs role in the governance of the future of work.

73. SADC is a transnational organisation that aims to promote sustainable and equitable social and economic development in the region, of which decent work is surely a component. The SADC Charter on Fundamental Social Rights, which provides a framework for regional labour standards, was adopted in 2003. Its emphasis on social and labour rights suggests that SADC has significant potential to facilitate positive developments in the governance of work at the regional level. Still, the following questions arise:

- What are the mechanisms available to SADC that may influence the governance of work, how successful have these been in the past and how likely are they to succeed in the future?
- What role can the ILO play in advancing the endeavours of SADC with regard to the governance of work?
- What role should other global initiatives, such as the UN Global Compact and the OECD Guidelines for Multinational Corporations play in the regional context in Africa? And how should domestic initiatives, such as the Department of Trade and Industry’s ‘Guidelines for Good Business Practice by South African Companies Operating in the Rest of Africa’,⁷⁰ be received as tools of governance for the future world of work?⁷¹

⁶⁹ The SADC Treaty was adopted in 1992 and consists of 15 member states, including South Africa.

⁷⁰ See <http://www.thedti.gov.za/DownloadFileAction?id=1097>. The guidelines are comprised of 12 principles, consistent which are intended to be consistent with South Africa’s Constitutional values and to promote sustainable development in Africa. Included in the principles are the observance and application of fair labour practice (principle 4) and the employment of local labour, skills development and technology transfer (principle 10).

⁷¹ One of the criticisms of the guidelines is that the guidelines were developed without consultation with business and labour.

74. Increased trade across national borders exerts new challenges to the application of legal principles⁷² and concepts such as collective bargaining, which is comprised of systems that are traditionally designed for national labour market systems. Likewise, anti-discrimination law principles, such as the ‘equal pay’ principle pose challenges when businesses operate multiple workplaces across national boundaries.

Recommendations and Concluding Remarks

75. Promoting decent work, which includes access to work, basic labour standards, social protection, and social dialogue, and enhancing labour market governance for the future of work will require, amongst others -
- effective and inclusive institutions in which the principles of responsive and accountable governance are entrenched and measured;
 - evidence led policy making;
 - adaptive forms of collective bargaining;
 - access to social security systems;
 - enforcement and compliance mechanisms, including private forms of regulation; and
 - a skills development landscape that enhances productivity and is responsive to the demands of the future world of work.
76. The difficulty is that the trajectory of the current legislative framework that governs the world of work has resulted in the continued proliferation of institutions that are ‘fixed in time’ in terms of their mandates and objections, yet all play a role in delivering decent work. The current system is rigid, and institutions operate largely in silos and are unlikely to deliver the efficient and flexible policy responses that are necessary to meet the unpredictable needs of the future world of work. For example, in the recent discussions to establish a national minimum wage for South Africa, the possibility of establishing a National Minimum Wage Commission was discussed, which would add an additional Commission to a growing number of institutions (including commissions such as the ECC and CEE) with overlapping mandates relating to conditions of work which would continue to operate independently of one another and would duplicate costs notwithstanding the efficiency gains and cost benefits to be achieved from a single institution that has a flexible mandate to promote decent work. In this regard, we recommend that the national dialogue on the future of work address the inefficiency of the currently fragmented and rigid system and debate the merits of replacing multiple current institutions with a unified ‘Decent Work Commission’ with streams of expert panels (permanent and ad hoc) rather than separate commissions or institutions, and a shared data centre and shared administration and an overarching Decent Work Commissioner.

⁷² Consider for example anti-discrimination law principles such as the ‘equal pay for work of equal value’ principle. How would this principle apply to employees of Shoprite Checkers that do work of equal value but are resident in different countries?

77. The diagram below illustrates a possible re-configuration of institutions for participants in the national dialogue to consider and discuss.

<p style="text-align: center;">Decent Work Commission</p> <p>Human resources capacity and resources to include a <i>research and data centre</i> to service the Commission</p> <p style="text-align: center;">A full-time <u>D</u>ecent Work Commissioner as CEO and as a member of each panel tasked to co-ordinate business between the panels</p>					
National Minimum Wage Expert Panel	Employment & Conditions of Work Expert Panel	Collective Bargaining Expert Panel	Employment Equity Expert Panel	Education, Training & Skills Development Expert Panel	Social Security Expert Panel
			[Including employment of people with disabilities – as a cross-cutting theme]		

78. On a final note, participants in the national dialogue on the future of work should also consider the overarching questions raised by the ILO, which include -

- COVERAGE OF PROTECTION -
 - ‘How will legal regulation reach those who work beyond employment relationships?’
 - ‘How will workers’ fundamental human rights and other essential protections be secured in the future, if not by regulation that is connected to employment relationships?’
 - ‘How to address, both nationally and internationally, the challenge of providing basic social security guarantees to the 70 per cent of the world’s population that remains inadequately covered while at the same time incentivizing the access to formal employment?’
- PROMOTING SOCIAL DIALOGUE
 - ‘What new forms of organization and representation are emerging, among workers in the informal economy and in non-standard forms of

employment, and what are their implications for the functioning of social dialogue institutions?’

- ‘How can the ILO, as the “global parliament of labour” contribute to renewing the social contract and strengthening social justice at the global level?’

- **SUPPORTING COLLECTIVE BARGAINING**

- What does the future of collective bargaining look like, at both the workplace and centralised level?
- How should the regulation of collective bargaining evolve in order to match the evolutions in the organization of production and in corporate structure, both nationally and internationally?’

- **SKILLS DEVELOPMENT**

- ‘What policies need to be pursued so that education and training systems continue to improve their capacity to anticipate and respond to skill needs through higher quality and more relevant programmes and institutions?’

- **PROMOTING COMPLIANCE**

- ‘Which legal and institutional initiatives are most likely to promote compliance in sectors with the most serious work deficits?’
- ‘Which priority initiatives should be taken to involve all the actors of the globalized economy in a governance model fostering responsibility and to install virtuous circles of compliance? ...’