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Organizing in the Informal Economy: A Case Study of the Building Industry in South Africa

by

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InFocus Programme on Boosting Employment
through Small Enterprise Development
Job Creation and Enterprise Department



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Foreword

The ILO's longstanding concern with the realization of freedom of association and its commitment to all workers, whether in the formal or informal economy, are well exemplified by the Decent Work agenda and the ILO Declaration on Fundamental Principles and Rights at Work (1998). In addition, ILO Recommendation No. 189 on Job Creation in Small and Medium-Sized Enterprises (1998) advocates adequate representation of these enterprises and their workers – including those in the informal economy – and calls on organizations of employers and workers to extend membership therein. In 2002, the Conclusions adopted by the International Labour Conference at its general discussion on decent work and the informal economy recommend future ILO work and activities be aimed, inter alia, at removing obstacles to the formation of organizations of workers and employers in the informal economy and assisting them to organize.

For the ILO, the right to organize is an enabling right in that it paves the way for the exercise of a range of other rights at work. However, the right to freedom of association is often denied – *de jure* or *de facto* – to those in the informal economy. The present report is part of an international research project jointly initiated by the ILO InFocus Programme on Boosting Employment through Small Enterprise Development (IFP/SEED) and the InFocus Programme on Promoting the Declaration (IFP/DECL), to probe how collective representation in the informal economy can generate positive social and economic outcomes. Countries under review are Bolivia, Colombia, Pakistan, Peru and South Africa. The intention of this project is to foster policy dialogue activity at the national level with a wide range of stakeholders.

ILO research counterparts in South Africa were the Community Agency for Social Enquiry (CASE) jointly with the Southern African Labour Research Institute (SALRI). Representational processes in South Africa's informal economy are assessed using a case study methodology. Within this framework, four sectoral studies (on clothing, construction, street trading and transport) have been conducted. This report investigates the construction industry and is published under the series on "Representation and Organization Building" by IFP/SEED.

To date collective representation of informal workers and entrepreneurs in South Africa's construction industry is at an embryonic stage. Attempts by both traditional trade unions and some employer organizations to organize in this sector are underway, but are still limited in nature and scope. This report evaluates the approaches adopted by a number of organizations, not necessarily those targeting solely informal actors, to organize and improve working conditions in the industry. It also identifies potential elements of a comprehensive organizing strategy in the sector and highlights critical issues for shaping and implementing such a strategy.

This report has been written by Tanya Goldman, researcher at CASE. Aubrey Nkoko carried out the fieldwork in Gauteng. IFP/SEED supported this research and jointly with IFP/Declaration coordinated its implementation. Giovanna Rossignotti (IFP/SEED) and Manuela Tomei (IFP/Declaration) designed the analytical framework for the research and guided this study to its completion.

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Acronyms and Abbreviations

ABA	African Builders' Association
AGM	Annual General Meeting
AGS	Acting General Secretary
ANC	African National Congress
AUBTWSA	Amalgamated Union of Building Trade Workers of South Africa
BCAWU	Building and Construction Workers' Union
BCC	Black Construction Council
BCEA	Basic Conditions of Employment Act of 1997
BEC	Branch Executive Committee
BIBC	Building Industry Bargaining Council
BIFSA	Building Industries Federation South Africa
BMBA	Boland Meesterbouers en Verwante Bedrywe Vereniging
BWAWUSA	Building Woodwork and Allied Workers' Union of South Africa
BWU	Building Workers Union
CASE	Community Agency for Social Enquiry
CAWU	Construction and Allied Workers' Union
CBPWP	Community Based Public Works Programme
CCMA	Commission for Conciliation, Mediation and Arbitration
CEC	Central Executive Committee
CETA	Construction Education and Training Authority
CIC	Construction Industries Confederation
CIDB	Construction Industry Development Board
COIDA	Compensation for Occupational Injuries and Diseases Act of 1993
COSATU	Congress of South African Trade Unions
DPW	Department of Public Works
FABCOS	Foundation for African Business and Consumer Services
GEAR	Growth Employment and Redistribution
LFS	Labour Force Survey
LRA	Labour Relations Act of 1995
LOSC	Labour-only subcontractors/subcontracting
MBA	Master Builders' Association
MDA	Mineworkers' Development Agency
MIC	Mineworkers' Investment Company
MIT	Mineworkers' Investment Trust
MMQOA	Master Masons' and Quarry Owners' Association
NACTU	National Council of Trade Unions
NALEDI	National Labour and Economic Development Institute
NEC	National Executive Committee
NEDLAC	National Economic Development and Labour Council
NHBRC	National Home Builders Registration Council
NPWP	National Public Works Programme
NUM	National Union of Mineworkers
OHSA	Occupational Health and Safety Act of 1993
PAC	Pan African Congress
PPPPFA	Preferential Procurement Policy Framework Act of 2000
RDP	Reconstruction and Development Programme
REC	Regional Executive Committee
RPL	Recognition of Prior Learning

SACP	South African Communist Party
SAFCEC	South African Federation of Civil Engineering Contractors
SANCO	South African National Civic Organisation
SALRI	Southern African Labour Research Institute
SARS	South African Revenue Service
SASCA	South African Subcontractors' Association
SAWU	South African Woodworkers' Union
SBA	Small Builders' Association
SDA	Skills Development Act of 1998
SDLA	Skills Development Levy Act of 1999
SMME	Small Medium Micro Enterprise
SPWP	Special Public Works Programmes
Stats SA	Statistics South Africa
T&GWU	Transport and General Workers' Union
UIF	Unemployment Insurance Fund

Executive Summary

“What contributions can be made with regard to meeting the representational needs of workers, employers and others conducting business?”

— *Decent work and the informal economy*, Report VI, International Labour Conference, 90th Session, 2002. ILO, Geneva, p. 120.

The ability of workers in the informal economy to exercise the right to freedom of association (establish or join organizations of their own choosing without fear of reprisal or intimidation) is critical to shaping regulatory frameworks and institutional environments that ultimately help workers and economic units to move into the formal economy. Lack of voice at work is marginalizing informal economic actors in the labour market and in society at large. This report seeks to enhance understanding of strategies adopted or currently experimented with by workers’ and employers’ organizations¹ to organize and improve conditions of informal economic actors in South Africa’s construction industry.

Interventions by these organizations are examined in the context of structural and policy changes that the industry has undergone over the recent years. Traditionally the construction industry in South Africa has been characterized by precarious and short-term work arrangements. These stem from the very nature of the industry itself. The industry operates on the basis of contracts issued for specific projects. The companies that tender for these contracts have always subcontracted parts of these jobs to “specialist” subcontractors, the latter often subcontracting out further to very small concerns (formal or informal). But during the past decade the entire industry has restructured in a way that has witnessed an upsurge in the number and range of informal work arrangements, pushing workers towards more vulnerable and insecure employment. The industry restructuring has happened largely through the system of labour-only subcontracting (LOSC). The specific features of LOSC are that, unlike traditional or “specialist” subcontracting, it performs narrowly defined tasks, usually not requiring a great deal of skills and with materials supplied by the main contractors. In addition, LOSC work is generally not registered with bargaining councils and does not comply with other labour legislation. As a result, labour-only subcontractors tend to be in a weaker position than traditional subcontractors. The increased risks associated with this new form of subcontracting are highly likely to be passed on to workers in the form of lower wages, worse working conditions and less skill requirements or training facilities.

These changes in the structure and organization of work and production processes have concomitantly been accompanied by changes in the policy and institutional framework traditionally governing terms and conditions of employment within the industry. Centralized bargaining in the building sub-sector has recently disintegrated. Since 1995 key regional bargaining councils, such as those in Gauteng and KwaZulu-Natal, have collapsed. Others are in the process of disintegration. Nonetheless, several institutions and mechanisms currently in place provide the framework through which working conditions in the industry can potentially

¹ With specific focus on 1) trade unions and 2) employer organizations as follows:

- 1) Amalgamated Union of Building Trade Workers of South Africa (AUBTWSA), Building, Construction and Allied Workers’ Union (BCAWU), the Building Woodwork and Allied Workers’ Union (BWAWUSA), National Union of Mineworkers (NUM); and
- 2) African Builders’ Associations (ABA) and the South African Subcontractors’ Association (SASCA).

be improved (the Construction Industry Development Board and the National Economic Development and Labour Council, community development fora and the state tendering system).

The present scenario raises enormous organizing challenges to worker and employer organizations operating within the industry. Countrywide in 2000, 65,000 construction workers – under 20 per cent of the formally employed – belonged to a trade union. Recruitment of informal construction workers (representing 40 per cent – 285 000 – of the industry’s workforce in 2001) faces key constraints. The precarious and unstable nature of work and the difficulties associated with recruiting and serving a workforce that is dispersed and subject to high mobility are just some of the factors impeding trade union action. Organizing informal employers in the industry is similarly impeded (inter alia, but not exclusively) by a lack of resources, disunity among employers and weak legitimacy linked to weak constituency.

This report shows that most of the unions profiled are still in the process of adjusting to industry restructuring and so far have devoted little or no serious consideration to organizing informal (potential) members. The same largely holds true for employer organizations. Only in the National Union of Mineworkers was there evidence of ongoing efforts to devise a strategy in this respect, although it is not yet operational.

While the prevailing lack of experience makes it hard to assess what works and what doesn’t in organizing building workers and employers, this report identifies a range of pertinent issues in different areas, including ways to ease recruitment and retain membership, organizing methods, collective bargaining, and policies approaches.

1. Introduction

In 2001 the International Labour Organization (ILO), through two of its technical programmes,² launched an international research project aimed at gaining insights into the organizational strategies of informal economic actors in the study countries of Bolivia, Colombia, Pakistan, Peru and South Africa. The purpose of this research is to acquire deeper insights into the nature of membership-based organizations in the informal economy, their strengths and weaknesses, with a view to understanding the incentives and rules that shaped their creation and function, and the constraints that hamper their potential as effective “voice” institutions. Such an understanding is critical to devise regulatory and institutional environments conducive to poverty reduction and decent work.

The Community Agency for Social Enquiry (CASE) in partnership with the Southern African Labour Research Institute (SALRI)³ was commissioned to conduct the South African component of this research. Four sectors have been selected for study: clothing, construction, street trading and transport. This report covers the construction industry.⁴

1.1 Defining features of the construction industry

Construction industry operations are highly mobile. Apart from materials manufacturing, most construction work (building and civil engineering) occurs on site. Construction projects are all fixed-term, rather than continuous. The workforce can either move with the operations or be drawn afresh at each location. Demand for construction can vary dramatically, as can the number of workers needed. At different stages of bigger projects this number can vary greatly from under ten to several hundred workers.

The mobility of building operations, and volatile demand for labour due to variations (overall or within projects) has meant that work arrangements have historically been precarious. Many building workers have always been employed on fixed-term contracts for the duration of a project, rather than on a permanent basis as in other industries. However, these workers were still likely to form part of a formal system of tax payments, and benefit systems were developed to accommodate contract employment by allowing for payments to be made on a pro-rata basis.

Most insiders agree that globally there have been shifts in the industry over recent years towards even more labour flexibility in an increasing variety of ways. In the South African construction industry, this has taken the form of a “distorted reliance” on labour-only subcontracting⁵ – a phenomenon described in Box 1.1. The construction industry is different from other sectors in which increased informality and downward pressure on wages and working conditions are driven by accelerating international competition and globalized production networks. However, the unemployment fueled by this process in other sectors

² The InFocus Programme on Boosting Employment through Small Enterprise Development (IFP/SEED) and the InFocus Programme on Promoting the Declaration [on Fundamental Principles and Rights at Work] (IFP/Declaration).

³ CASE is a non-governmental organization specialized in applied social research, with extensive experience in the areas of labour and gender. SALRI provides a range of applied research services to the labour movement with which it has direct links.

⁴ An electronic version of the report is available on <http://www.ilo.org/seed>

⁵ DPW, 1997, p. 8.

appears to have created similar pressures in an industry that essentially has a local production and employment base.

Box 1.1: Two views on labour-only subcontracting (LOSC)

From the academic perspective^a

“LOSC is qualitatively and quantitatively different from the ‘traditional’ or ‘specialist’ form of subcontracting. While specialist subcontractors are highly skilled, retain considerable discretion as to how they do their work and also supply the necessary materials, the LOSC performs a narrowly defined task, usually not requiring a great deal of skill, with materials supplied by the main contractor. Generally, LOSC work is not registered with a bargaining council and does not comply with any other labour regulations. The status of LOSC employees varies from working on fixed-term contracts to working as ‘independent contractors’ or the even vaguer ‘partners’.”

From the work-seeker’s perspective^b

“If you are working for labour-only subcontractors and say you are a member of a union, the boss won’t take you any more. With one subcontractor we fought with the help of the union up to the Commission for Conciliation.⁶ When we won, he just said he didn’t want workers who are members of the union. He didn’t take us any more.”

Sources: ^a Godfrey, 2000, p. 94; ^b Work-seeker (casual labouring in construction).

Given the high unemployment rate and low skill levels in South Africa, the construction industry is particularly important as an employer of labour with relatively elementary skills. It remains relatively labour-intensive, despite the introduction of some labour-saving materials and other technology. Even where new technologies are available, there is potential for labour-intensive techniques to yield the same results.

In South Africa, high unemployment is compounded by the lack of basic facilities in poor communities. These communities are mostly Black⁷ due to the country’s apartheid past. The building industry therefore has a significant role to play in the development of a post-apartheid South Africa, for example, by overcoming backlogs in the provision of low-cost housing and basic community infrastructure such as schools and clinics. Low financial requirements for entry, particularly as a labour-only subcontractor, mean that the industry is also seen as an important avenue for the promotion of Black-owned business.

High mobility and continuously changing labour requirements have always made it challenging to organize workers in the building industry, particularly general labourers with relatively elementary skills who comprise a large proportion of its workforce. It is even more difficult to organize the increasing numbers of informal workers in the sector, often working for emerging Black enterprises. It becomes especially difficult when it involves one-off projects within poor communities where unemployment is extremely high.

With the accelerating number of informal businesses operating in the industry, organizing these employers has also become an issue. An added racial dimension is that the

⁶ The Commission for Conciliation, Mediation and Arbitration is an institution set up in terms of the Labour Relations Act of 1995 to facilitate the resolution of labour disputes.

⁷ Apartheid divided communities according to four major racial categories: African, Coloured, Indian and White. All Black people – African, Coloured and Indian – were discriminated against under apartheid, although not to the same extent.

majority of these informal enterprises are owned by Black people who were formerly excluded from mainstream business activity under apartheid.

1.2 Aim of the research

The overall objective of the country research is to map organizational strategies – of worker organizations but, where appropriate, of employer associations too – in South Africa’s informal economy, with a focus on how these strategies:

- build strong and sustainable organization at local and national level;
- ensure the inclusion of poor women, and that their interests are addressed;
- empower stakeholders to have a recognized “voice”, as well as access to and influence over decision-making processes affecting them; and
- reduce the vulnerability of informal economic actors by enhancing their access to facilities, services, public institutions, markets and other resources.

An additional objective of this ILO project is to strengthen local capacity for participatory and qualitative research on representational rights in the informal economy. It aims to do this by fostering cooperation between different types of research organizations with an interest in improving working conditions in the informal economy.

1.3 Focus of this study

Organizing strategies in the building sector

The construction industry includes building, civil engineering and materials manufacturers and suppliers. The focus of this research is on the building sub-sector, given that it is the most labour-intensive and the location of most of the informal activity in the industry. As part of the ILO’s broader ongoing effort to advance an understanding of organizing strategies in member-shipped based organizations in the construction industry, the priorities of the study are to:

- identify the motives behind the creation of these organizations, their type and legal status, and how they relate to informal actors in the sector;
- investigate the internal structure of these organizations, their functioning and performance in terms of financial viability and services offered to members;
- assess the capacity of these organizations to deal with coordination and management issues, and resolve conflicts among members;
- examine the ability of the organizations to represent their members, based on their accountability to members, responsiveness to members’ needs, ability to foster cooperation among members, legitimacy in the eyes of public authorities, and interaction with non-governmental actors;
- ascertain the policy and institutional factors that encourage or hamper organizational processes and representation in the informal economy; and
- analyse gender-specific issues within the organizational and representational processes in the informal economy.

Selecting organizations

The ILO established the following criteria for guiding the identification of the organizations to be covered across the four sectoral studies:

- a minimum existence of three years - a proxy measure of relevance to members on the assumption that associations would not survive for this length of time in such a difficult context without member support;
- financial and political independence – intended to ensure the legitimacy that can come from members only, that members’ interests are represented by the organizations, and that these cannot be co-opted by government or other interest groups;
- membership of not less than 500 – a measure of adequate representativeness to create the critical mass required to defend members’ interests and achieve social and economic change; and
- legal organizations – intended to identify organizations that do not pursue criminal objectives and so generate positive instead of negative results for society.

The brief allowed for flexibility of selection to include organizations that do not satisfy all these criteria but may still provide lessons for organizing strategies in the sector.

The organization of informal workers and employers in South Africa’s construction industry is extremely limited. Trade unions organizing workers in the industry have generally lost formally employed members through retrenchments over the past five to ten years, and are only beginning to develop strategies for responding to this by organizing in the informal economy. New employer organizations have been formed to represent the new types of enterprise operating informally in the sector but these are still in the process of establishing themselves and are still small.

This research therefore examines all organizations in the industry, not only those focused on informal actors. It outlines strategies they use or are planning to use to organize and/or improve the working conditions of informal actors. Given the newness of organizing efforts in this area, it is not possible to evaluate the efficacy of these strategies. Rather, an effort is made to outline potential elements of a comprehensive strategy, and some of the issues that will need to be resolved in the process of developing such a strategy.

Readers are reminded that the anecdotal evidence presented in this report is intended to shed light on various situations within the construction industry, in the absence of hard data and consolidated organizing experience in this sector.

Gender

The construction industry is male-dominated, with men comprising just under 90 per cent of the total workforce.⁸ The research examines the scant membership and participation of women in organizations and also attempts to incorporate a wider gender analysis by examining the impact of different organizing strategies for women – as potential employees in the industry and as family members of men employed in the industry – even when they are not the target of organizing efforts.

⁸ Stats SA, 2001a.

Geographical focus

The research has an urban focus. Two urban centres were chosen to allow for comparison. Cape Town and Johannesburg were selected because they are located in provinces with very different demographic profiles in terms of race, historical levels of unionization and bargaining arrangements.

Cape Town is the main urban centre in the Western Cape, where employment and demographic patterns are still dramatically marked by the Coloured labour preference policy that operated under apartheid. The province also has relatively high literacy rates and levels of unionization of formally employed construction workers.

Johannesburg is in Gauteng province, where most of the country's economic activity takes place yet where organization in the construction industry has historically been weaker (although strong in other industries). The province is also home to more foreign migrant labourers than the Western Cape, if only because Gauteng is nearer to South Africa's borders with the rest of Southern Africa. Part 3 of this report goes into greater detail on the different bargaining arrangements.

Gauteng and the Western Cape are the two wealthiest provinces in South Africa. The focus on relatively industrialized urban areas and provinces means that this research does not reflect issues specific to organizing in the more rural areas. A unionist described how workers in rural areas have less exposure to organizational issues and often simply "do not see the need for a union". Currently, a greater proportion of building work is also likely to take place in the major urban centres due to higher levels of economic activity and the demand for facilities such as houses, schools and clinics that accompanies urbanization.⁹

1.4 Methodology

Research team

The terms of reference and research tools for this study were developed by CASE in consultation with SALRI and the ILO. In terms of the partnership between CASE and SALRI, it was initially envisaged that researchers from the National Union of Mineworkers (NUM) – the COSATU affiliate that organizes construction workers – would complete this case study. It became apparent that the NUM research unit did not have the capacity to complete research, so Tanya Goldman (a CASE researcher with research experience in the labour movement) was assigned to the project. Aubrey Nkoko of CASE conducted the fieldwork in Gauteng.

Data collection

The methodology outlined in the terms of reference comprises an initial review of background documents on the industry, in-depth interviews with key informants and organizational leadership at provincial and national level, and focus groups with members of organizations.

⁹ However, backlogs in the provision of such facilities are actually greater in rural areas, and increased government emphasis on rural infrastructure development could shift this balance.

Interviews with key informants

The CASE approach was first to interview key informants and leadership in the provincial offices of trade unions and employer associations, and then interview national organizational leadership and institutional actors where appropriate. Annex 1 provides a list of individuals, agencies and organizations contacted in the course of this research. These interviews allowed the researcher to gauge what was happening at a more local level in organizations before exploring what should be happening or is intended in terms of policies and plans. Annex 2 provides the guidelines for leadership interviews and Annex 3 for the focus-group discussions, both templates developed by CASE in consultation with SALRI and the ILO.

It was very difficult to get leadership to make time for interviews, and this delayed fieldwork for the project substantially. Problems arose for a range of reasons:

- Organizations are under-resourced and when organizers are under pressure research is not a priority. Further, organizers are sometimes not good at managing their time.
- Organizers are inexperienced in dealing with researchers and react with insecurity and suspicion, sometimes deferring to superiors for a mandate or often simply avoiding calls.
- Organizations do not see any benefit for themselves or their members arising from the research.
- Organizations guard their strategy closely and do not want to share it with rivals.

Another factor was that the CASE researchers may have been perceived as close to a COSATU union, which in turn may have influenced the response from unions not aligned to COSATU. This was definitely the case with the Building, Construction and Allied Workers' Union (BCAWU) Provincial Coordinator in Gauteng.

It was particularly difficult to set up interviews with Black employer associations. First, they are not widely known, their contact details not easily available, and some of those provided by various sources were found to be incorrect. Second, their leadership appeared over-stretched. In the case of the Black Construction Council (BCC) in Gauteng, the chairperson refused the interview on the grounds that he did not see any benefit for his organization. In the case of the African Builders' Association (ABA), the chairperson confirmed arrangements for an interview time, but did not arrive. He called to arrange an alternative time two weeks later and the interview was conducted as this report was being written.

Some organizations, such as the Building Workers Union (BWU) in Gauteng and the Western Cape, and the South African Woodworkers' Union (SAWU) and the Master Masons' and Quarry Owners' Association (MMQOA), were not interviewed because they do not organize in the informal economy and are unlikely to have an interest in doing so because of their craft-union character. Leadership of other organizations, such as the Master Builders' Associations (MBA), their national association, the Building Industries Federation of South Africa (BIFSA) and the Small Builders' Association (SBA) in the Western Cape, which organize primarily formal businesses, were interviewed as key informants, but are not profiled in detail in this report.

Additional key informant interviews were conducted with the Secretary of the Building Industry Bargaining Council (Cape of Good Hope) (BIBC) and the Chief Executive

Officer of the Construction Industry Development Board (CIDB). The previous Secretary of the Building Industry Bargaining Council for Gauteng resisted efforts to arrange an interview. Table 1.1 lists the organizations that were targeted by the present researchers for leadership interviews and the positions held by individuals requested for interview. Those interviewed are in italics.

Table 1.1: Organizations in the construction industry targeted for leadership interviews

National	Gauteng	Western Cape
Worker organizations		
<i>BCAWU</i> <i>Deputy General Secretary</i>	#BCAWU Provincial Coordinator	<i>BCAWU</i> <i>Provincial Coordinator</i>
<i>NUM</i> <i>National Construction Sector</i> <i>Coordinator</i>	<i>NUM</i> <i>Organizer</i>	<i>NUM</i> <i>Regional Organizer &</i> <i>Organizer</i>
	<i>AUBTWUSA</i> <i>Organizer</i>	<i>BWAWUSA</i> <i>Deputy General Secretary</i>
	*BWU	*BWU
		*SAWU
Employer organizations		
^FABCOS	#BCC Chairperson	<i>ABA</i> <i>Provincial Chairperson</i>
+BIFSA <i>Manager, Liaison Officer</i>	+MBA <i>Executive Director</i>	+MBA <i>Director</i>
		*BMBA
		*MMQOA
	^Mamelodi Builders' Association	<i>SASCA</i> <i>President, Western Cape</i> <i>Director, National Director</i>
		+SBA <i>President</i>

Note:

- Leadership from organizations *in italics* were interviewed.
- + Interviewed as key informants, but not profiled as do not (and are unlikely to) organize in the informal economy.
- # Interview refused.
- * Not interviewed as do not (and are unlikely to) organize in the informal economy and cannot add to information supplied by other key informants.
- ^ Not interviewed as discovered too late in the research process.

Focus groups discussions

The NUM researchers conducted focus groups with members in the construction industry, all of whom are formally employed. CASE conducted three additional focus groups with construction work-seekers – one in Cape Town, two in Johannesburg.

Work-seekers were recruited for the Cape Town focus group at the gate of a construction company plant yard. They were recruited with the assistance of a NUM shop steward, who also provided translation between English and Xhosa. The discussion took place in the company's training room.¹⁰

¹⁰ Work-seekers were assured that they would be called from the discussion if work came up for them. However, the researcher was told that this was unlikely in view of the many laid-off workers also waiting at the gate, who have preference over those not previously permanently employed by the company.

Participants in the Johannesburg focus groups were recruited from the side of the road where they were waiting for work. They were offered a monetary incentive, transported to the CASE office for the discussion, and given lunch. The CASE researcher conducted the focus group discussion in Zulu in which all but two¹¹ of the participants could converse.

Research tools

Interviewers used the general research tools that were developed for this ILO country study, but adapted them where necessary to the construction industry. The guidelines for the leadership interview (Annex 2) were comprehensive but time-consuming, a difficulty when interviewing busy people working in under-resourced organizations. Therefore an effort was made to access other sources of information such as organizational reports, to cover some of the areas outside of interviews. Where this was not possible and interview time was limited, questions were prioritized and some omitted. As a result, information from the organizations is sometimes uneven.

Similarly, the guidelines for the focus group discussions (Annex 3) were adapted by omitting questions that were not relevant to the construction industry, being more specific in questions where access to background information allowed, and were generally adapted to suit participants who were not members of organizations and were unemployed at the time of the discussion.

1.5 Structure of this report

This report is divided into seven parts. Part 1 presents the defining features of the construction industry in South Africa and outlines the research objectives and methodology used. Part 2 outlines the economic, social and legal context for organizing informal workers and employers in the construction industry, including a profile of industry employment. Collective bargaining arrangements in the building sector are examined in Part 3. Part 4 describes a range of other institutions that have an impact on the construction industry, with special attention paid to how they affect organizing, wages and working conditions for the informally employed. Part 5 focuses on the organizing of building workers and profiles the unions with an interest in organizing and improving conditions of work in the informal economy. Two national unions – the Building, Construction and Allied Workers’ Union (BCAWU), the National Union of Mine Workers (NUM) and two largely regional unions – the Amalgamated Union of Building Trade Workers of South Africa (AUBTWSA) and the Building Wood and Allied Workers’ Union (BWAWUSA) – are assessed. Part 6 looks at issues on organizing informal employers as they relate to improving conditions of work in the building industry. Two associations based in the Western Cape – the African Builders’ Association (ABA) and the South African Subcontractors Association (SASCA) – are profiled. Part 7 concludes this report by defining the potential elements of a comprehensive strategy for organizing informal building workers and improving conditions of work in the industry. It also highlights some issues that will need to be resolved in the process of developing such a strategy.

¹¹ These two (from Mozambique) spoke only Shangani and participated through translation by other participants in the group who were also from Mozambique.

2. Context

2.1 Building and economic policy

The Reconstruction and Development Programme (RDP) served as the election platform for the African National Congress (ANC) in South Africa's first democratic elections in 1994. It was developed jointly with the ANC's alliance partners, the Congress of South African Trade Unions (COSATU), and the South African Communist Party. Adopted by the government of national unity after the elections, it includes public works and mass housing programmes among measures to generate jobs and meet basic needs – particularly those of poor Black people – that were ignored under apartheid. The RDP¹² stressed that these programmes should “not abuse labour standards”. At the same time, the need for community participation in the delivery of housing and support to “Black and, more generally, to small builders” was highlighted.¹³ Government's approach to public works and housing provision is discussed in Part 2.4 of this report.

The ANC government aimed to refine its macro-economic approach in a document entitled Growth Employment and Redistribution (GEAR), adopted in 1996 without consultation even with the ANC alliance partners. Supporters claim that GEAR is a strategy for implementing the RDP. However many, including COSATU, argue that it shifts from the policy approach outlined in the RDP by its emphasis on reducing government expenditure in the interest of fiscal discipline and the lack of attention to providing for the needs of the poorest South Africans.

There is widespread recognition that job creation has been inadequate since the introduction of GEAR. The economy created jobs between 1995 and 1999 but job growth was poor, at only a third of the rate required to absorb new entrants to the labour market. However, this includes informal jobs, which are likely to be worse paid, less secure and more dangerous than formal work.¹⁴ One analysis¹⁵ identifies three distinct phases: substantial job losses from 1990 to 1993, followed by a four-year period of stabilization and renewed job shedding between 1997 and 2000.

The building industry generated a turnover of just under ZAR 24 billion¹⁶ in 1999, of which 57 per cent was non-residential. In addition, the Reserve Bank estimates a ZAR 0.5 billion turnover in the informal economy for the same year, mainly through residential work.¹⁷ Growth in the South African economy has been sluggish at best, with per capita GDP remaining almost constant in recent years. Levels of investment in construction usually correlate with cycles of growth and decline in the broader economy. In addition to bearing the impact of current poor growth conditions, investment in construction has been declining in South Africa since the late 1970s. Construction, comprising building and civil engineering, contributed only 3 per cent to GDP in 1996, as opposed to a significantly higher 5.4 per cent at its peak in 1975.¹⁸

¹² ANC, 1994, p. 19.

¹³ *idem*, p. 28.

¹⁴ Bhorat, 2002.

¹⁵ Makgetla, 2001, p. 17.

¹⁶ US\$ 1 = ZAR 11.79 at current exchange rates.

¹⁷ CETA, 2000, p. 17.

¹⁸ DPW, 1997.

Experience in other countries illustrates that public sector purchasing power can be used to encourage the construction industry to operate in terms of government-identified good practice.¹⁹ Key tools for influencing employment practices positively are spending patterns that encourage industry stability and tendering criteria that include adherence to labour legislation as a prerequisite for consideration. The South African government's impact on employment levels and conditions of work as a client of the construction industry is greater in the civil engineering sub-sector (where the state accounts for about three-quarters of spending) than the building sub-sector where about 80 per cent of spending is comes from the private sector.²⁰ The figure for private sector spending may include money spent on housing by individual recipients of state housing subsidies, but the government has exerted little, if any, control of what happens to labour standards in these cases. The amount budgeted for this was just under ZAR 3 billion in the 2000/1 financial year. Figures for 1999 indicate that building accounts for a higher proportion of turnover (57 per cent) than civil engineering.²¹ Declining investment and government under-spending of infrastructure and housing budgets from 1994 until recently, have had a negative impact on the building industry.

2.2 Unemployment and construction employment

High unemployment

South Africa has extremely high rates of unemployment and poverty. Even by the narrow official definition, unemployment stood at 27 per cent in 2000. The expanded definition (which includes those who have given up looking for work because they have lost hope or because the expenses of seeking work are beyond their means) puts unemployment at 36 per cent for the same year. Official unemployment is highest among Africans at 32 per cent in 2000. African women in urban areas have the highest official unemployment rate at 40 per cent.²²

This means that people are often desperate to work and earn an income, any income. A union informant described how organizing is particularly difficult in areas of high unemployment: "People are concentrated to get a slice of bread on the table. So they think 20 rand is better than nothing."

The Western Cape and Gauteng are the two provinces with the lowest unemployment rates in the country. Both urban centres are attractive to migrants looking for work – the Western Cape more to people from elsewhere in the country, particularly the Eastern Cape, and Gauteng to people from the more rural provinces as well as those from other parts of Southern Africa and the rest of the continent. There are no accurate figures on foreign migrants employed in construction, because a large proportion, if not the majority, are undocumented. A unionist estimated that foreign workers constituted a quarter of construction employees in Gauteng.²³ Employer estimates are higher, ranging from 50 to 80 per cent.²⁴ Informants estimated that at least half of these foreign migrants are from Mozambique.²⁵

¹⁹ DPW, 1997.

²⁰ CETA, 2000, p. 9.

²¹ *idem*, p. 17.

²² Stats SA, 2001b, p. 8.

²³ Rees, 1999, p. 7.

²⁴ *idem*, p. 14.

²⁵ Employer informants claimed that migrant rural South African workers were no different to undocumented migrants in terms of willingness to work for low wages, productivity, skills and low levels of unionization (Rees, 1999, p. 14).

Construction industry employment profile

In 2000, jobs in the construction industry comprised 4 per cent of private formal employment.²⁶ According to Stats SA (2001a) Labour Force Survey (LFS) data, total formal employment in the construction industry was 319,000 in September 2001. Based on the Stats SA Survey of Total Employment and Earnings, formal employment in the construction industry shrunk 29 per cent between 1997 and 2000.²⁷ The average annual change in this period was 11 per cent, as compared to 4 per cent between both 1997 and 1993, and 1993 and 1990.

The LFS data indicate that 258,000 people were informally employed in construction in September 2001, or almost 40 per cent of the sector's workforce. Some employer and worker informants in the Western Cape saw this figure as exaggerated, at least for the province, and suggested the estimate of 20 per cent.

The building industry operates on the basis of contracts issued for a specific project; tendering companies are known as main or general contractors. They have always subcontracted out parts of these jobs to specialist subcontractors (plumbers and electricians). As Box 1.1 mentions, main contractors are increasing their subcontracted work. In turn, subcontractors often subcontract out further to very small enterprises, in a LOSC chain that may be formal or informal and may employ workers on a project-by-project basis either formally or informally.

All informants cited decreasing formal employment in the industry, driven mainly by retrenchments from the large companies since 1994. Examples were given of formal contractors whose workforce has dropped from thousands to a few hundred. Work-seekers in a Johannesburg focus group had experienced a contraction in the industry, even in informal employment: "In the past you wouldn't spend a week without getting a job, but now you can stay over a month looking for one." Official sources show that over half of those working in the industry are in companies with less than ten regular workers. Only 14 per cent work in companies with 50 or more regular workers.²⁸

Table 2.1 gives a breakdown according to race and sex of all workers – formal and informal – in the construction industry in 2001. The majority (66 per cent) are African men. A skills profile for the industry is not available, but informant input suggest that the majority of Africans are employed as labourers or employers in very small labour-only subcontracting businesses. Coloureds and Whites each comprise 12 per cent of those working in the construction industry (Coloureds are more likely to be employed as artisans or labourers; Whites in managerial, professional or administrative categories).

²⁶ Makgetla, 2001, p. 17.

²⁷ Ibid.

²⁸ StatsSA, 2001a.

Table 2.1: Formal and informal workers (employers, employees and self-employed) in the construction industry, September 2001

	African	Coloured	Indian	White	Total
Female	46 000	*	*	*	60 000
Male	391 000	70 000	*	63 000	534 000
Total	437 000	74 000	*	73 000	594 000

* For all values of 10,000 or lower the sample size is too small for reliable estimates.

Source: Stats SA, 2001a.

Construction work often places heavy physical demands on workers and involves long hours on sites in locations that change. Women comprise only 10 per cent of the workforce, partly for these reasons and partly because of stereotyping by prospective employers.²⁹ Some construction projects under the Community-Based Public Works Programme (CBPWP) employ mostly African women and men from local communities but only provide temporary employment. White and Coloured women are usually employed in an administrative capacity.

The main categories of workers in the industry are labourer or general worker, various categories of driver, and artisans in a range of trades (bricklaying, painting, plastering, and tiling). The terms ‘labourer’ and ‘general worker’ are often used interchangeably, but also sometimes to differentiate new entrants (i.e. labourer) from existing workers (i.e. general worker) at the same level of skill.

Some formal job losses in the construction industry are due to the introduction of new technology. A union organizer provided the example of compacting earth to level the building site, which was once done by hand, sometimes with 50 workers. “Now it is one driver and a compacting machine.” However, informants said that the vast majority of formal job losses in the industry are due to the industry restructuring process described below.

2.3 Industry restructuring

Hire and fire

Because of the nature of the construction industry, employment arrangements have intrinsically been precarious and short-term. But in the past five to ten years the entire restructuring of the industry has left workers more vulnerable and insecure, and increased the number and type of informal work arrangements. An employer informant was not ashamed to claim, “In the past few years, ‘Hire and Fire’ has been the slogan in the building industry.” Restructuring has mainly occurred with the LOSC system.

Price-setting power

Main or general contractors have subcontracted an increasing amount of work, as noted earlier, often becoming solely project managers and/or property developers, who employ a small core team of workers and a few others on formal fixed-term contracts. A union leader estimated that on any given project a maximum of 20 per cent of workers would be core: “The majority are those who come and go.” Main contractors have distributed the

²⁹ CETA, 2000.

risks associated with the building industry downstream to subcontractors, yet still retain the power to set the LOSC prices they pay. In the words of one union leader, “You have the emerging employer and the big giant that squeezes him. Out of the little from the big employer, the small employer needs to share that with the workers.”

Some informants felt that improving working conditions would probably mean dismantling the LOSC system. They were not concerned whether these subcontractors survive as businesses or not. Others, because of equity concerns, felt it was important they do survive.³⁰ Godfrey (2000) distinguishes the newer and more widespread phenomenon of LOSC from specialist subcontracting, which has always included plumbing and electrical work. The main difference is that specialist subcontractors have their own tools and usually supply their own materials. Although the BIBC Secretary referred to LOSC and specialist subcontracting as “the same animal” in that “all specialize and very few do more than one thing” (plastering, tiling, painting, bricklaying or plumbing).

In general, subcontractors are more likely than main contractors to avoid abiding by bargaining council agreements and all subcontractors’ employees are more vulnerable to exploitation than those formally employed by main contractors. The increasing tendency to subcontract newer areas such as bricklaying and plastering underlines their more vulnerable negotiating position than those in specialist and more skilled fields such as plumbing. The increased risks associated with the newer forms of subcontracting are even more likely to be passed on to employees in the form of lower wages and worse conditions of work.

There are no current figures on the prevalence of subcontracting in the building industry but half of the firms enumerated in an unspecified 1991 survey were subcontractors. Since then, it is estimated that subcontractors account for 65 to 95 per cent of labour employed on site in general contracting, 40 per cent to 85 per cent in home building and 10 per cent in civil engineering.³¹ The vast range of figures for general contracting and home building make it difficult to draw definitive conclusions.

The growth in subcontracting was a comment made by most informants, but they were usually referring to LOSC and what this means for labour standards and costs. Business-orientated informants were quick to cite decreasing investment and increased competition as the factors driving the restructuring of the building industry. Union organizers and members argue that employers have embraced subcontracting as a conscious strategy to undermine worker solidarity and union organization: “If the employer realizes that a certain worker is clever, they will employ him as a subcontractor.”

Formal economy enterprises

Informants generally used the same criteria to distinguish formal from informal enterprises in the construction industry. Formal companies were those registered with the Receiver of Revenue for tax purposes and, in the Western Cape, those also registered with the BIBC, Cape of Good Hope. Unionists associated formality with registration with the BIBC from the perspective that registration of companies means it is possible for them to register workers and pay benefits on their behalf. Employer informants see company registration as a way of gaining representation in the bargaining process and (under the new agreement) of

³⁰ As noted earlier, the majority of LOSC businesses are likely to be Black-owned and therefore a target for affirmative action in terms of South Africa’s constitution and government policies.

³¹ DPW, 1997, p. 8.

avoiding being hounded by BIBC agents. From the perspective of employers, formality depends on company registration and is not necessarily linked to registering all employees with the BIBC.

Informal work arrangements

Informants used different terms to describe a range of informal work arrangements, including four categories of informal building worker:

- i) “permanent” workers employed indefinitely or on a fixed-term contract (usually for a certain number of months) by unregistered companies;
- ii) “casual” workers employed (supposedly on a daily basis, but often longer) by unregistered companies;
- iii) “casual” workers employed (supposedly on a daily basis, but often longer) by registered companies;
- iv) “permanent” workers employed on a fixed-term contract by registered companies, but not registered with the BIBC or for Unemployment Insurance Fund (IUF) and other taxes.

The terms “casual” and “permanent” are in inverted commas because they do not have meaning in terms of South Africa’s current labour law. In ii) and iii) above, “casual” is often used to describe a variety of work arrangements that fall outside the law and that overlap to a large extent with the categories in i) and iv). Conversely, many use “casual” to refer to those working under 24 hours a month for a given employer, because these workers are excluded from certain basic conditions. Section 2.5 of the present report discusses the legal context for organizing informal building workers in more detail.

All union leaders interviewed saw the need to organize informal workers; some emphasized the needs of subcontractors as employers. NUM was arguably the most firm on the need for all workers, formal or informal, to have representational rights. The NUM National Construction Sector Coordinator was clear that emerging Black enterprises would not be dealt with differently: “If it is a Black subcontractor, we are not confining ourselves from organizing or taking action.”

Even employer informants agree that a result of the restructuring process has been a decline in productivity and quality of work in the industry. Subcontractors generally pay their employees, and are themselves paid, on a production output basis or piecework rate instead of the standard time-based pay system in building bargaining council agreements.³² Labour-only subcontractors generally do not have the time, skill or facilities to train their workers. The payment system and scarcity of work provide little incentive for subcontractors or their employees to increase productivity through improvements in skill or work processes. In the focus groups, work-seekers reported that they are forced to work longer hours to complete a job, even though they understood the payment system is a time-based rate for the day.

2.4 Community-based employment

The RDP intended the construction industry to create new jobs through public works and housing provision. It was envisaged that this work would be in addition to existing

³² Horwitz, 2000.

capacity in the construction industry. An emphasis was placed on using temporary local labour, initially for building projects at the community level, such as schools, clinics, or mass housing projects in rural areas. Later it shifted to infrastructure (such as roads) that would facilitate sustainable economic activity in rural areas. The approach of employing temporary local labour was formalized in some DPW projects under the community-based public works programme (CBPWP) from 1994; the CBPWP is only a small proportion of government infrastructure spending.

In response to concerns about wages and conditions of employment on CBPWP and related government projects, the Minister of Labour issued a sectoral determination and code of good practice to cover all Special Public Works Programmes (SPWP) in terms of the Basic Conditions of Employment Act. The SPWP code encourages a focus on the employment of women and empowerment of participants through training. It obliges employers in SPWPs to comply with relevant labour legislation.

The method of employing local labour on community building projects appears to have been adopted much more widely than the limited CBPWP programmes, particularly by local government (and others) in the provision of housing, although informants were not certain which policies and laws were driving the process. Union informants argued that, in addition, some business people “hide behind the RDP” when doing work in the townships. Thus it appears that, in addition and possibly on a much wider scale, private building contractors and/or subcontractors use this approach as justification for employ local people at lower than legislated rates on privately commissioned or local government building projects.

The private companies employing local labour at lower than legislated rates are often Black-owned, and this is used to provide further justification for the approach. Entry into the building industry is relatively easy (particularly as a LOSC, where all tools are provided by the main contractor). This, together with the location of building projects in Black townships, fosters a significant industry for Black economic empowerment. Government appears to have emphasized this aspect in tendering policy, at the expense of labour standards, and has increased the scope for private companies and individuals to do likewise.

A 1996 evaluation of the DPW Community Employment Project noted the immediate positive impact on communities of creating temporary jobs and providing assets, but that little attention had been paid to the displacement of formal jobs. It was too soon to assess long-term socio-economic impact on these communities.³³ A union leader argued that retrenchments and restructuring are not caused by “the economy per se”. He emphasized the role of government policy in relation to community employment, (“You retrench and make unemployment to create employment”). One organizer described how his union was struggling to retain formal jobs in the face of the community-employment approach: “The RDP document says they must employ people of the area. But we are saying you need to keep on the people who are on layoff.”

Unionists said it is particularly difficult to organize and fight for better wages and conditions in township areas where there are very visible “RDP jobs”: “If you come with a very hard strategy there, you’re going to become the enemy of the township.” As one unionist put it, there appears to be a need for government to “get a handle on the situation of the RDP”.

³³ Everatt et al., 1996.

2.5 Legal framework

Building workers, regardless of whether they work for a main contractor, specialist subcontractor or LOSC, are, at least in theory, covered as employees by all of South Africa's labour laws, the most relevant being:

- Labour Relations Act of 1995 (LRA);
- Basic Conditions of Employment Act of 1997 (BCEA);
- Occupational Health and Safety Act of 1993 (OHSA) and Compensation for Occupational Injuries and Diseases Act of 1993 (COIDA);
- Skills Development Act of 1998 (SDA) and Skills Development Levy Act of 1999 (SDLA).

The following subsections focus on how these laws regulate key issues for informal building workers.

Job flexibility and security

Although Section 2.3 noted that many informants distinguish “permanent” formal employees from “casual” informal employees, this distinction has no basis in current labour laws. A union informant described the legal reality of informally employed building worker as follows: “There is no name for them. They are just not registered.” The BCEA makes provision only for those employed for less than 24 hours a month to be excluded from basic conditions relating to hours of work and leave without defining these workers as casual.

Theron (2000) argues that the removal of the casual definition from the BCEA has created pressure for employers to externalize the labour relationship. The earlier BCEA (1983) defined “casual” as a worker employed for not more than three days a week and entitled casuals to be paid no less than the applicable hourly rate as well as overtime. However, employers were not required to contribute unemployment insurance or pay social benefits for casuals. It is difficult to assess the number of workers currently informally employed in the construction sector who would be covered by such a provision (working three or less days per week). Also, given that employers in the industry avoid registering even those workers on longer fixed-term contracts, it is not certain that the inclusion of a restrictive definition of “casual” would encourage employers to register those employed for shorter periods and/or pay them the legislated wage. Theoretically, Theron's argument could hold but more empirical evidence is needed to ascertain if the change in the BCEA has had this effect – or that the inclusion of a more restrictive definition would remedy the situation for casual workers.

Some employers argue that allowing flexibility around termination of employment would encourage employers to abide by other regulatory instruments. Yet, the construction industry already has this flexibility in the ability to hire workers on fixed-term contracts. A fixed-term contract usually has a clause on termination of contract, and the employer does not follow a retrenchment procedure in terms of the LRA when the contract is over. An MBA informant claimed it is “normal to employ on a fixed-term contract” in formal enterprises and “it is not a case of signing rights away” in that fixed-term contract workers are registered and paid wages and benefits in terms of the collective bargaining agreement by which they are covered. In terms of the LRA, a “dismissal” includes the case of an employee who

“reasonably expected” an employer to renew a fixed-term contract. The employer’s failure to do so requires fair procedure to be followed.

Centralized collective bargaining

The LRA encourages a system of centralized collective bargaining on a sectoral basis. In terms of the LRA, a bargaining council (BC) may be formed if the trade union and employer parties are “sufficiently representative” within a specified sectoral scope.

The value of the centralized bargaining system is that, if parties to an agreement meet certain criteria for representativeness, they can request the Minister of Labour to extend the agreement to non-parties within the BC scope of jurisdiction. This is the case for the Building Industry Bargaining Council, Cape of Good Hope (discussed in Section 3.4 below). Some major difficulties are experienced with enforcing agreements reached in BC. Enforcement difficulties in the context of industries restructured along the lines described above make BCs inappropriate institutions for regulating wages and working conditions: the institutions are undermined by the weakness of the unions and the BC financial base erodes with the changed conditions.³⁴

Covering informal economy workers: Creating potential

Recent amendments to the LRA, which were promulgated into law in August 2002, are intended to facilitate the improvement of conditions for informal workers through centralized collective bargaining in BCs. First, a change to section 28 of LRA, which sets out the powers of BCs, will now allow them to extend their services and functions to cover informal work. The amendment gives BCs the opportunity to register to include informal work and to enter into collective agreements that can be extended to cover informal workers.

This creates the potential for organizations in BCs to enter into agreements on wage payment, retirement funding, medical schemes, hours of work, safety and other conditions of employment for informal workers. The new provision provides only a facilitative legal tool: for informal workers to win improvements in their working conditions, parties in the BCs will still need to reach an agreement.

These amendments were driven by unions outside the construction sector – but they provide a legal framework within which centralized collective bargaining in construction can be strengthened to accommodate the needs and interests of informal workers. However, they will not address the difficulties of enforcement and weak worker organization. The extent to which it is possible for unions to use centralized bargaining to improve the lives of informal workers will still depend on the organizing strategies unions adopt and, also, on the extent to which unions use this and other legal tools that have been provided.

Health and safety

Work in the construction industry is often extremely dangerous. In the field of health and safety, the Occupational Health and Safety Act (OHSA) places the onus on the employer to find out what the health and safety risks are in a workplace and to involve workers in preventing accidents. In terms of the National Environment Management Act (1998) workers

³⁴ Theron, 2000.

have the right to refuse work that damages the environment. Rights set out in these acts are often denied in practice to informally employed construction workers. In focus group discussions, workers reported struggling to be supplied with appropriate safety clothing, and being forced to work under particularly dangerous conditions such as “on a big hole” which was “dark and not balanced”. Attempts to raise these grievances (addressed either to the informal subcontractor employing them or to the formal company that had contracted their employer) were met with threats of dismissal.

As with other measures, the Department of Labour capacity for enforcement is weak. COSATU has campaigned for the DOL’s health and safety inspectorate to be given adequate resources to enforce the law and has also agreed to work with the DOL to encourage compliance.³⁵ It is only possible for the trade unions to play this role in workplaces where workers are organized and have voice and knowledge of their legal rights.

In terms of OHS Act, workers have the right to refuse work if it will endanger their health and safety. If levels of unionization were high among formally employed construction workers, this issue could attract informal worker recruitment through solidarity campaigns on site. Such solidarity would need to be built up carefully and any campaign would need to include an education component (for both formal and informal workers) to be successful.

The Compensation for Occupational Injuries and Diseases Act (COIDA) provides workers or their families with financial compensation for death or disability caused by dangerous workplace conditions. However, informal workers are often unaware of this law or avoid reporting injuries to stay in the job market.³⁶ Focus group participants who are informal workers said that, if involved in a work-related accident, they are unable to claim because their employer denies knowing them or having employed them, or cannot be found to support their claim.

Skills development

Although much construction work is described as “unskilled”, avoiding danger on the worksite often requires knowledge and skill. In addition, some jobs in the industry require high levels of skill and accuracy that are only acquired through detailed training and extensive practice. There is little scope for this among workers who are not employed permanently, and/or are employed on LOSC to complete very narrowly defined and fragmented tasks. An informant claimed that some trades are dying as skilled artisans retire and new entrants are not trained in these skills, for example, face brickwork, which requires more precise skill than bricklaying.

Increasing informality poses challenges to implementing the skills development legislation. Some employers argue that the legislation, particularly that relating to the payment of a levy for skills development, encourages informality. In terms of the Skills Development Act of 1998, the levy is calculated as a percentage of payroll. Employers not committed to training see it as an incentive to keep as many workers as possible off the formal payroll. Also, formal businesses argue that it means they bear an unfair burden in funding training for informal businesses that do not pay government taxes and levies. An informant said alternatives, such as a levy on common materials like cement, had not been taken further because SARS systems do not have the capacity to administer it.

³⁵ Mpolokeng, 2001.

³⁶ Horwitz, 2000.

The Construction Education and Training Authority (CETA) was registered in terms of the SDA in March 2000 and finalized a sector skills plan later that year. The major areas of need identified are:

- adult basic education and training as the basis for any further training;
- training quality artisans as the “old apprentice-trained craftsmen” retire;
- management training for SMMEs.

These priorities do not address the skills development needs of lesser skilled building workers, apart from adult basic education and training.

Under a Recognition of Prior Learning (RPL) programme, the CETA is required to carry out the training of 6,000 learners, of whom at least 400 must be women, 240 assessors, 96 advisors and 24 verifiers. The programme is also intended to set up 24 RPL centres around the country.³⁷ Informants did not mention the RPL programme specifically, although a Black employer association representative indicated that the African Builders’ Association had facilitated the certification of members’ skills.

Lack of continuity of employment presents a major difficulty for training in construction. Employers are cautious to sign learnership agreements because most construction projects run for a period shorter than a full learnership. Only four learnerships have been approved for the industry thus far, and none has yet been implemented yet. There are approximately 30 additional learnerships awaiting approval from the Department of Labour. The recently initiated CETA project under the strategic project-funding window seems to focus only on SMMEs, and does not specifically mention learnerships.

Gatekeepers or gate openers?

Informants from formal employer organizations expressed discontent with the slow process of developing learnerships and releasing funds for training by the CETA. One MBA informant had been the Deputy Chairperson of the CETA board, but had withdrawn due to frustration with its lack of progress in providing incentives to the industry. Another employer informant perceived the CETA odds as stacked against established companies:

“Representation is not proportional. So the emerging contractors have the exact same vote as us. Black employer bodies side with the unions. It is a political thing. It is a Black/White thing... They will not support our training.”

Informants outside the MBAs felt that BIFSA was trying to corner the training market and only allow for training through institutions linked to the federation. One gave the example of health and safety training:

“BIFSA runs training. So BIFSA doesn’t want there to be separate training for Black emerging contractors. They want the funds to come into their institutions. We mustn’t duplicate, but sometimes there’s a need for something different.”

This informant was concerned that stakeholders in the CETA “want to be gatekeepers rather than gate openers” and that “often it is the officials [of the stakeholder organizations] who further their own interests, not the stakeholder itself.”

³⁷ CETA, 2001.

The only remaining industry-linked training institution is the Cape Peninsula MBA's Belhar Training College in Cape Town. It was formed in 1978 and belonged to BIFSA before it was transferred to the MBA in 2000. The College is accredited to provide training, assessment and trade testing by the CETA. Training is offered in a range of construction trades:

- i) designated, such as brick laying, carpentry, plumbing and roofing;
- ii) non-designated, such as artisan assistant, concrete mixing, community house builder and house wiring, as well as business skills.

The College's clients include private companies, national and local government, parastatals and community projects.

The Western Cape has a history of contributing to training in the building industry to a greater extent than other regions. In September 2000, there were 353 ongoing apprenticeships, of which half were in the Western Cape.

Part 3 of this report takes an in-depth look at the various collective bargaining arrangements in different sectors of the construction industry in South Africa, highlighting key regional BCs, as seen from an insider perspective.

3. Collective bargaining

Union informants stressed the importance of centralized collective bargaining to build worker solidarity across companies, because it sets a common labour standard and encourages employers to compete on a basis other than labour cost. Centralized bargaining is often preferred by unions because it allows them to focus skills and resources on one set of negotiations, rather than spreading their scant resources across many companies.

3.1 Sectoral bargaining

Different collective bargaining arrangements exist for the different sectors within the construction industry. These range from an informal national bargaining forum for the civil engineering sector to company or plant-level bargaining only in the manufacturing and materials supply sector. Centralized bargaining in the building sub-sector was originally the most organized, but has recently “disintegrated”, as discussed in the following section.

The informal national bargaining arrangement in the civil engineering sector was established under previous labour legislation. Recommendations from this forum are taken into account when the Minister makes a Sectoral Determination for the civil engineering sector in terms of the BCEA. However, agreements reached in the forum have no legal standing.

The two major national unions, NUM and BCAWU, are attempting to formalize the national bargaining arrangement in terms of the current LRA, and hope eventually to extend such a national bargaining forum to other sub-sectors in the construction industry. However civil engineering employers, who are represented by the South African Federation of Civil Engineering Contractors (SAFCEC), are resisting these efforts. Many of the companies operating in this sector also operate in the building sector.

3.2 Regional arrangements in the building sector

Within the building sector, a variety of arrangements operate. Centralized collective bargaining in the building industry has historically been organized at the regional level. Many (particularly those in the major urban centers) began as industrial councils under a labour relations system that initially regulated wages and conditions of work solely for White (and perhaps) Coloured workers. African workers were only included in the system from the end of the 1970s.

Regional boundaries have not necessarily coincided with South Africa’s new provincial boundaries and also did not necessarily coincide with the old boundaries. Further, at no time were all areas of the country covered by centralized collective bargaining arrangements. For example, the Building Industry Bargaining Council (Cape of Good Hope) covers a range of magisterial districts in the Western Cape around the major urban centre of Cape Town, but leaves large parts unregulated. Some, but not all, of these are covered by a BC in the southern Cape.

Union leaders and other informants characterize the situation in geographical areas outside the scope of BC jurisdiction as a “free for all”, although in the larger formal companies bargaining takes place at the plant level.

Since 1995, key regional bargaining councils, such as those in Gauteng and KwaZulu-Natal, have collapsed. Others are in the process of disintegration. Some unionists argue that this has been a conscious strategy of employers in the industry to cheapen labour costs. One unionist said he “won’t be surprised if the others go”. The comment of the Director of the Gauteng MBA suggests this is true and exposes the logic behind business support for the exclusion of Blacks from representation in centralized bargaining under apartheid:

“Traditionally bargaining councils were for skilled people, formerly White construction workers, then Coloured, eventually Africans. Now the general workers are also qualifying for this and as a result are overpaid. The main reason employers do not want to take part in the bargaining councils is because they are forced to pay unskilled workers, general workers, high salaries.”

The employer representative argued this, despite the fact that “unskilled” workers’ wages were decided in centralized collective bargaining structures from as early as the 1940s, even though African workers did not have the right to join trade unions or participate in the bargaining process. African workers in all sectors only gained these rights in the early 1980s – to a limited extent – after the emergence of the independent Black labour movement and major struggles in the 1970s.

In terms of the most recent agreement negotiated in Gauteng, a general worker is paid ZAR 6.56 per hour and a newly engaged employee ZAR 5.67 per hour from October 2001. The household subsistence level for low-income households of five persons was calculated at ZAR 1,463.69 per month (ZAR 7.51 per hour) for August 2001.³⁸ This figure provides only for the maintenance of health and decency in the short term. It excludes medical, education, savings, insurance, and purchase and replacement of household equipment. Yet the general worker’s wage is 13 per cent lower than the household subsistence level, and that of a new entrant 25 per cent lower.³⁹

3.3 Gauteng: The collapse of centralized bargaining

Collapse of the bargaining council

Informants suggested several specific reasons for the collapse of the Gauteng BC. The key reason was that non-parties to the extended agreement, particularly LOSC, had no interest in abiding by the agreements and made every effort to avoid them. Under these circumstances not even all companies who were party to the agreement would implement it.

In 2000, an effort was made by parties in the BC to restructure the agreement to allow for lower wages and benefit payments at entry level, and to commit contractors to take responsibility for the working conditions of LOSC employees. The employer party eventually withdrew from the BC in May 2000 as it felt that the trade unions had reneged on agreements reached.

Some informants outside the province argued that the reason why the Gauteng MBA was able to influence the collapse the Gauteng BC was because union representation is so low

³⁸ NALEDI, 2001. The HSL is a measure developed and published by University of Port Elizabeth. The quoted figure is for the Eastern Cape, but is not likely to vary much for other provinces.

³⁹ According to LRS, 2001. At the same time, directors in construction companies earned, on average, 107 times more than the lowest paid worker in the industry in 1999, a gap that increased to 117 in 2000.

in the province, compared to the Western Cape for example. Around the time of its closure, unions on the Gauteng BC reportedly represented only 27 per cent of employees in the sector.⁴⁰ However, the Director of the Gauteng MBA contended that this percentage was the case in KwaZulu-Natal, but not in Guateng and that “Gauteng got out of this for its own reasons.” Other informants suggested that the former historically White craft unions colluded with employers in Gauteng in dissolving the BC in the interests of benefiting from funds in the BC medical and retirement schemes.

NUM informants noted that the collapse of the Gauteng BC was timed to coincide with the process of integrating CAWU into NUM. The NUM perception was that employers moved to undermine the power this new arrangement would bring to workers in the construction industry. An employer informant in the Western Cape surmised the impact the newfound NUM presence might have on bargaining arrangements: “[BCAWU’s] support base has moved to NUM. It’s a COSATU affiliate, more militant than here.”

Voluntary bargaining forum

The BC was replaced by a voluntary bargaining forum, to which 18 companies belong, mainly large contractors and some smaller companies with active unions. An agreement was negotiated in 2000, which expired in October 2002. At time of writing, informants were not sure if it would be possible to negotiate a new agreement. If not, union informants said they would be negotiating at plant level.

3.4 Western Cape: Carrot-and-stick approach

History

The BIBC in the Western Cape was established in 1924 as part of a national Industrial Council. It has existed in the form of a regional structure since 1934. According to the Secretary, its long history and broad support from formal employers in MBAs has helped the Council survive new conditions: “To start a bargaining council from scratch is a really difficult task.”

Recently, the BIBC has made a major policy shift in how it relates to informal work in the industry. Initially, the response by formal employers to competition from informal subcontractors was to try to level the playing field by not abiding by the agreement themselves.⁴¹ However, it became apparent that this approach would eventually lead to a collapse of centralized collective bargaining in the province. An MBA informant offered several reasons why their members chose to avoid a collapse when it was the strategy of employers in other key regions. First, trade union representativeness is relatively high in the province, and union opposition to a collapse of the council would “bring the industry to a standstill.” Second, Cape Town’s liberal political tradition and relationship of patronage between White employers and Black (mostly Coloured) employees infers some political will to build relationships. Third, the demographics of the province and racist stereotyping make

⁴⁰ Godfrey, 2000, p. 93.

⁴¹ In 1997, formal employers obtained a BIBC decision not to enforce the agreement actively, and to regulate conditions of employment in the industry in terms of complaints only. They were motivated by concerns that the BIBC agents had been targeting only large companies for enforcement, and leaving the small LOSC “untouched”.

negotiating easier than elsewhere: “We don’t have the same language and cultural problems as they do in Gauteng and KwaZulu-Natal.”

Thus both employers and unions in the BIBC were committed to taking an alternative route to inactive enforcement of the agreement. In 2000, the Horwitz Commission⁴² was established to investigate the effects of subcontracting on collective bargaining in the building industry and make recommendations on a bargaining framework that would allow for “both flexibility and fair and stable employment practices.” The Commission’s report laid the basis for a consensus conference of parties to the BIBC, which produced the Erinvale Accord, described below.

Representativeness in the BIBC

According to the BIBC Secretary, about 20,000 people are formally employed through the BIBC system. This entails pro rata contributions (in the form of “stamps”, for benefits such as sick leave and annual leave) into funds maintained by the Council for each purpose. The permanent equivalent of this workforce, if all employees were employed for the full year, is approximately 14,000,⁴³ as Table 3.1 shows. Some union members may be employed by employers who are not members of the employer associations but are nonetheless formally registered with the BIBC. Similarly, not all employees of the employer associations’ member companies are trade union members.

Table 3.1: Official membership of the Building Industry Bargaining Council, Cape of Good Hope, May 2002

Union	Members	
BWU	2 756	
SAWU	1 672	
NUM	479	
BCAWU	274	
BWAWUSA	527	
Total	5 708	
Employer association	Members	Members’ Employees
MBA	163	4 204
BMBA	70	1 318
MMQA	4	51
SBA	12	118
SASCA	23	171
Total	272	5 862

Of the union membership figures shown in Table 3.1, only those of BWU and SAWU were not queried by the Secretary. However, another unionist in the province described these as “sweetheart” unions favoured by employers. The informant argued that employers agree to a closed shop or agency shop arrangement with these unions without members filling in the required stop-order form. BWAWUSA is in the process of setting up the same system used by the old craft unions, whereby companies pay subscriptions over to the union through the

⁴² Chaired by Professor Frank Horwitz of the Graduate School of Business of the University of Cape Town.

⁴³ Given that union membership is likely to fluctuate according to numbers employed at any given time, the permanent equivalent provides a useful figure against which to measure representativeness.

BIBC. The BIBC Secretary was certain BWAWUSA has over 1,000 members in the Council's scope, and is assisting them to put their records in order.

NUM and BCAWU collect subscriptions by stop-order directly from companies. The BIBC Secretary suggested that their actual membership figures are higher than the figures shown in Table 3.1 (as "their records are bad" and they had not submitted lists of members to the Council by the deadline).⁴⁴ The Secretary estimated that neither union has more than 1,000 members in the BIBC scope, although this was contradicted by regional union informants.

While it does not appear to be the case in Table 3.1, one analyst⁴⁵ claims that trade unions and employer organizations in the BIBC have over 50 per cent representativeness. The Assistant General Secretary (AGS) of BWAWUSA explained that the BIBC system of calculating representativeness on the basis of formally registered members only provides a disincentive for organizing informal workers: "Unless they're registered, then your members aren't counted."

The interests of informal employers are represented in the BIBC by the South African Subcontractors' Association (SASCA), although only member companies that have opted to formalize their business by registering with the South African Revenue Service (SARS) and the BIBC are reflected in the official membership figures. The BIBC is in the process of assisting the 176 "active" SASCA members, with an estimated 2,500 employees, to become compliant with South Africa's tax and labour laws, including the BIBC agreement.

The Small Business Association (SBA) is ideologically opposed to centralized collective bargaining and participates on the BIBC only to voice its objection to a "system that raises labour rates above the market level." They did not sign the most recent agreement. An informant from outside the organization claims "They are not a real organization. They don't have a proper Annual General Meeting (AGM) and the chair hasn't changed since it started." However, the SBA is registered as an employers' association with the Department of Labour.

The ABA has observer status in the Council. Informants from outside the organization commented that their participation in the bargaining forum was weak because representatives had changed frequently and were not familiar with the issues.

Erinvale Accord and 2001 agreement

The Erinvale Accord, reached at the consensus conference in May 2001, laid the basis for a strategy of incorporating informal subcontractors into the centralized collective bargaining system and enabling them to become formal businesses. It provided a framework for indemnity from action against non-compliance with the BIBC agreement in the period before the Accord was signed, and allowed for SASCA to join the BIBC.

In terms of the Accord, a number of changes were made to the 2001 wage agreement negotiated in the BIBC. The most important of these are described below. It is now law that employers in the industry may subcontract work in the industry only with other registered

⁴⁴ They were in danger of losing their seats on the Council because of this.

⁴⁵ Horwitz, 2000, p. 8.

employers who are in good standing. Provision is made for the BIBC to keep a register of compliant employers.

In order to assist subcontractors to achieve compliance with gazetted wage rates and benefit payments, the agreement makes provision for a new entry-level labourer, at a basic hourly rate of ZAR 6.64 – the same as a cleaner – as opposed to the usual general worker rate of ZAR 10.22. This new category of labourer would qualify for holiday and sick pay fund payments but, unlike cleaners and general workers, not for retirement fund contributions. The labourer wage is 35 per cent lower than that for a general worker and there is no provision in the agreement for progression from entry-level labourer to general worker. Promoters of the agreement argue that, in addition, the holiday pay and sick leave pay contributions and ordinary hours of work provisions make the agreement “cheaper than the Basic Conditions of Employment Act.”

The new agreement also allows for the introduction of “more flexible” retirement and health care benefits before November 2002. These may give employees the option of cash payments instead of benefits.

The agreement makes provision for a forum of employer parties to the BIBC to “decide on recommended rates for subcontracting work in the specified subcontracting trades.” The recommended rates must accommodate payment of minimum basic wages and benefits. This forum has not yet met; SASCA argues that the MBA has avoided complying with this provision. (For more on SASCA, see Section 6.4 of the present report.) There is widespread support for the most recent agreement from employers and worker leaders. Unionists in the province and in Gauteng outlined the principles behind the agreement as part of a strategy for improving conditions in the industry that they would support. Representatives of employer organizations in the Western Cape perceived the Erinvale Accord as a step towards leveling the playing field between companies in the industry. It was signed by SASCA and supported by ABA.⁴⁶

The Horwitz Commission report also advocates for the Bargaining Council to adopt a more developmental role in assisting subcontractors to comply with provisions in the agreement. The need, as it was expressed to the Commission, is for skills training in business management, project costing and negotiation. This need is evident but is a BC the appropriate institution to provide such services? By working with or through the CETA, it may be able to facilitate the provision of these services.

It is too early to assess the impact of this new approach: SASCA is still in the process of registering its members with the BIBC, and MBA is still raising awareness among members. The MBA representative was hopeful that members would comply. A union informant commented, “The fact that subcontractors are beginning to register with the BIBC doesn’t mean they register all their employees”. Most union informants acknowledged that this problem cannot be overcome through bargaining, and requires an organizational response from the worker side.

Part 4 examines the institutions and processes through which workers and employers in construction can interact with government in order to potentiate improvements in working conditions (and hence productivity) in the industry.

⁴⁶ The only employers that did not support the Accord were those in the SBA. They are ideologically opposed to the centralized collective bargaining system.

4. Building the construction industry

As client and stakeholder in the construction industry, government has a substantial interest in development and job creation – and a range of leverage points that are unique to the industry and through which government interacts with workers and employers, as shown below.

4.1 Construction Industry Development Board

An Act of Parliament in November 2000 established the Construction Industry Development Board (CIDB) “to implement an integrated strategy for the reconstruction, growth and development of the construction industry”.⁴⁷ The legislation and formation of the CIDB in 2001 was the outcome of a lengthy process initiated in 1995 and coordinated by the Department of Public Works (DPW). Business and labour were represented on an inter-ministerial task team that drove the process, with secretariat support from DPW. Key industry stakeholders were represented in a reference group, while an even wider range of players contributed to refining technical issues in specialist focus groups. Informal building employers may have been represented by the Black Construction Council, but informal workers in the industry had no specific voice in the process, apart from the extent to which the unions involved were able to represent their interests.

Main tasks set by CIDB founding legislation are the design and implementation of (largely) public sector work, but with the intention of also encouraging good practice in the private sector. The chief focal points are:

- *Register of Contractors*: Only registered contractors will be allowed to tender for public construction work. The register is intended to regulate the behaviour of contractors, and promote minimum standards. It will be used to maintain performance records for contractors; will also be accessible to the private sector and thus able to influence private sector procurement as well. In a second phase, the register will be used to implement a best practice recognition scheme among contractors.
- *Register of Projects*: This register will include public as well as private projects over a certain value. The intention is to gather information about the nature, value and distribution of projects, and provide the basis for a best practice project assessment scheme to promote good development practices by public and private sector clients of the construction industry. In the public sector at least this will allow for uniform tender documents and procedures.
- *Publication of best practice standards and guidelines*: The Act does not specify that these include labour standards, but it is possible for them to be included and serve as a guide for the exclusion of non-compliant companies from the register of contractors.

Almost all informants were hopeful about the positive impact these developments would have on the industry, although labour representatives felt that their exclusion from the structure will limit its ability to take workers’ interests into account. Appointed by the Minister of Public Works, the CIDB is comprised of managers and professionals (as opposed to workers) and government. The CIDB Act also makes provision for an Advisory Council with stakeholder representation. Both BCAWU and NUM, as unions with a national presence, expressed dismay that labour has been excluded from representation in the CIDB Board.

⁴⁷ RSA, 2000, p. 2.

NUM said they had nominated experts to the board, and were still waiting for a response from the Minister on why their nominees were not included.

4.2 Sector Summit

At the Presidential Jobs Summit in 1998, agreement was reached that sector summits would be held in sectors with a high potential either to create or lose jobs. The purpose of these summits is to develop industrial strategies that increase output and create or save jobs. At time of writing, the construction sector jobs summit was due to be held in November 2002, although preparations for the event were still at an early stage and it might be postponed.

NUM organizers were the only informants to mention the summit, perceiving it as a forum where labour, business and government can reach agreements with the potential to “ensure sustainable, quality jobs” in the sector. Key issues on which NUM will seek agreement are state tendering policy and process; public infrastructure and housing spending; ensuring that Black economic empowerment is not championed at the expense of decent jobs, health and safety; and promoting the employment of women in the industry.⁴⁸

4.3 State tendering system⁴⁹

The RDP⁵⁰ states:

“Instruments of policy such as ... tenders etc. must all be utilized to encourage stakeholder participation in the RDP and promote worker rights, human resource development and job creation.”

South Africa’s constitution stipulates that all state contracts for goods and services must be issued in terms of a system which is “fair equitable, transparent, competitive and cost effective”, and allows for affirmative action in this process. The Preferential Procurement Policy Framework Act (PPPFA) of 2000 and regulations issued in terms of the Act in 2001 provide a framework for such a system to be implemented. However, the framework and regulations focus on preference points for Blacks, women and disabled contractors in the tendering process, rather than on conditions for workers. In terms of the legislation, preference points may also be allocated for contributing to implementing the goals of the RDP. Among these is the promotion of businesses located in the area where the contracted work is to be done. The only provision with possible relevance to workers is “the empowerment of the work force by standardizing the level of skill and knowledge of workers”. However, this does not address their wages and conditions of work – or the right to organize, that is often denied in community-based employment schemes.

The PPPFA marks a major shift in the procurement process in that the national and provincial tender boards will no longer exist to deal with problem cases that arise in the tendering system. All authority will now be delegated to the chief accounting officer (usually the Director General or Head of Department) within each government department in the national and provincial spheres responsible for public works and housing.

⁴⁸ At the time of this research, the union was in the process of accessing money from the Department of Trade and Industry’s sectoral partnership fund to assist with research that will enable the labour movement to make a meaningful contribution at the summit.

⁴⁹ Mark Bennett of SALRI provided useful input on the State tendering system.

⁵⁰ 1994, p. 115.

A labour informant expressed concern that increased delegation of authority would also increase the scope for corruption. However, the new legislation also provides a window of opportunity for labour to influence the criteria by which government tenders are awarded. A single set of criteria will be developed in the Chief Directorate: Norms and Standards of the National Treasury, and delegated authorities will need to apply them across all state departments and institutions.

Labour has been represented on the national tender board, which dealt with cases arising from all national government departments including public works. But the ability of these representatives to ensure positive outcomes for workers was limited by policies that had already been set by cabinet and relevant ministries. Most unionists interviewed were not aware of existing representation on the board and expressed a wish to be represented at some point in the process of decision-making around tenders.

There is scope for labour to influence the new general criteria for government procurement that are being developed through NEDLAC, as well as construction-specific criteria through the CIDB. Existing criteria require a certificate of good standing regarding payment of taxes; this could be expanded to require a certificate of good standing regarding unemployment insurance and COIDA registration and payments. In addition, companies could be asked to state the wage determinations or collective bargaining agreement they are required to adhere to; checks could be introduced to ensure that they maintain those standards. The system could also be used to encourage best practice where, for example, companies are rewarded for moving towards a 40-hour working week or paid maternity leave, even though these have not yet been achieved in legislation.

The general criteria will need to be adapted to conditions in each sector. This is important because tenders are often excluded from more rigorous procedures if they are below a certain value. These values mean different things for different products: for example, a small clothing contract will be of a much lower value than a small building contract. An informant suggested that sectoral reference groups with stakeholder representation should be formed to assist with adapting the criteria, and to deal with problem cases that arise.

Almost all trade union informants called for labour participation in the tender process for construction work. Work-seekers in Johannesburg complained that Black workers still do not benefit from public tenders: “The Government gives contract to Whites who subcontract us to do the job. We end up working for the Whites and they decide how much they want to pay us.” Trade unionists will need to have absolute clarity about what they are trying to achieve through such participation. A union informant stressed the need for companies that win tenders to be “affirmative”: “They must have started transformation to employ all races from the bottom to the top.” This interviewee did not recognize that often it is the most “affirmative” companies that are most exploiting workers, because of the power balance in subcontracting relationships. Another organizer explained: “Black people are getting the opportunity to have a business for the first time. People think, ‘Because I’m Black, I must have a subcontracting company.’ On the other hand, they exploit our Black people.”

Local government tenders are also frequent but unions are unlikely to be able to intervene in the myriad structures of local government. However, they could target the four major urban authorities. This process may be eased once the Local Government Public Finance Management Act has been passed, which is likely to give national government more say in how local government finances are conducted.

While any criteria that are developed will only apply to state tenders, several informants, including labour and business leaders, expressed the hope that they could then be used to influence tender practice in the private sector.

4.4 National Economic Development and Labour Council

The National Economic Development and Labour Council (NEDLAC) is a statutory forum where government, business, labour and community organizations negotiate economic and policy. NEDLAC has four chambers covering labour market policy, monetary and fiscal policy, trade and industry, and development. The community constituency is represented in the development chamber only; government, business and labour participate in all four chambers. BCAWU and NUM are represented in NEDLAC through their affiliation with NACTU and COSATU. Labour has raised and negotiated around construction industry issues in NEDLAC, such as state tendering policy and the LRA amendments.

Representatives of both unions recognize NEDLAC as an important forum where policy is negotiated but did not mention using the forum to raise issues specific to the sector, such as community-based employment. An external observer indicated that the unions had not given much input on the determination and code of conduct for Special Public Works Programmes (SPWP) that had been taken to NEDLAC. This could be due to capacity problems, but may also be because the unions' main concern is with private projects funded by government housing grants, as opposed to public SPWP that employ community-based labour in a way that may displace formal employment and undercut formal wages.

The BAWUSA representative complained that they are not represented in NEDLAC because the union is independent of the federations. He sees NEDLAC as a useful forum in which to raise issues such as rulings from the Council for Conciliation, Mediation and Arbitration and national strikes. He also said the union is excluded from other institutions for which labour had negotiated government funding, such as Ditsela, the trade union education college. While only federations are represented on Ditsela's board, and affiliates of these federations are prioritized for the limited places on (often over-subscribed) courses, there is no rigid system of excluding independent unions.

4.5 Community development fora

Labour is seldom represented in local development fora (sometimes called RDP fora or development committees) or on project sub-committees. Box 4.1 provides a concrete example of their operation. Work-seekers in Cape Town said that RDP fora are active in the African townships where they live, but that labour is not taking the initiative to participate: "The problem is COSATU locals are not there. The locals are where the leadership can demand to be involved in an RDP forum."

Box 4.1: Community development interaction: African Builders' Association

A Project Sub-committee of the Development Committee

This structure is a sub-committee of a specific local ward development committee, which in turn reports to the wider Khayelitsha Development Forum. The project sub-committee comprises political parties, the South African National Civic Organisation (SANCO) and builders' and more general business associations.

It is not uncommon for the leadership of organizations that are represented to have personal business interests or a political interest in furthering the business interests of others. The ABA Chairperson serves in this capacity on the project sub-committee but also in his capacity as a leader of the local civic structure. In addition, one of his companies is contracted to do building work for the project.

A unionist described how the absence of labour from community development fora creates extremely difficult conditions for unions to organize and improve the wages and working conditions of workers on community-based projects:

“Various community structures, civic organizations, have a tendency to claim the guardianship of people working in townships. This makes it difficult for the unions because civic organizations often have a different approach from trade unions. Ultimately, these civic organizations make it difficult for unions to organize such workers.”

4.6 Other structures

According to informants from established formal business associations, BIFSA has contact with the National Home Builders Registration Council (NHBRC). They did not provide details on the role of the structure, but it is a response to problems experienced with the quality of low-income housing (often built with government subsidies). MBA informants indicated that BIFSA participation had been hampered by perceptions that it is a “White organization” and, possibly, by divisions among employers: “Government and other actors exclude us from the actual running of the NHBRC. There are, however, attempts to get us back. The ANC government, the legislation, are all here to stay. There is no point being at odds with them. Participation of everybody concerned is required.”

Union informants did not mention being part of this structure, although the NUM informant in Gauteng mentioned participating in a policy-making forum hosted by the Department of Housing at a specific date.

Part 5 of this report examines the issue of organizing building workers in the South African context. It describes the needs of informal workers in the industry, their attitude towards unionization as well as their expectations vis-à-vis the trade union movement. It also gives examples of union attempts at outreach.

5. Organizing building workers

5.1 Union membership

Numbers

The construction industry has one of the lowest union densities of all major economic sectors in South Africa, and most building workers remain unorganized. Nationally, 65,000 construction workers – just under 20 per cent of the formally employed, or 11 per cent of total employed – belonged to a trade union in 2000.⁵¹ A non-union informant commented that the unions “have barely got presence, let alone power.”

Union representativeness has historically been higher in the Western Cape, due to the Coloured⁵² labour preference policy. Under apartheid, Coloured workers were incorporated into the industrial relations system much sooner than African workers. In addition, literacy rates and skill levels among Coloured workers have historically been higher, making conditions for organizing easier.

Employment status

Union recruitment strategies are largely focused on formally employed workers – often termed “permanent” although many are on fixed-term contract – with the large registered contractors, and some smaller registered subcontractors. The focus on the formally employed appears to be driven by the need for members to have access to company stop-order facilities in order to pay union subscriptions: “If you organize a casual worker, they finish the work tonight and tomorrow are not working. How do you collect membership fees? We are not able to collect by hand.” (See also ‘Subscriptions payments’ below).

For some informal workers, victimization plays a role. An NUM member in the Western Cape explained: “An employee of the informal economy can join the union as an individual. But most are not union members because they fear being victimized.”

All informal workers in the work-seeker focus groups identified themselves as “the unemployed” and wanted to be organized in order to find work.⁵³

“Because I am unemployed I would want a union that could find a job for me. Other than that, there is really nothing that a union can do for me now.”

Participants in the Cape Town work-seeker focus group felt that COSATU should take on the task of organizing the unemployed:

“The main umbrella body is COSATU. There should be something under COSATU for the unemployed workers.”

⁵¹ Stats SA, 2001a.

⁵² As noted earlier, South African terminology to designate communities according to four major racial categories: African, Coloured, Indian and White.

⁵³ One participant recalled an “unemployed movement in the 80s”, an organization that trained workers in practical skills and distributed food donations from major retail chains.

Some work-seekers suggested that “a second arm of NUM” could play this role. Of all the unions, NUM is well placed to organize the unemployed because of its experience in development work with retrenched mineworkers and their communities (see more on NUM in Section 5.7 of this report).

Exclusion from organizations⁵⁴

Some construction work-seekers in Johannesburg from other countries in Southern Africa felt that they would not be welcome in unions here: “I think if you are not a South African it is not easy to join unions or to get help from them.” Others felt that their exclusion from organizations was based solely on their employment status: “It does not matter whether you are South African or not, as long as you are employed permanently and the union can deduct money through the employer every month. Unions want money.”

A worker from Mozambique argued that foreign workers have more problems than other informal construction workers. He explained that speaking Portuguese and no English prevented him from using his skills to get work: “I can build a house from scratch but it is difficult for me to go to a White man and tell him what I am capable of.” Others said that foreigners are not subject to more abuse than other workers in the industry: “The conditions apply to all Black workers in the construction business. It does not matter whether you are a South African or not.”

However, there was a general perception that union members are “working in better conditions than us casuals” and it is mainly unemployment that prevents informal workers from participating: “It is easy to join unions if you are working. By doing that you are safeguarding yourself in case you are unfairly dismissed from your job.”

Recruiting and serving informal workers

Most union organizers described recruitment as something that takes place “at plant level”, with the intention being to sign up the majority of workers in a given company. It was not clear whether organizers were referring to the company’s plant or to the building site where the company is contracted to work. Sites are the logical place for recruiting informally employed workers but the difficulty is that these workers “come and go” and their enterprises are scattered and frequently shift sites. Plant-level meetings are organized by faxing notices to shop stewards at all the sites where a company is operating at a given time. Shop stewards are usually responsible for ensuring that workers at each site are informed of the meeting and it appears that workers then go especially to the company’s plant to attend the meeting.

The bigger companies appear to have a system whereby work-seekers wait at the company gates on certain days of the week. While this arrangement offers recruiting opportunities, serving these workers remains difficult because of work-seekers high mobility, as focus group participants attested.⁵⁵ An added difficulty this mobility creates for organizing is that informal workers have “no time to get to know each other and start making plans”.

⁵⁴ While all the unions say they organize all categories of workers in the building industry, some (BWU and SAWU, for example) focus on organizing artisans who earn substantially more than other employees in the industry; have better benefits; and are most likely to remain part of a formal company’s core workforce. These unions are not profiled here because they make no particular effort to organize labourers, let alone those that are informally employed, and are unlikely to have programmes that address the interests of the unemployed.

⁵⁵ “We don’t have a stable place where they can reach us. We go to many places when we look for work.”

Some organizers hold meetings in the townships where informal workers live, either in the open or using local community halls as venues. However, all union informants usually referred to interaction with members happening at plant level, which is likely to exclude informal workers. Also, none had a system for including informal workers in union structures and other communication channels through the election of shop stewards.

Work-seekers in the Cape Town focus group stressed the need for union offices in the townships: “Even if it is a small office, open only every two weeks or once a month. It could provide for us in terms of work. Then we will contribute in return.”

They discussed how unemployed individuals could be represented in a union, through a process of mandating at community level:

“For the people who are unemployed in each township, there can be a meeting every two weeks to elect a representative and to list the problems the unemployed face there. Then, if they approach government, or business even, they have the mandate.”

Subscription payments

All the unions interviewed are funded only or primarily through subscriptions. For NUM, BCAWU and BWAWUSA, these are set in terms of their constitution, at a maximum of 1 per cent of a member’s basic monthly pay. AUBTWSA did not provide a constitution, but the informant said the union charges a joining fee of ZAR 17, and thereafter subscriptions of ZAR 15. BCAWU monthly subscriptions are ZAR 20. The BWAWUSA stop-order form has a ZAR 30 subscription rate and joining fee of ZAR 20.⁵⁶ NUM informants said subscriptions vary⁵⁷ according to earnings, but are usually between ZAR 15 and 20 for a general worker in building.

All unions provide for the member being up to three months in arrears, specifically to allow for workers who have been laid-off. The NUM constitution permits membership to continue for up to a year after an employer terminates a member’s employment contract. Such members are exempt from paying subscriptions while unemployed. Both the BCAWU and BWAWUSA constitutions exempt subscription payment for workers unemployed or unable to work on account of illness for 60 days or more. The NUM constitution provides exemption from payment only for those unable to work on account of illness for three months.

Most union organizers interviewed saw no possibility to organize workers without stop-order facilities. Only the regional unions made provision for the payment of subscriptions by hand. Even so, they expected individual workers to come into the office to pay. NUM had not yet made provision for other methods of payment than stop-orders. BCAWU Deputy General Secretary said that other arrangements are possible for informal workers, but the Western Cape Coordinator said that all members in the province pay subscriptions through a stop-order facility.

⁵⁶ These fixed amounts seem to contradict the unions’ constitution’s percentage approach, but may just set a ceiling level.

⁵⁷ A set amount is more likely to discourage informal workers, who earn less.

Unemployed work-seekers viewed obligatory payment of subscription as a key factor preventing their membership: “They don’t want us to join in without money.”

Some did not trust union organizers collecting subscriptions because they had previously been robbed of money: “Someone came to recruit us to join a union. He took our money and disappeared.” One work-seeker suggested that a much lower subscription be set for work-seekers in the industry. Most said they would not mind paying when they were working. However, one said that if work was irregular, he would still not pay until his family’s basic needs had been met:

“If I can pick up ZAR 50 now, the only thing I can think about is to put food on the table.”

Participants in one focus group suggested that, if NUM set up local employment offices in each township, the offices could be funded from subscriptions paid from those who have the opportunity to work at any point in time i.e. not usual monthly subscriptions.

5.2 Workers’ needs and interests

Access to work

This is a major issue for informal construction workers who, as noted earlier, identify themselves as “the unemployed”. All participants in the work-seeker focus groups said they search for work in construction every day. It was difficult to obtain an idea of how many work-days per month they averaged; most reported being without work for long periods: “Some people go the whole month, even six months, without getting jobs. Some are lucky and get jobs every week.”⁵⁸

Two focus groups of work-seekers talked about the cost of transport involved. “Most contracts have moved to places like Midrand and Kyalami and it is difficult for us to get to those places. Most of us stay in Johannesburg. We have been unemployed for a while now and it is a struggle for us to get money for transport.” Work-seekers in Cape Town talked about the dangers of being caught as they “steal the trains” – travel without paying – in their work-seeking efforts. COSATU is currently campaigning for unemployed work-seekers to travel free of charge on trains.

African work-seekers in Cape Town claimed that racism often prevents them from obtaining work: “They employ on racial lines. The person who selects the workers is always Coloured in the Western Cape and they employ Coloureds ahead of us.”

Access to work may also be hampered because of union membership, unless unions are involved in facilitating employment: “If you go to the boss because something is wrong, they tell you not to come back because you are clever and you will wake up the others.”

⁵⁸ Some non-South Africans in Johannesburg said they do other work in between: two sell sweets, cool drinks and cigarettes, one cuts hair and another fixes shoes. One who sells sweets and cigarettes on the taxi rank said he was looking for construction work because he did not have stock to sell.

Wages and other conditions of employment

Informal workers reported earnings that differ from one project to the next. The lowest pay mentioned was ZAR 35 for a day; many reported from ZAR 40 or 50 a day; the highest was ZAR 65. The average of ZAR 40 to 50 compares poorly with wage rates set in the Western Cape agreement. It is even less than the new labourer rate of ZAR 56.44 for an eight and a half hour working day as provided for in the agreement. It is substantially lower than the general worker's basic wage of ZAR 86.87 a day, before benefits are paid. Wages are probably even less favourable than this comparison suggests, as informal workers described being forced to work extended hours with no extra pay:

“There is no overtime. You work till the foreman tells you to stop. He says that your watch works at home but not on the building site.”

Many work-seekers said they would work for “any amount”, or work for less if they knew that the work was being shared fairly: “Even if I got 600 rand a month when I used to get 2,000, at least it would be something.” At the same time, one focus group participant said informal workers at a site in Gauteng had resisted being registered for unemployment insurance because of the money they would need to sacrifice: “We were asked to sign some papers that meant our money would be taxed. I was earning 60 rand a day and by signing those papers it meant I would earn 50 rand a day.” They refused, and were fired.

Most work-seekers in the focus groups either do not ask what wages they will be paid or else ask and receive no response. According to one worker: “I didn't ask any conditions. I don't even know the name of the company. I just accept it.”

One perception was that employers often decide how much they will pay at the end of the work-day according to criteria that are not clear to workers in the focus groups:

“He gives you whatever money he wants to. I asked him, ‘Why am I paid less?’ He said it was because I do not know my work.”

African work-seekers in Cape Town claim there is racial discrimination in pay levels:

“Where I worked as a casual in the subcontractors the Coloureds earned 75 rand and we Africans earned 45 rand. All of us were casuals.”

Some interviewees perceive they are excluded from earning more, despite sometimes being more skilled than Coloured workers: “They say if you are African you must be an assistant to that Coloured man, even though you see you are ahead [in skills]. They will class you as a person who is stupid.”

In all three focus groups with work-seekers, participants described situations where their employers did not pay them for work completed. Several told stories where “the boss ran away with the money” and they could not trace him. Others said their pay was withheld on some days for reasons that may have to do with a task-based payment system of which they are not informed: “There are days where you are not paid if you did not finish whatever you are doing by the time people knock off.” Boxes 5.1 and 5.2 illustrate how subcontracting arrangements operate and how they can breed mistrust and cause severe financial problems.

Box 5.1: Links in the subcontracting chain: Focus group participant 1

A sub-subcontractor and his workers

“I had a guy that subcontracted me to paint some houses in Pretoria and promised to pay me 2 600 rand. I then employed two people to help me. On completion of the job, the man disappeared with the money and when I met him he told me that the owner of the job had not paid him. I followed this up till I found the owner of the job because the people that I had employed to help me were demanding their money. They thought I was playing tricks with them and that I did not want to pay them. When I confronted the owner of the job, he was quick to show me the proof that he had paid the man that employed me about 21,000 rand, immediately after finishing the job. I had to explain this to the people that I have employed. But still I have to find a way to get their money. Luckily enough I got another job quicker and I was then able to pay them. At the moment I am still chasing after the man that subcontracted me.”

Box 5.2: Links in the subcontracting chain: Focus group participant 2

A male worker and his spouse

“Sometimes at the end of the day they run away instead of paying you. By that time you have used your energy and you still don’t get money for food. Come Friday, the wife expects the money. And when it is not there that thing affects the marriage. She can see you have used your energy, but there is no money.”

Informal building workers receive no other benefits in addition to their cash wages: many voiced the need for services to assist with funerals, health care and skills training. In addition, work-seekers view unionized workers as “getting better treatment” than informal workers because of their permanent status:

“They are not treated like all of us who come and go. They have shop stewards and the union to complain to if they have problems or are treated badly. If I were permanent, I would definitely join a union because they seem to be helping their members, especially on the issues of treatment and getting paid better money. Unions are, however, useless if you are not employed permanently.”

Work-seekers consider that trade unions are not taking up the issue of the poor wages and working conditions of LOSC workers, although in the Western Cape they are a party to the new agreement that is intended to encourage LOSC to become part of the formal system. In Gauteng, according to an employer informant, the unions “have not really started complaining about labour-only subcontracting.”

5.3 Organizations

Trade unions

As mentioned earlier, some worker organizations function similarly to the old craft unions, in that their membership is mostly White (and, in the Western Cape particularly, also Coloured) workers.

All trade unions discussed in this report are registered with the Department of Labour.⁵⁹ Until an organization is registered, it does not have recognition or access to stop-orders. Trade union leaders also noted other measures in the LRA that assist workers (albeit only formal workers until now) to exercise the right to freedom of association – access to company premises and the right to represent workers in disciplinary hearings. Other advantages of registration relate to protecting workers’ rights when engaging with organizations. Registration helps to avoid i) any “on-purpose” racial barriers because they are forbidden in the LRA, and ii) the very real danger that workers (especially informal workers) face when making financial contributions to organizations offering to help them. One leader said registration allows workers to “monitor the abuse of funds”; another said it means the trade union “can’t run away with their money”.

The unions reported working together on collective bargaining, but informants noted that this relationship sometimes breaks down or is weakened because of competition for members. There did not appear to be any joint strategizing around organizing informal workers. None of the work-seekers in the focus groups was aware of a union that organized “casual workers or unemployed people”.

Other organizations

Among the other organizations that attempt to attract construction workers as clients – for services that trade unions may or may not offer, or that focus group participants think unions should offer – are job placement, legal and financial services. Negative comments were received on the first two types of service. No experience of financial services was reported.

All the Cape Town work-seekers were familiar with job placement agencies operating in the townships. The agencies charge unemployed persons to register with them: “You pay 50 rand to get a job and then they still maybe find nothing for you. In one small area there can maybe be 500 unemployed. They get 50 rand from each of them and they are rich. They cheat you.”

A Johannesburg focus group discussed legal services offered for a monthly fee of ZAR 18 per month, about the same as most union subscriptions. The experience of one participant who had signed up in a group of informal workers to try to recover pay owing to them by a subcontractor was dissatisfying⁶⁰ and, overall, these types of organizations make township residents mistrustful of any organizations that require subscription payments.

5.4 Amalgamated Union of Building Trade Workers of South Africa

The oldest constituent union of AUBTWSA was formed by White workers in the ship-building sector in the 1800s, with assistance from an international trade union federation. This union joined with others in the 1950s to form AUBTWSA, which broadened its membership base across the construction industry. The majority of members are now African workers “in the lower income bracket”.

⁵⁹ Leaders of established trade unions said that, while there are criteria for registration, it is not difficult to meet them. The Assistant General Secretary (AGS) of BAWUSA contended that, as a new union, it is difficult to meet the membership requirements. However, no specific union membership requirements are listed in the LRA.

⁶⁰ Interestingly, the company advertises its legal protection services in a magazine produced by the NUM Mineworkers’ Investment Trust.

Membership profile

The AUBTWSA informant was reluctant to give concrete information regarding membership, so it is difficult to assess the relevance and strength of this organization. The informant stated that AUBTWSA organizes nationally, with its strongest base in Gauteng and then KwaZulu-Natal. It has some presence in the province: AUBTWSA participated in the Gauteng Bargaining Council before its collapse and informants from other Gauteng unions also knew of AUBTWSA. However, the union recently closed its office in Pretoria, the other major city in Gauteng outside Johannesburg, possibly indicating a decrease in membership in the province. The AUBTWSA organizer said the union has offices and hence presumably members, in the Western Cape, Northern Cape and Free State. However, none of the informants in Cape Town mentioned AUBTWSA, and it is not represented on the BIBC. It is possible that the office is in a smaller urban centre covered by a different bargaining arrangement.

The organizer claimed that AUBTWUSA is the only union in the sector that organizes informal workers, because it does not require such members to sign a stop-order form for the payment of subscriptions. Members are given the option of paying subscriptions “over the counter” at the union’s offices and most “try very hard [to pay their subscriptions] even if they are not on a permanent payroll”. While there is flexibility around the payment method, as with the other unions, membership is terminated if a worker has not paid for more than three months. The subscriptions are set at a flat rate of ZAR 15. There is no lower sum or alternative method of calculating subscriptions for members on an irregular income. The membership fee will clearly constitute a bigger proportionate burden for the lower-paid worker.

About 70 per cent of AUBTWSA members are African, with the remaining 30 per cent comprising Coloureds, Indians and Whites. Notwithstanding the low female participation rate in the industry, women’s membership (2 per cent) is low mainly because “their husbands are discouraging them” from joining unions, according to the organizer.

Services

A major function of AUBTWSA is to negotiate better minimum wages and working conditions for the industry. However, this service mainly reaches those employed by formal companies: “Even if not everybody complies, there are employers who comply, especially the big and established ones.” The organizer did not outline any union programme to encourage or force employers to comply.

A service that may attract informal building workers is that AUBTWSA helps members with job placements “in some instances”. The union does not actively seek job placements, but rather directs members to companies who approach the union when they have a need for people with specific skills. Even this service may be more geared towards assisting employees of more formal companies who have been working on formal fixed-term contracts.

AUBTWSA does not participate in any policy-making institutions, and the informant did not see a need for representation in such bodies. The union does not have any proposals for policies that would further the interests of informal building workers.

Organizing strategies

The chief AUBTWSA strategy for organizing informal workers is the “rather unusual arrangement” of allowing subscriptions to be paid over the counter: “This system is helping the trade union a lot.” The organizer also claimed that the “lower subscription fee helps the union to retain its members” – although AUBTWSA subscriptions are similar to those of NUM.

Other strategies are common for formal and informal workers. These include visiting construction sites to recruit, and encouraging existing members to recruit others: “Our existing members receive good service and they are happy with the union. In some way, they market us to other workers.”

Organizational capacity and processes

As mentioned above, AUBTWSA has offices in five provinces. In each of the provincial offices, the union employs two administrators and one organizer. An additional person is employed in each office, but it was not clear what their function was.

The union has telephone and fax machines in its offices. The researchers did not see a photocopier or computer in the Johannesburg office where the interview took place. However, the informant said the union was not in need of additional office equipment. AUBTWSA communicates with members through meetings, and by telephone or fax.

AUBTWSA is funded only from subscriptions, and has no links with the international federation that facilitated its formation, national federations or other organizations.

AUBTWSA’s national leadership structure comprises a Chairperson, Deputy Chairperson, Treasurer and General Secretary, elected by secret ballot by members during the union’s national congress. There are no women in leadership functions and “almost all” office bearers are formally employed in the industry.

5.5 Building and Construction Workers’ Union

History

BCAWU claims to be the first of the independent Black trade unions that emerged in the 1970s to organize specifically in the construction industry. The construction workers who formed BCAWU in 1974 were initially organized by the food and beverage affiliate of the labour federation that was to become the National Council of Trade Unions (NACTU). NACTU and its predecessor have historically been aligned with Black consciousness and Africanist political organizations; the federation still has a close working relationship with the Pan African Congress (PAC).

BCAWU was first established at a large construction company in Johannesburg, from where organizing efforts spread to other areas in the city. Once the Johannesburg branch was well established, organizing spread to the rest of the province, and then to other provinces such as KwaZulu-Natal and the Eastern Cape. BCAWU started organizing in the Western Cape in 1983, targeting companies where workers were unorganized.

Membership profile

Nationally, BCAWU claims a membership of 15,000 to 25,000 workers across the various sectors of the construction industry. Membership has declined dramatically over the past five to ten years from a peak of 45,000 to 60,000. Almost all – 90-95 per cent – of BCAWU members work for the big employers in the construction industry. The national leader attributed decrease in membership to the general employment slump in the industry. However, NUM organizers in the sector claimed that a large portion of their increased construction worker membership was recruited by winning over members from BCAWU.

The number of paid-up members fluctuates greatly as employment contracts end and others begin. The union's constitution allows members to be in arrears for three months due to the frequency of layoffs, and to allow for the fact that members sometimes work far away – the example of Uganda was given – and it takes time for subscriptions to reach the union.

The Deputy General Secretary would not provide information on the provincial ratio of BCAWU membership to “outsiders”, but indicated that the union's “stronghold” is in Johannesburg, the Western Cape and KwaZulu-Natal. In the Western Cape, BCAWU has about 1,600 members at 41 companies in Cape Town and 700 members in the southern Cape.

The majority of BCAWU members are African. Even in the Western Cape, membership was estimated at 70 per cent African and 30 per cent Coloured. The majority are also general workers or labourers. In part, this is because they comprise the majority of employees in the industry; in part because African workers are less likely to have artisan qualifications and because White and Coloured workers are less likely to join a union like BCAWU.

According to the Deputy General Secretary, about five to ten per cent of workers in the industry are from South Africa's neighbours and it is BCAWU policy to organize them: “I do not think of them as aliens. I think of them as workers.” He did not say how many of these workers BCAWU had recruited and acknowledged the difficulties involved.

Services

The Western Cape informant said the overall aim of BCAWU is to “defend the working class” and negotiate wages and other conditions of employment for its members, including benefits such as retirement and health care funds. In addition, BCAWU negotiates for advantageous benefits for its members in areas such as funeral plans, housing and personal investments: “We get an investment vehicle and recommend it to our members as a good product. They can decide whether or not to invest.”

BCAWU also educates members on their rights “through meetings”. The union represents its members in the CETA process towards establishing the CIDB. BCAWU members are represented in NEDLAC through the union's affiliation to NACTU.

Organizing strategies

Initially, part of the union's strategy was to target large construction companies but industry restructuring motivated BCAWU to change its approach and in 2001, BCAWU took a resolution to organize smaller companies and/or subcontractors, including those that are

informal. However, the regional leader interviewed did not appear to be aware of this resolution and the national leadership acknowledged that, while the decision was taken last year, “implementation is taking some time”.

The national leader referred to the union strategy as “a secret recipe” that should not be shared “with the enemy”. Despite numerous attempts at following it up, he did not provide the researchers with a copy of the BCAWU resolution. However he described the basic approach of organizing site-by-site where companies of different types and sizes are working on a particular job at a single site, thus providing organizers with access to a wider net of workers to recruit. The Provincial Coordinator said that if they get workers from smaller projects at scattered sites, the union calls them to a meeting at a local community hall in the workers’ township.

He also indicated that BCAWU has considered how to collect subscriptions from members who work in small informal operations: “They pay by hand till we secure something. We talk to business people. If the guy is too small to administer the subscriptions, we make sure they pay three months in arrears.” However, the Western Cape Coordinator said that all members in the province are formal employees registered with the BIBC.

The Deputy General Secretary’s approach suggested that another element of BCAWU strategy is to support emerging Black subcontractors:

“You need to think of the interests of the employer, that he needs to exist. ... If we fight them, they will never exist. If we empower them in terms of negotiating skills, then it can be different.”

His emphasis was on building their ability to negotiate with the main contractors in order to provide the financial basis for them to abide by minimum wage rates and benefits. He recognized the risk for the union in engaging with subcontractors in this way. If organizers find that paying the minimum rates is “impossible in terms of cash flow, the workers start to question your credibility as a union.”

For this reason he said it would also be important for government to assist emerging Black subcontractors to have an association that could build their negotiating power in relation to main contractors. This is interesting, given that government does not play a similar role in relation to unions. Government could also contribute by:

- setting minimum rates for subcontractors;
- regulating tenders so that a certain percentage goes directly to emerging Black subcontractors;
- ensuring that main contractors are forced to take responsibility for the payment of minimum wages to employees of subcontractors.

He saw the CIDB as the appropriate forum for furthering these objectives – hence his dismay in learning that labour had been excluded.

Organizational processes and capacity

The BCAWU stop-order form lists eight offices in seven provinces, but there may be others. In the Western Cape, there are two rented offices – one in Cape Town and one in

George, the major town in the southern Cape – but the George office is not included on the form. The Deputy General Secretary was not forthcoming with further details on organizational capacity, despite numerous follow-up calls. Information is drawn only from our interview with the Western Cape Coordinator.

In the Western Cape BCAWU is staffed by the Provincial Coordinator, an administrator and three organizers – one in George and two in Cape Town. Because of decreasing membership and hence funds collected through subscriptions, BCAWU had lost one of its organizers in Cape Town in the past five years.

Branches are the most basic structure of BCAWU, and a branch is formed for every 200 members. Cape Town has six branches, defined in terms of the industrial areas where construction company plants are located. A Branch Executive Committee (BEC), comprising a Chairperson a Secretary and two additional members, is elected at a general meeting.

Ordinary members participate in the union by attending general meetings at branch level and electing shop stewards to represent them in other structures. The union communicates with ordinary members through meetings at plant level. If there are problems with meeting at the company, meetings are held in the townships. The union calls meetings with the shop stewards by faxing the company. BCAWU does not have a union newspaper.

Regional structures are not included in the BCAWU constitution, but in the Western Cape there is a Regional Executive Committee (REC) comprising 14 members. The REC is elected by a meeting of shop stewards in the region. It had met more than ten times in 2001 and has a programme of meetings with the branches.

The BCAWU constitution identifies its biennial National Congress as the union's "supreme governing body". Participants comprise the National Executive Council and delegates elected by each branch. The National Congress elects worker office-bearers to the positions of President, Vice-President, Acting President and Treasurer, as well as the General Secretary.

The National Executive Council (NEC) manages the affairs of BCAWU between Congresses, including the appointment of staff and all finances. It comprises 14 shop stewards from the different provinces nominated by branches and elected at the National Congress. The Western Cape Coordinator said the NEC had met three or four times in the previous year.

From a photograph in the union offices, it did not appear that there are any women on the NEC. Two of the 14 REC delegates in the Western Cape are women.

The potential for conflict between permanently employed members and a strategy of recruiting informal workers was recognized by the Deputy General Secretary: "Workers who believe they are core employees always think they're better. In terms of benefits and so on they always are better off. Temporary employees are also not confident to join the union."

He did not wish to elaborate on strategies to overcome organizational difficulties that may arise over these differences. However, the Western Cape Coordinator described a firmly established process of decision-making and problem-solving in the union: "Branches make recommendations to the Regional Executive. If they agree, they take it to the NEC. The NEC are the super-power. They decide."

5.6 Building Woodwork and Allied Workers' Union of South Africa

History

BWAWUSA was formed in 1999 by workers who broke away from the South African Woodworkers' Union (SAWU) and BCAWU in the Western Cape. The breakaway of mostly African workers from SAWU appears to be the result of perceptions of racism in the (mainly) Coloured craft union. It appears that BCAWU members who joined the new union were motivated by dissatisfaction with service by BCAWU organizers.

Founders of BWAWUSA see NUM as “similar to our situation” in terms of approach to workplace issues. However, BWAWUSA was formed before CAWU was integrated into NUM, and CAWU was experiencing major resource problems that made it an unattractive option to disenchanted SAWU and BCAWU members. The Assistant General Secretary (AGS) also outlined workers' fears that affiliation to a federation will be divisive – given that a federation like COSATU is part of a political alliance with the ANC and the SACP:⁶¹ “We have achieved political rights. Now it is more important to focus on the needs of workers, not take all the politics.”

A major aim of BWAWUSA for the next two years is to have one union in the building industry. The union is beginning by establishing a “working relationship” with NUM to “put our differences aside”.

Membership

BWAWUSA claims to have 7,250 members nationally. Its main membership base (5,000)⁶² is in the Western Cape and the Northern Cape (1,500). The BIBC has a record of only 527 registered BWAWUSA members, but the union is working with the BC to register as many others as possible. The Secretary of the Council is sure they have over a thousand members in building. Currently, members who work for unregistered companies are encouraged to come to the union office to pay their subscriptions. Few do so, although some “who feel strong” do. The union has considered the option of encouraging members to register with the BIBC regardless of whether their employer is registered or not – or is willing to register their employee or not. The worker, however, is left in a highly vulnerable position and usually ends up being dismissed.

BWAWUSA membership is approximately 90 per cent African and 10 per cent Coloured. The majority (98 per cent) of members are men. The majority of the women members work in the wood sector, which employs women and men in equal numbers, and a few do cleaning work or are administrators in the offices of construction companies. About three-quarters of members are general workers; one-quarter semi-skilled and artisans.

⁶¹ South African Communist Party, a partner in the Tripartite Alliance consisting of the ANC and the Congress of South African Trade Unions.

⁶² Of these, 2,500 in the building and civil engineering sectors are paid-up; about 1,900 of these work for registered building companies and 200 work for unregistered subcontractors, as estimated by the AGS.

Services

According to its information pamphlet, BWAWUSA offers its members:

- protection from discrimination in the workplace;
- education;
- funeral cover;
- negotiation around wages and conditions of employment, retrenchments and personal loans.

The Assistant General Secretary did not mention any services that were specifically targeted at members who are not registered with the BIBC, or adapted to suit them.

Organizing strategies

BWAWUSA focused its initial recruitment drive on companies where workers were dissatisfied with SAWU and BCAWU and on workers who were unorganized by other unions. It recruits by distributing pamphlets and calling workers to meetings at plant level. Recruitment “on a plant basis” appears to target bigger companies: “The organizers give out a form and explain it. You can take it home and fill it in. Then you call us to collect it when you have say ten or 15 or 20. If there are 100 workers at a company, then maybe when you have 50 we will collect them.”

Informal workers are recruited by calling mass meetings that can be attended by members or non-members. The union identified companies “with a problem” and then calls a meeting in township halls, at the taxi ranks or on the grand parade in the centre of Cape Town. The companies are identified through information provided by workers, who either find the union of their own accord or are referred by the BIBC.

BWAWUSA tries to explain the benefit of registering to unregistered subcontractors that come to the union’s attention. The union has been willing to argue for exemptions from the BIBC agreement on behalf of a company that is “under pressure”, and then allowed for the legislated conditions to be phased in over a period of time. This has worked in some cases, but “not perfectly”. The union’s experience is that companies often liquidate to avoid registration, and then reopen under another name: “We register the workers. The company agrees. But we don’t have honest employers. There is a liquidation in one out of ten cases, maybe more.”

The Assistant General Secretary identified the plant-level closed shop as another tool unions could explore that would assist with organizing formal and informal workers. But he indicated two key problems. First, it is not easy to meet the criteria for a closed shop, particularly in the construction industry, where employment numbers vary so greatly and disclosure is limited: “You have to get 50 per cent +1 representation. You never know how many employers and companies and workers are registered in the area, but you must have the majority.” The second difficulty relates to the lethargy that a closed shop can create in a union,⁶³ despite provisions in the LRA for a vote on the closed shop that should prevent this. An additional difficulty is that unregistered informal subcontractors are likely to evade the closed shop in the same way as they evade taxes and legislated labour standards.

⁶³ For example, the situation in Worcester where the BWU has a closed shop and, according to the Assistant General Secretary: “The workers are demoralized. The union does nothing.”

Organizational capacity and processes

BWAWUSA has three offices, all rented, in the Western Cape, Northern Cape and Eastern Cape. The Eastern Cape office also serves workers in the southern Cape. The Cape Town office serves the Western Cape and the few members in Gauteng, as well as serving as the union's head office. Permanent staff in the Cape Town office includes the General Secretary, his Deputy, two organizers and an administrator. An organizer is employed for each of the three other regions, and an administrator in the Northern Cape.

Like other unions, BWAWUSA is funded primarily from subscriptions. However, the union's Cape Town office appeared comparatively well equipped for a new organization, with "donations from companies" and a few items that were bought with the "personal money" of the staff.

Volunteers run union projects. In a recruiting week drive, for example, "five or ten people will target areas for recruitment. Some get paid time off. But usually it's unpaid. They give up their time to build the union."

The basic structures of BWAWUSA exist at plant level and then "locals" where workers from a number of companies come together. The locals are not defined in the union's constitution. In the Western Cape there are four locals: Central Cape Town, Khayelitsha, Paarl and Malmesbury. Locals "establish themselves" and, because they are not part of the formal constitutional structures, it is up to each local to decide how often to meet ("probably once a month" according to the Assistant General Secretary). Locals nominate shop stewards to stand for election to the regional Branch Executive Committee (BEC). The BECs meet once a month and comprise a Chairperson, Vice-Chairperson, Secretary and six additional members elected by the branch shop stewards' council.

Ordinary members participate in union activities "only when they get correspondence via their locals or plant-level meetings". Because the casually employed members are not based in a company "you can't elect shop stewards for those workers".

As with other unions, the highest decision-making body is the biennial National Congress, at which a President, two Vice-Presidents, Treasurer and Assistant Treasurer, together with 12 additional members, are elected to the National Executive Council (NEC) at the Congress. The NEC meets every three months to make decisions between Congresses, and reports to Congress. The national office bearers are responsible for the day-to-day running of the union.

There are no women in BWAWUSA structures. The union envisages a Women's Coordinating Committee, but "at the moment it is a plan only on paper" that the union finds difficult to implement.

In the future, BWAWUSA would like to affiliate to the International Federation of Building Workers but has not yet done so due to the expense. Advantages of affiliation include access to education; the ability to "get your voice heard in the ILO" and by "our own government"; and to put pressure on international companies.

5.7 National Union of Mineworkers

History

In 1985, the year the federation was established, COSATU initiated a Construction Project to explore if it was viable for workers in this sector to organize independently. Construction workers had previously been part of the COSATU affiliate, the Transport and General Workers' Union (T&GWU). The existence of such a project indicates that COSATU recognized the precarious nature of work in the construction industry and the difficulties inherent in organizing workers in this sector. In 1988, the Construction and Allied Workers' Union (CAWU) was formed as the outcome of the project's work.

CAWU operated as an independent affiliate of COSATU until 2000, when the smaller union was integrated into the National Union of Mineworkers. CAWU was, throughout its history, one of the smallest and weakest of the federation's affiliates. NUM celebrates its 20th anniversary in 2002 and is one of the biggest unions in South Africa with a total membership of just under 300,000 in the mining, energy and construction sectors. The integration process was initiated by COSATU in 1998 in line with the federation's strategy, adopted at its 6th National Congress in 1997, of building broad sectors or "cartels" that would ultimately form the basis for "super-unions".

The "super-union" strategy aims at bolstering organizational and financial stability and maximizing resource use in the face of massive retrenchments, as a result of which the NUM membership in the mining industry fell from 314,891 in 1997 to 251,021 in 1999.⁶⁴ At the same time, the CAWU membership had declined to only 17,000 at the time of integration from over 30,000 in 1997.⁶⁵

The benefits of integration for construction workers are increased unity – as reflected in the increased membership discussed below – and access to many more human and material resources – outlined in the section on organizational capacity. The potential danger is a possible lack of focus on or understanding of a sector that now constitutes a minority membership and is more difficult to organize than the mining sector (where most members are concentrated and the union has most experience). Fortunately, it appears that this has not happened.

Membership profile

Membership of NUM has clearly benefited construction workers. By February 2002, membership in the sector had reached over 49,000. NUM has a sophisticated membership database, which records membership by company and from which organizers receive monthly updates as needed for their area of work. Membership in the construction sector is set out by region in Table 5.1.

⁶⁴ NUM, 2000.

⁶⁵ Interview; Naidoo, 1999, p. 9.

Table 5.1: NUM construction sector membership as at 1 February 2002

NUM Region	Provincial coverage	Paid-up members
Orange Free State	Free State and Eastern Cape	5 981
Highveld	Mpumalanga	2 438
Kimberly	Northern Cape	511
Klerksdorp	North West	2 249
Natal	KwaZulu-Natal	6 059
North East	Limpopo and Mpumalanga	1 532
PWV	Gauteng	21 072
Rustenberg	North West	685
Western Cape	Western Cape and Northern Cape	8 758
Total construction sector membership		49 285

The national coordinator explained that the Pretoria, Witwatersrand, Vaal (PWV) construction sector membership figure, over 40 per cent of the total, may be inflated because many big construction companies have their head office in Gauteng. Thus it may be that workers in other centres are included in the PWV figures because the head office in Johannesburg pays the subscriptions over to the union.

Of total NUM membership in the construction industry, approximately 40 per cent are employed in the building sub-sector. Interviewees considered it likely that workers in the building sub-sector are under-represented in union membership compared with those in civil engineering because jobs in the latter sector are more “sustainable”.

Nationally, the current NUM strategy is to augment union membership in the construction sector by targeting employees in materials manufacturing companies because this is a “somewhat stable sub-sector”. It is, however, also a sector in which a lot of unions are competing for membership. For NUM, success will depend on its ability to establish a bargaining structure that covers this sector.

Most NUM members are African, although in the Western Cape they also have Coloured members; the majority are labourers.

Services

Collective bargaining is a major service NUM provides for its members, with the goal being to negotiate a “living wage” for all workers. Two staff members are employed in the union’s head office collective bargaining unit, to provide research and support to organizers involved in negotiating agreements. An informant described one of the advantages of CAWU integration into NUM: it “brought hope in terms of capacity to engage employers in the construction sector”. Construction members will benefit from increased negotiating skills and from the strength of a bigger organization.

The union provides the usual social benefits for members such as funeral funding. However no thought has been given to how these could be adapted for informal workers.

NUM employs a health and safety coordinator in its head office and, through health and safety committees at national, branch and regional level, conducts area campaigns. Informants did not mention any health and safety campaigns specific to the construction industry but the focus on HIV/AIDS is relevant to all construction workers.

In addition, NUM provides legal services for members, paying particular attention to cases of victimization.

NUM set up the Mineworkers' Investment Trust (MIT) in 1995 to provide social benefits that improve the lives of NUM members, ex-members, their families and their communities. The MIT funds three projects – a development organization, a training centre and a bursary fund.⁶⁶

Through the Mineworkers' Development Agency (MDA), NUM is the only union in South Africa that provides training and development services after a member has lost employment. MDA was formed in 1987 as a unit within NUM to assist the 40,000 workers who were fired as a result of a major mining strike. In 1997 it became a stand-alone non-profit company. MDA implements and supports local economic development and job creation programmes in communities in rural areas and mining towns affected by mine downscaling.⁶⁷ The MDA provides NUM with some experience of organizing and serving the unemployed, albeit members who have lost their jobs as opposed to those who are still looking for work in construction.

The Elijah Barayi Memorial Training Centre offers training in leadership and management for NUM members and organizers. Since the integration of CAWU into NUM, the training centre has introduced an advanced course on the construction industry to improve the ability of organizers to serve that sector.

The JB Marks Bursary Fund provides NUM members and their dependents bursaries for professional studies, particularly in fields related to mining, energy and construction. The fund had allocated 2,274 bursaries from 1997 to 2001.⁶⁸ It is unlikely that construction workers and their dependants will have benefited from this fund yet, but it does provide them with a window of opportunity.

The MIT is supported mainly by money from the Mineworkers Investment Company (MIC), in the amount of ZAR 70 million over a five-year period. The Trust also attempts to raise donations from other organizations.⁶⁹

NUM represents its members in a range of structures and processes such as the CETA and the process to establish the CIDB. Two staff members are employed in a skills development unit, to contribute to education and training policy and implementation for the benefit of members, at structures like the CETA.

NUM members are represented in NEDLAC through its affiliation to COSATU (where the union holds considerable sway because of its size). It is also able to draw on COSATU expertise in specialized areas such as skills development and job grading to develop programmes relevant to its sectors. CAWU had previously drawn extensively on the federation in these areas. Naledi, the COSATU research institute, has conducted research on the construction industry, specifically on undocumented migrants who are often employed informally.

⁶⁶ MIC, 2001.

⁶⁷ NUM, 2002.

⁶⁸ MIC, 2001.

⁶⁹ Ibid.

Organizational capacity and processes

Informants described how, under CAWU, they did not have access to the most basic resources such as vehicles to visit scattered construction sites, and telephones and fax machines in their offices to communicate with members and companies. As part of NUM, they now have access to an extensive infrastructure.

NUM has a total staff of 183 located across 19 regional and sub-regional offices, covering all nine of South Africa's provinces, its head office in Johannesburg, and a parliamentary office in Cape Town. NUM head office capacity is structured around six pillars responsible for a range of areas as follows:

- Secretariat: strategy, international affairs, parliamentary office;
- Human resources: internal management and personnel;
- Finance;
- Publicity and information;
- Production: education, health and safety, skills development, collective bargaining, membership, sectoral coordination for construction and energy;
- Services: legal, housing, social benefits, bursaries.

NUM has encouraged all its organizers to focus on construction. As part of the integration process, an effort was made to broaden the previous organizing experience of NUM: regions were asked to mix organizers with construction and mining backgrounds in allocating staff to different areas. This approach “breaks the legacy” of separate organizations and increases NUM capacity for organizing in the construction sector.⁷⁰ It has not yet been possible in all geographical areas.

Integration of CAWU into NUM has, according to the national coordinator, built the capacity of shop stewards in construction companies to “represent workers at all levels”, for example in wage negotiations, grievance procedures and disciplinary hearings. The capacity of shop stewards is built largely on the NUM education department's focus on training construction shop stewards. The education department has three national staff, eight regional education officers and is directed by elected shop steward committees at regional and national level. While improvements were noted, an organizer in the Western Cape said there was still some way to go in educating construction workers about their rights and duties as union members. For example, construction members were accustomed to going on wildcat strikes, which are not protected by the LRA; education programmes have focused on educating shop stewards and members about the union's structures and procedures in terms of the constitution, which aim to avoid unprotected action.

Structurally, increased responsibility and skill of construction shop stewards has been encouraged by the NUM strategy of locating branches at any workplace where the union has 50 per cent +1 representativeness or where there are 100 members. The CAWU constitution had required a minimum of 1,500 members to establish a branch; too many companies participated in a single branch and branch office bearers (as opposed to company shop stewards) were responsible for dealing with these matters across all the companies in the branch. In addition, under the CAWU constitution, branches could not be in a radius of 50 km

⁷⁰ The union has found that organizing in the construction industry is complex for newcomers to learn because this sector is more loosely structured and nomadic in nature: “Converting a construction organizer to mining is easier”.

from each other: sometimes a branch would even cover companies in different towns. According to an organizer in the Western Cape, the result was too many branches in the region – 86, of which about 50 include construction workers. The region is in the process of reducing the number.

As with other unions, branch structures are the most basic level of decision-making in NUM. Recommendations are forwarded to regional structures and then to the national level, with the National Congress as the highest decision-making forum. The Central Executive Committee (CEC) decides on policy issues of major importance between National Congresses and the National Executive Committee (NEC) manages day-to-day union affairs. The functions of NUM structures are set out in detail in its constitution.

Branch committees include the chairperson from each workplace shop stewards' committee as well as chairpersons and secretaries of the branch education and health and safety committees. Branches elect a leadership committee comprising a Chairperson and Deputy, a Secretary and Deputy and a Treasurer. Office bearers are also elected to these positions at regional level, and chairpersons of branches are included in the regional committee. Nationally, there is a President and two Deputies, a Secretary, a Deputy and a Treasurer.

No women hold office at regional or national level, but there are some women office bearers at branch level. An organizer claimed they “always discuss the inclusion of women in leadership.” However, the union’s position is that “women should not be included because of their sex ... they should be suitable to hold such a position.”

A NUM informant acknowledged that most of the office bearers in “high positions” in the union come from big companies. He said this is not the result of a conscious policy. However, it may be due to the resources big companies have to pay full-time shop stewards, and is likely to create a bias whereby informal workers are even less likely to serve as office bearers.

Elections for regional and national structures are unlikely to have taken place since the integration of CAWU into NUM. Thus construction workers are unlikely to be represented until the next congresses at each level. In the Western Cape, a construction shop steward had been co-opted onto the REC. A regional health and safety conference had been held and a construction shop steward elected as treasurer for the regional health and safety committee.

NUM has a range of tools for communicating with its membership, including pamphlets, posters and a national union newspaper, *NUM News*.

Organizing strategies

NUM is still in the process of developing a strategy for organizing informal construction workers. Interviews with national and regional staff indicated that a comprehensive approach towards improving conditions of work in the formal and informal construction industry is likely to include:

- pushing for a national BC that encompasses all sectors of the construction industry;
- ensuring that the main contractor on a project is held responsible for employment standards, including wages, benefits, unemployment insurance, conditions of work,

health and safety of all workers on a given project, regardless of whether they are employed by the main contractor or a subcontractor;

- at an ideological level, challenging the idea that Black employers should be awarded government tenders and/or deserve private contracts, regardless of whether they maintain labour standards;
- working with bodies like the CIDB to ensure stability in the industry, which will enable more stable employment patterns;
- intervening in the development of tendering policy nationally, and in the process whereby tenders are awarded at national, provincial and local level;
- organizing initiatives among unregistered workers.

The national construction coordinator recognized that the strategy as a whole will not be successful unless unregistered workers join the union: “It won’t work without the strength of organization. We have to target subcontractors.”

At time of writing, no plan was in place for such an organizing initiative, although a workshop for organizers in the sector will discuss this issue. Organizers had not considered alternative methods of subscription payment or of how to ensure the representation of informal workers in union structures. One commented that it is difficult to meet with casual workers and the union had not had success in meeting with construction workers in townships: “We try over the weekend. But we are not used to open-air meeting places.”

Organizers hoped that the strengthening of current shop stewards in the formal building industry through union education would assist in any organizing initiatives among informal workers. One explained that all members of NUM know the slogan: “If you are organized, organize a fellow worker.”

Community links

NUM involvement, through COSATU, in a political alliance with the ANC emerged as an issue in addressing labour standards in building because of the political nature of housing and infrastructure provision. The national construction coordinator explained that often contractors purposefully use the union to put pressure on ANC councillors to increase the value of a contract if the union acts against them for paying wages below the legislated rate or for not paying benefits. The contractors claim to have been unaware that the wages stipulated in the contract with a local government authority were too low on signing the contract, and take no responsibility for it.

NUM organizers said that the current COSATU relationship with SANCO – an umbrella body of community organizations – made it difficult for the union to organize workers on community-based projects: “We cannot organize because we end up fighting with SANCO. SANCO people approve tenders through the RDP committees in the townships.” However, NUM sees the potential to assist in ensuring worker participation in community development fora and improving the wages and conditions of workers on community building projects by involving representatives from COSATU local structures. An earlier strategy whereby COSATU locals nominated people to stand for local councils and represent workers

had not been successful: “There is this issue of payment by local authorities to attend the local council meetings. The COSATU nominees are no longer accountable to COSATU locals.”⁷¹

According to organizers in the Western Cape, a broad agreement between COSATU and SANCO exists on these issues but a relationship between the organizations needs to be built at community level. The presence of unions in the residential (and not only industrial) areas would probably assist in this process.

Part 6 treats the issue of organizing building employers in the South African context. It discusses two problems of Black associations in the informal economy: disunity and legitimacy, linked to the role these organizations of informal employers play in trying to control access to work in the townships. It also describes the attempts White formal associations are making to shed their exclusionary image and unify the construction industry.

⁷¹ Work-seekers in Cape Town supported COSATU representation in local development structures and working with SANCO to create decent employment. They described how SANCO “used to try to help” on a building project in one of the townships: “In Gugulethu there is this thing to build new [family] flats in this old [single-sex] hostel. SANCO has someone in charge of housing and of labour respectively. They take stock of the unemployed in terms of doing local community jobs. NUM can build an alliance and use SANCO to address unemployment.”

6. Organizing building employers

6.1 Associations of Black employers

As Part 2 of this report showed, most companies operating in the informal economy are Black-owned. Many are managed by people who have been retrenched, either from the construction industry or from other jobs such as teaching and policing. Some of these companies are well established in the industry and are only informal because they were previously excluded from the industrial relations system and were not committed to paying taxes to a government for which they did not vote. Some argue that all Black subcontractors are “emerging” businesses, with a right to benefit from affirmative procurement policies. They cite the fact that all Blacks and even the established Black building companies were discriminated against under apartheid. Others argue that more established firms, and those owned by “well-educated retrenched public servants who are by no means poor” do not deserve to benefit from such policies.

The organization of Black building industry employers is extremely weak. Their participation in historically White employers’ associations is limited by their informality. This is discussed in more detail in Section 6.2. Two organizations of interest in the Western Cape are profiled in this report – the South African Subcontractors’ Association (SASCA) and the African Builders’ Association (ABA).⁷²

The main difficulty with organizing informal employers is their lack of resources for setting up and participating in organization.⁷³ According to a BIFSA informant, even if Black builders manage to meet the MBA criteria of formality for membership, most do not have the necessary infrastructure (office, administrative support staff, other management personnel to substitute during their attendance at meetings) to make themselves available for election as office bearers: “I think it’s not colour-related but business-related.”

Organizations of informal employers also seem to have a common problem of disunity and legitimacy, linked to the role they seek to play in controlling access to work in the townships. This issue was referred to by informants in the Western Cape and KwaZulu-Natal:

“There was no attempt to unite all smaller organizations. Most of them are not registered and do not have a constituency. There is also a lot of disagreement and in-fighting among the leaders in those organizations.”

Apparently, the nature of the conflict is over-access to a limited number of building contracts and possibly is also linked to the political connections of individual role players. MBA informants claimed that leaders of the BCC in Gauteng and the Western Cape “are not directly involved in building”, suggesting they may have other political objectives. SASCA is the only organization profiled here that appears to have the potential to build a solid

⁷² Neither organization fits all the ILO criteria: SASCA has been operating for only just over two years and ABA has a paid-up membership of only 39 companies. These companies would need to employ an average of 13 workers each to meet the ILO criteria (unlikely given the company size distribution in the sector and the fact that ABA is township-based). Both organizations are profiled to document strategies that are currently being tested for organizing these employers.

⁷³ As mentioned earlier, the Chairperson of the Black Construction Council (BCC) in Gauteng refused to grant an interview, on the grounds that his time was limited and his organization would not benefit directly from the study.

organization base among Black building employers (although some outsiders remain skeptical).

If unions decide that emerging Black contractors are important for building equity in the industry, they will need (together with other stakeholders such as government) to encourage and strengthen efforts by these employers to organize. It appears that a single strategy of absorption into the historically White MBAs is unlikely to succeed, and would in any event not address the needs and interests of the emerging contractors. It also appears that the established employer associations are unlikely to assist in strengthening organizations of Black employers in the industry. An MBA representative argued that the existing Black employer organizations are “too political” about issues: “They actually say to government, ‘Here we are. Look at us. And give us jobs’”.

6.2 Historically White associations

Building companies formed Master Builders’ Associations (MBAs) at local – city, town or rural area – level in the early 1900s. In 1904, these MBAs formed the Building Industries Federation of South Africa (BIFSA) to further their interests at a national level. BIFSA plays a coordinating role, and member associations remain autonomous.

In most regions, MBAs consolidated into a provincial association. BIFSA corporate members include employer associations covering the Eastern Cape, Free State, Gauteng, KwaZulu-Natal and Northern Cape. Only in the Western Cape are there still a number of separate associations, the largest being the MBA Cape Peninsula covering the major urban centre of Cape Town. BIFSA also has affiliated and allied members representing suppliers to and specialists in the building industry.

Historically, employer associations have brought together only White-owned companies in the industry. An association informant argued that this was a result of the apartheid policies of the government of the day, rather than racial exclusion on the part of the association: “People were never excluded in terms of our constitution.” However, Black builders were excluded, and there is widespread acknowledgement that BIFSA is now struggling to shed its “White, elitist image”. The Federation has considered a name change as part of its efforts, but then decided against it. An MBA informant suggested that outsider perceptions of BIFSA as exclusionary are partly correct, because many established White-owned companies choose to enter into joint ventures with Black-owned companies rather than transform internally: “Joint ventures work well because they get to keep their identity and autonomy.”

BIFSA participated in an effort from 1992 to unify construction business organizations in the Construction Industries’ Confederation (CIC). This initiative attempted to include Black business organizations alongside the established civil engineering and building federations. The CIC set up offices in shared premises with its component federations, but soon collapsed. Informants suggested that this was due to clashes between individuals working for the different affiliates who were insecure about their job prospects if the new organization were to be a success.

BIFSA informants claim the MBAs have rather taken the approach of encouraging Black business people to seek membership of their associations and are “actively marketing themselves in other areas”. However, the Gauteng MBA representative was of the view that

emerging Black subcontractors need services other than those offered by the MBA: access to contracts, group financing, guarantees and securities.

MBA membership criteria vary across the provincial associations, but include common basic requirements such as registration with the Receiver of Revenue and quality standards: “You should be a responsible employer, you should have done some building one can see and also have some references. It will then be up to members to decide whether you are a fly-by-night or a recognized contractor.”

MBA membership provides numerous benefits. Apart from services in areas like legal drafting, health and safety and education, members are entitled to put an MBA logo on their company letterhead, with the result that: “the reputation of being a member of the MBA should qualify you for more work.” The MBA reputation for quality work means that members of the public ask the association for recommendations of companies to complete a building job. MBA members must also follow a code of conduct that maintains the association’s reputation: “You will aspire to do the building as well as you can and if there were mistakes in the building the MBA would encourage you to rectify them.”

This code of conduct does not cover companies to which MBA subcontracts work.

6.3 African Builders’ Association

History

ABA was formed in 1989. An affiliate of Foundation for African Business and Consumer Services (FABCOS), it appears to be driven by this affiliation – in that the Provincial Chairperson was unable to separate the activities of the ABA from those of the federation and its other affiliates. He serves as an organizer for ABA and other FABCOS affiliates in the province at the same time. He was uncertain of the ABA legal status in terms of the LRA, and said he would need to consult his “superior”, the National President of FABCOS, to find out. Another employer informant was fairly certain ABA is not registered with the Department of Labour.

Membership

ABA claims a paid-up membership of 39 building employers, mainly in two African townships in Cape Town, and 178 unpaid-up members in the province. Annual membership fee is ZAR 250; the provincial office retains ZAR 100 and ZAR 150 is sent to the national office (presumably the national FABCOS office, which is the only office with paid staff).

Given the informant’s dual role as FABCOS and ABA office bearer, it was difficult to clarify the scope of ABA membership. FABCOS is a national organization with affiliates in the taxi industry, street trading sector, building and other sectors that have members across the nine provinces. However, it appears that ABA only has members in the Western Cape and KwaZulu-Natal.⁷⁴

⁷⁴ ABA in the Western Cape has locals in four areas in the greater Cape Town and two smaller urban centres 100 km outside the city. The organization had locals in three other smaller urban centres further from the main city, but the Provincial Chairperson’s car was stolen in 2000, so membership in these locals has dwindled.

A second area of confusion is around the organization of consumers. The Provincial Chairperson first said that consumers are also members of ABA, but later it appeared that they are either organized into FABCOS, or participate through civic organizations in local project committees. The Provincial Chairperson is also a local office-bearer of SANCO, so this confusion is also possibly the result of overlapping roles. The blurring of ABA and FABCOS (and possibly SANCO) appears to have raised issues of legitimacy with other industry stakeholders. One informant claimed that the leadership of ABA were not even in the building industry and rather had “all sorts of political motives”. Another alleged that the ABA leader in the province was not an employer in the building industry: “He has a laundry and undertaking business.”

Organizing strategy

The key to the ABA recruitment strategy is providing potential members with “a job” so they are able to pay the joining fee. In doing so, ABA resists the awarding of tenders to businesses from outside the township, which are usually White-owned enterprises. The Provincial Coordinator personally recruits members by organizing meetings “maybe once a month” to inform people about ABA.

The organization appears to have difficulty in sustaining membership unless it is able to provide jobs for businesses on an ongoing basis. The informant’s vision was that members “must come to join with their heart”, but he complained that “once the people get a job they are lazy about building the organization.”

Once members have joined, the main service ABA offers is “to protect them from exploitation”. The informant spoke of ABA members as workers, desperate for a job, often not paid for work that is completed and at the mercy of larger contractors who set the price. He explained that most ABA members are unregistered because it is expensive to register – ZAR 500 for registration with the BIBC only.

A related strategy appears to be that of providing a quality control service to customers, linked to access to certification of skills for employers. According to the ABA, it seeks to recruit “any tradesman who has a paper” and that those who “are not perfect” do not want to join. This contradicts the MBA informant’s impression that Black builders’ associations are not concerned about quality control. ABA attempts to facilitate certification by sending candidates to the BIFSA training college for assessment.

6.4 South African Subcontractors’ Association

History

Established in 2000, SASCA became formally registered as an employer organization under the LRA in 2001. Although it has existed for only three years and does not meet the ILO criteria for study relevance, it is profiled here because it is part of the BIBC in the Western Cape and has established tangible services for its members. It was founded by two cousins who had grown up with their fathers in the construction industry. They are Coloured (in the South African terminology) and “learnt early that part of being in business was having to duck and dive” legislation that was made in bargaining councils where they were not represented. The political changes in South Africa, which created the possibility for Black-owned companies to participate in institutions governing the industry for the first time,

motivated them to form SASCA. They now occupy one out of ten employer seats on the BIBC. Their main aim is to “build a fair building industry where everyone can get a fair piece of the cake.”

Legal status

SASCA representatives listed several advantages of registering as an employer organization in terms of the LRA. The main advantage is representation on the BIBC: “Eventually our voice is being heard. They have to take notice of us, not just sweep it all under the carpet.” Interestingly, SASCA leadership appeared more concerned to be heard in the BIBC by large contractors (“the puppet masters”) than by trade unions.

SASCA is in the process of revising its constitution to accommodate dual status as a non-profit organization as well as an employer organization. The leadership considers this will assist in raising funds over and above membership subscriptions.

Membership

Eligibility to join is limited to subcontractors in the building industry who “have people working for them”. The one-off registration fee is ZAR 100, with an annual subscription of ZAR 350.

In addition, SASCA members must abide by a code of ethics, which says that a member must “comply with all legislation applicable to the Construction Industry in South Africa”. This would include registering with the BC, paying the gazetted wage rates and benefits, and paying the relevant government taxes. A representative said the intention is not for SASCA to “play a policing role” but rather that members should “behave like business persons”.

SASCA claims a membership of 300 to 400 companies. Of these, only 23 are registered with the BC. They have only one White member and were hesitant to provide a breakdown of Black membership between Coloured and African people: “Maybe half/half, but this is an estimate only.” Only two of the nine members of its executive committee are African. A representative estimated that there are ten women members. There are no women on the executive: “We tried, but it’s difficult. I asked two or three women last year.”

SASCA representatives gave conflicting impressions of their membership base. On the one hand, they claimed “95 per cent of subcontractors are uneducated people ... who’ve got a trade and were forced to become subcontractors because the bigger companies don’t want to employ any more.” On the other hand, they said that many subcontractors “have been around 25 years already”.

SASCA recruits new members by inviting unregistered subcontractors to meetings held once a month: “Our secretary gets a list and phones them. You get maybe 50 per cent turnout.” At the meetings, the Provincial Director describes how the industry operated in the past, what the current situation is and the SASCA vision for the future.

Broadening business opportunities

It seems that subcontractors are motivated to organize by the possibility of getting a larger slice of the government procurement pie. An informant said the founding motivation was the “change on the political scene. The government put a lot of procurements out for affirmative business.” It is also possible that “harassment” from BC agents, fines and court cases have created sufficient discomfort to provide some incentive for employers to legalize their businesses – although this is contradicted by the extent to which building companies (similarly to those in the clothing industry), are liquidated and re-established under a different name to avoid paying workers. SASCA also facilitates access to work opportunities for members through organizations like Wesgro, the province’s trade promotion agency, and the City of Cape Town.

Making legality affordable

SASCA representatives argue that the main reason most subcontractors avoid abiding by labour and other legislation is “to stay alive”. However, unlike the SBA, SASCA views the bargaining council system as a legitimate forum for negotiation. As noted earlier, it has one of ten employer seats on the Council and aims to increase its representation by recruiting more members and encouraging them to register.

A SASCA informant said the Employers’ Forum agreed to in the most recent BIBC agreement “is standing dead still” because MBA members are resisting subcontractors’ efforts to increase payments from main contractors so that subcontractors can afford to pay legislated wages and benefits.

Apart from this difficulty, the SASCA representative was enthusiastic about the incentive for registering provided in the new BIBC agreement: “I’m buying stamps [paying benefits] now because it is affordable for me. ... My people weren’t registered with the Council. I was paying 7.50 rand. So now I make a 22c saving per hour [it comes to 7.28 rand with the stamps and I’m legal. If they [subcontractors] look at the big picture, it’s worth their while.”

It is difficult to assess the counter-claims of rival organizations whose members represent different interests; they are presented here as interview information. One employer informant outside the organization questioned SASCA sincerity: “The owners of those businesses run around in expensive cars ... They want the perks of being in the formal net – networking, supplier discounts, access to credit ... They pay lip service [to labour standards] and don’t act in good faith.” Another informant was wary of the “political agenda” of such an organization in a province that is known for splinter organizations with strong ideological views.

Awareness-raising

SASCA educates members around their obligations as employers: “They don’t realize that as soon as you employ one person, you have certain legal obligations. We tell them that they have to purchase stamps and so on.”

New members of SASCA are taken through an induction course aimed at changing their attitude towards the regulatory institutions such as the bargaining council:

“You must understand that they fear the bargaining council. Even me, when I was a lightie [youngster], I worked with my dad. My dad was called in many times to the bargaining council and had fines slapped on him, and had him taken to court. They see the bargaining council as the enemy. So we give them education, tell them they have representation and if they have a problem they should come to us and we will do our best to help them sort it out.”

SASCA publicizes the incentives for registration provided in the new agreement in its effort to change subcontractors’ attitudes towards registering with the BIBC and complying with the agreement.

Providing services

A key element of the SASCA programme has been to set up a “one-stop shop” that provides members with legal, accounting, employment agency and quantity surveying services, as well as entrepreneurship training. The Provincial Director explained that most SASCA members do not have bank accounts and “can do the actual building work” but not business-related tasks such as measuring up a wall and costing a job. These services are a key area in which SASCA is looking for funding.

Organizational capacity and processes

SASCA currently only operates in the Western Cape but intends expanding to other provinces (and nationally) only after it is firmly established in this province. The existence of the bargaining council was an important facilitating mechanism for SASCA and the reason it cited for becoming established in the Western Cape.

SASCA has a staff of two: a Director and a secretary. The Director of SASCA explained that he was previously a building contractor and president of the Boland MBA for two years. He had left BIFSA when the other MBAs had persisted in “keeping quiet” about the way in which subcontracting in the industry prevented subcontractors further down the chain from paying legislated wages and benefits. Some informants were mistrustful of the SASCA Director, possibly because of this history.

SASCA offices were originally located at the Belhar Training College, but it appears that a breakdown in the relationship between the organization and the MBA made this arrangement unworkable. The organization is currently moving to new premises (those of its Provincial Director’s and President’s businesses), where it will share office space in order to reduce overheads as the businesses’ office equipment (telephone, fax, computer, photocopier) is used for SASCA work.

Communication with members occurs mainly by mail and telephone. The Provincial Director acknowledged that there is “very little” membership participation:

“You get their input when you are on site. We are having a problem with that. They have this ‘thing’ that you must do everything for them.”

The Executive Committee is the main decision-making structure of SASCA. The President and Provincial Director lead the organization on a day-to-day basis but may refer a “big decision” to the Executive.

As shown above, there is an overall lack of experience in organizing either informal employers or workers in the construction industry. Part 7 outlines the issues that need to be developed to potentiate representational rights in this sector.

7. Conclusions

In South Africa, the lack of experience in organizing informal building workers or employers allows for no conclusive results but this research does point to a range of methods as potential elements of a comprehensive strategy to organize these workers and improve their working conditions. Issues that will need to be resolved in the process of developing such a strategy are also highlighted below.

Union membership

Currently, trade union subscription systems do not encourage informal workers to join. The unions need to work out a method of payment that makes it easier for these workers to become and remain members. While the payment of subscriptions is an important principle, it is also likely that some services to these workers will need to be cross-subsidized by those in the union who are employed on a less precarious basis.

Trade unions also need to devise ways to provide services that are relevant to informal workers in the industry, who see themselves primarily as “the unemployed”.

Informal worker representation

Organizing informal workers challenges unions to be present in their residential communities, where meetings are likely to be best attended – and workers best represented – through a residential-area system and not a company- or plant-based one.

Women are unlikely to be equitably represented in the unions without a serious campaign to encourage their employment at all levels in the construction industry.

In the Western Cape, an additional challenge is to build organizational unity between Coloured and African workers.

Collective bargaining

Given the generally low wages and poor conditions of employment in the construction industry, improving the position of informal workers must be linked to improving the conditions of construction workers generally and building a set of minimum wages conditions that are adhered to. The key to improving conditions for informal workers will be to draw informal employers into collective bargaining arrangements. The next biggest challenge is ensuring compliance across-the-board.

National collective bargaining across sectors

The National Union of Mineworkers vision for collective bargaining is to have a national structure covering the construction industry as a whole, with sub-structures for the building industry, civil engineering and materials manufacturing and supply. They foresee several advantages:

- Much of the work is similar and the processes are related, so overall industry standards make sense.

- The administrative cost of running separate bargaining councils at provincial level would be cut, in addition to those for administering retirement, health and various other benefit schemes.
- It would also assist with organizational development, by allowing unions to build on the relative stability of the civil engineering and materials manufacturing and supply sectors.

The Building Woodwork and Allied Workers' Union of South Africa also mentioned the need for a single standard for work in building and civil engineering. However, those unions with a smaller, more regionally focused membership may be less enthusiastic, as their proportional representation in the national bargaining forum would be likely to decrease.

Several union informants noted that the State has a role to play in building centralized collective bargaining institutions.

Representation

An issue that will need to be resolved in any centralized bargaining arrangement is how representativeness is calculated; currently there is no recognition of informal union membership. A mechanism will be needed to verify informal membership and would provide an incentive to unions to organize in the informal economy. However, given the difficulties of organizing informal workers, it would be problematic if representativeness were calculated on the basis of membership as a proportion of total employment, regardless of whether it is formal or informal.

Recent amendments to the Labour Relations Act of 1995 now allow bargaining councils to extend their services and functions to cover informal work. These amendments also strengthen the Minister of Labour's discretion to extend an agreement to non-parties, even if the employer party does not meet all the criteria for representativeness. This could be important to the construction industry, where organization among informal employers is extremely weak and fragmented.

Engaging labour-only subcontractors

Any centralized bargaining arrangement in the sector would need to create incentives for informal employers to become a party to the national bargaining forum. The following methods are currently being explored:

- inclusion of a new entry level for workers in terms of wages;
- developing a framework for fair subcontracting rates;
- skills development for employees of labour-only subcontractors through the Construction Education and Training Authority;
- training for labour-only subcontractors in management, costing and negotiating skills.

For example, the Building and Construction Workers' Union Deputy General Secretary said the union had supported an approach whereby there are "structured different levels of compliance" for emerging Black companies. However, he warned that formal construction companies use such provisions to cheapen their wage bill by retrenching more permanent employees and using the services of subcontractors who are then encouraged to employ people straight from school at the entry minimum: "What we thought is a solution is a circle of frustration."

It is therefore imperative that incentives such as the inclusion of a new entry level are not introduced in the absence of:

- assistance for labour-only subcontractors to increase their bargaining power in relation to main contractors, in order to ensure that they are sufficiently paid to pay the usual wage rates to their employees;
- organizational pressure on labour-only subcontractors to pay the appropriate rates.

Flexibility on wages and/or benefits

The Building Industry Bargaining Council agreement in the Western Cape aims to provide an incentive for informal companies to register, and for formal companies to register informal workers, by providing a lower entry-level wage and excluding the payment of certain benefits at this level.

In addition, the Assistant General Secretary of the Building Woodwork and Allied Workers' Union of South Africa thought formal and informal employees should be given the option of either cash or contributions to benefits such as medical aid. He argued that certain benefits could be restructured, for example risk or death benefits attached to retirement funds. Retirement funding could be more affordable without the added benefit. He acknowledged, however, that the expense of this benefit is currently due to risks associated with HIV/AIDS, and that workers and their families need such cover.

A concern with this approach – not raised by any of the unions – is that these benefits are often more important for, and more likely to reach, the female partners or dependants of (mostly male) construction workers, who given the cash option, may not prioritize their family's health. While flexibility may be important in encouraging emerging subcontractors and their employees to become part of the centralized bargaining system in a volatile industry, sight should not be lost of the need to create decent jobs.

The success of any collective bargaining strategy will depend on representational strength: "It would be inappropriate to advocate the use of collective bargaining, if the workforce is not adequately organized and equipped to participate in the process. Collective bargaining can only succeed, if both business and labour have the organizational capacity to negotiate from equal positions of strength."⁷⁵ Until this is achieved, one option may be to incorporate building workers under the Sectoral Determination for the civil engineering industry, in which the wage is 6.60 rand an hour, a few cents above that for general workers in Gauteng, but higher than that for the "newly engaged employee".

Union interaction with communities

Conditions of high unemployment often force workers to collude with employers in lowering labour standards in the construction industry. In South Africa this has been exacerbated by the idea of community-based employment without consideration of formal job displacement. NUM organizers suggested that one way for unions to counteract the negative effects of this would be to arrange community education programmes on labour rights and labour standards.

⁷⁵ DPW, 1997, p. 10.

Such education programmes would be strengthened by stronger links and a better working relationship with community-based organizations and civic associations. This will entail more than an agreement between national structures, for example the National Union of Mineworkers and the South African National Civic Organisation, and will require local union organizers and shop stewards to manage a complex set of political relationships at local level.

As noted above, organizing informal workers requires union presence in residential communities. A suggestion put forward by work-seekers was for unions to consider establishing offices in the townships (initially on a limited scale). Linked to this is the need to debate a possible role for unions in offering job placement services to informal workers in the construction industry.

Redistributing risks

Strategies for improving conditions of informal workers in the construction industry may include making the main contractors for a project legally responsible for wages and conditions of work, and adherence to health and safety standards, regardless of whether all workers on the project are employed by the main contractors.

Employer informants indicate that this strategy is likely to be firmly resisted by formal businesses. They are already under pressure to take responsibility for subcontractors from the South African Revenue Service (SARS), which has sent main contractors the unpaid tax bills of subcontractees. At the time of the interviews, the Building Industries Federation of South Africa was scheduled to meet with SARS in an effort to stop this action.

The process of shifting price-setting power in the subcontracting chain away from main contractors would be easier if subcontractors were a more organized, cohesive force. Other role players with an interest in ensuring that this happens, such as unions and government, will need to think of creative ways to encourage representative and credible associations among these employers.

Tender policy

Tender policy, together with the creation of a register of employers, is a tool government can use to ensure and encourage the implementation of minimum labour standards in the construction industry. An MBA informant expressed a wish that eventually this system would extend to private work. These issues will require debate among a wide range of stakeholders to ensure commitment to implementation. Labour input will be important at a sectoral level to ensure that tender assessment criteria include measures that support the implementation of workers' rights and minimum standards.

Long-term development

Government can significantly contribute to improving conditions of work in the construction industry as a whole by creating some stability in expenditure. While the impact of government spending is less in the building sub-sector than in civil engineering, it would nevertheless contribute to spreading good practice across the industry.

The Green Paper on creating an enabling environment for the development of the construction industry expects that the government's policy approach "will help address the unemployment problems endemic to the marginalized". However, it accepts that the creation

of sustainable and decent employment in construction “will largely depend on the ability of the sector to grow as a result of becoming more effective and efficient.”⁷⁶

Employers have a responsibility to ensure improvements in skills and work processes in order to encourage the creation and retention of decent, safe jobs in building. Employer associations can play an important role in facilitating access of informal economic actors to information on government regulations or market opportunities, as well as access to finance, technology, and credit. They can also provide support in a number of areas with a view to advancing productivity improvements and entrepreneurship development.⁷⁷

Trade unions will need to devise and implement ways to redress the power asymmetries generated by recent industry restructuring. The achievement of this objective will also depend on union ability to organize informal workers in a way that, ultimately, will help them enter the economic and social mainstream. The strategies and means to organize construction workers may vary in the formal and informal economies, but the goal of voice and representation remains one and the same. Unless this goal is fulfilled, “the gap between the formal and informal will continue to be the most important divide in society, and a hindrance to equitable growth”.⁷⁸

⁷⁶ DPW, 1997, p. 10.

⁷⁷ ILO, 2002, pp. 58-59.

⁷⁸ ILO, 2001, p. 68.

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Annex 1: Organizations, agencies and individuals contacted in the study

Organization/Institution	Acronym	Person(s) contacted
Amalgamated Union of Building Trade Workers of South Africa	AUBTWSA	- Organizer, Gauteng
Building and Construction Workers' Union	BCAWU	- Deputy General Secretary - Provincial Coordinator, Western Cape
Building Woodwork and Allied Workers' Union of South Africa	BWAWUSA	- Deputy General Secretary, Western Cape
National Union of Mineworkers	NUM	- National Construction Sector Coordinator - Organizer, Gauteng - Regional Organizer and Organizer, Western Cape
African Builders' Association	ABA	- Provincial Chairperson, Western Cape
Building Industries Federation South Africa	BIFSA	- Manager, Liaison Officer
Master Builders' Association	MBA	- Director, Western Cape
Gauteng Master Builders' Association	GMBA	- Colin de Kock, Executive Director
South African Subcontractors' Association	SASCA	- President, Western Cape - National Director
Small Builders' Association	SBA	- President, Western Cape
Construction Industry Development Board	CIDB	- Spencer Hodgson, Chief Executive Officer
Building Industry Bargaining Council (Cape of Good Hope)	BIBC	- Koos Kitshoff, Secretary
Southern African Labour Research Institute	SALRI	- Mark Bennett, Researcher

Annex 2: Guidelines for leadership interviews

Note to interviewers

The aim of the interviews is to get an in-depth understanding of who is organized and how, how the organization really operates and what it really does – not just what the leadership people you interview think their organization should be doing or wish their organization was doing. This means that you need to get people to talk as concretely and honestly/self-critically as possible. We don't just want the official 'line'. So feel free to ask them how they know something or what makes them have a particular view. Obviously, you need to do this politely and in a way that builds trust.

When you ask people who they organize, you need to get as much clarity as possible about differences between workers in the informal economy. For example there may be workers who own their own informal operations (for example a street trading stall, a building sub-contracting outfit, a home-based operation, a taxi). These people may work alone. Or they may be helped by family members – a husband, a wife, children, sisters, brothers, aunts, uncles, cousins. Or they may have people who are not family members who work for them (for example a stall assistant, a labourer, a machinist or ironer, a *gaatjie*). The people who work for them may be 'employed' in a range of ways – regularly or irregularly; part-time or full-time; piecework, commission-based or hourly paid. We can refer to these different situations as differences in 'employment status'.

There are a couple of confusing situations to look out for. The first is that some organizations' members may see themselves as working for themselves – on their own or with others. But they may actually be dependent on a single customer (like a homemaker who sews clothing for one agent or company, or an owner-driver who provides transport for only one company) or a single supplier (like a street trader who relies on a CocaCola or pantyhose distributor). The second confusing situation is where some members do dependent work as described above as well as independent work. They may shift from one kind of work to the other in the course of a year (for example a clothing homemaker may sew for a company in peak season and independently for her neighbours in between), depending on the season, or even during the same day (a taxi driver may drive for an employer by day, and use the taxi or a self-owned vehicle to work for his/her own account at night). So some organizations may organize both independent and dependent workers.

Get interviewees to describe how the organization understands employment status and ask them what the employment status of their members is. Don't be too concerned about terms – use the terms they use. What is most important is to find out what the terms they use mean about who the workers and members are and what they do. For example, some organizations may only be organizing people who own their own informal operations, and may not be reaching or representing the people who work for them. They may not be doing this on purpose. They may not even be aware of it. It may just work that way because people who own their own operation are more likely to be able to take time off and have the skills and knowledge to participate in organization, or access to facilities like a telephone. On the other hand, it might be their conscious decision only to focus on this group.

These guidelines are as general as possible. But in some cases they apply specifically to leaders of worker organizations and are geared towards the taxi industry. They can be adapted to your sector, and for use with employer organizations.

Organizational leadership interview guidelines

Introduction

- What is your position in your organization?
- How long have you served in this position?
- How does someone become a member of your organization?

- What are the criteria for joining and remaining a member?

Organizational history

- (For those previously organizing in the formal economy only...) Why did you start organizing in the informal economy? (For those set up to organize in the informal economy...) What factors or problems led to the creation of your organization?
- What is the organization's legal status (trade union, employer organization, NGO, not formally registered, other - specify)?
- What are the good and bad effects of having this legal status?
- Has this changed at all? Why? What good things came of any changes? Did the changes have any bad effects?
- On which levels do you organize (local/metro, provincial, national, international)?
- Which level did you start organizing on first? How did you progress? Why did you do it this way?
- What are the advantages of organizing on only this level/more than one level? What are the disadvantages?
- Is your legal status and level(s) of organization the same or different from other organizations in the industry?
- Why was the organization designed this way?
- What does your organization aim to achieve overall?

Membership profile

- Who do you organize in the sector?
- Who don't you organize in the sector? Why don't you organize them? Are these people in another organization?
- Do you also organize workers/employers in the formal economy?
- Did you start organizing workers/employers in the formal economy or informal economy first? How did you progress? Why did you do it this way?

[For the following questions, ask for as concrete information as is available. If there are problems with the figures you are given, explain these in your report. If specific figures aren't available, ask for estimates, ask how they were worked out, and explain this in your report.]

- How many members do you have:
 - by race and sex; [race and sex, at least, should be cross-tabulated if possible]
 - by income level;
 - by job category: [for example, in the taxi industry: drivers, administrators, washers, queue marshals, *gaatjies*];
 - by employment status (see common definitions);
 - by membership status: signed up or paid up;
 - by province?
- What is total employment in the industry? And what is your source for this? *[You may have this information from your document review. But you may also want to cross-check different sources, and get an understanding of what leaders know and how leaders see the position of their organization relative to the industry as a whole.]*
 - by race and sex; [race and sex, at least, should be cross-tabulated if possible]
 - by job category: [for example, in the taxi industry: drivers, administrators, washers, queue marshals, *gaatjies*];
 - by employment status [describe how the organization understands employment status – don't worry about terms, worry about what they mean to your interviewee];
 - by province?

- How is your membership the same as that of other organizations in the industry? How is your membership different from that of other organizations in the industry?
- Has your membership in the informal part of the sector increased or decreased? Why?
- Has your membership in the formal part of the sector increased or decreased? Why?
- What are the problems with statistics for employment and organizational membership in the sector?

Organizing strategies

- What is the main thing your organization does for its members (representing interests – bargaining, policy; service – marketing, training, pension, health; single issue-driven)?
- What else does your organization do for its members?
- What strategies for organizing in the informal economy have worked? Why?
- What strategies for organizing in the informal economy have not worked? Why?
- How are organizing strategies in the informal economy the same or different from those in the formal economy?
- What makes it easier or more difficult to organize in specific areas?
- What things make it easy or difficult to keep members once you have recruited them?
- What kind of public policies would help you to recruit more members and keep those you have recruited? [*Press interviewees to be as concrete as possible, e.g. if they say laws, ask what do you want the law to say and how will this help you?.*]

Organizational processes and capacity

- Do members pay membership fees?
- How are they collected?
- What are your organization's main sources of funding?
- What percentage of your total budget comes from each of these sources?
- Who staffs your organization (employees and/or members who volunteer and/or outside volunteers)? How has this changed over last year? How has this changed over the last five years?
- How many people are there in each category?
- Does the organization rely on outside organizations (e.g. labour support organization, research institutions, legal firms) for support, planning, management, negotiation, or representation?
- Does your organization have offices (national, provincial, local)? How many and where? Are these permanent or temporary, rented or owned?
- What office equipment do you have? If you had to buy one new item of office equipment, what would it be?
- Does your organization have a constitution?
- What leadership structures does your organization have?
- How is your leadership chosen?
- How are decisions made in the organization?
- If decisions are made at structural meetings, ask: How many times has each structure met in the past year? What was attendance at the most recent meeting of each structure like?
- How do ordinary members participate in the organization?
- What is the main method you use to communicate with your members?

- Is your organization contactable by telephone at the office? Is somebody there all the time to answer the phone? How else can your organization be contacted?

Representation and voice

- How many people are on each of your main leadership structure(s) (national, provincial and/or local)? How many of these are women?
- If your organization includes workers/employers from the formal AND the informal economy, how many people on the leadership structure(s) operate in the informal economy?
- Are there any conflicts of interest between different groups of members (e.g. taxi members vs. public bus company drivers, between employers over routes, between long distance taxi companies and others, conflicts that are defined in terms of race or gender)
- What has happened in these conflicts?
- What has the organization done?
- What are the particular interests and needs of women workers/employers in the industry?
- What has the organization done to meet these needs or address these interests?
- How has this changed over the last year? How has this changed over the last five years?
- Does the organization bargain around wages and conditions of employment with informal worker/employer organizations in the industry? Or are there other collective agreements that apply to informal workers/employers in the industry?
- How long has this been the case?
- What happens in the bargaining process? *[Probe to develop an understanding of skills, practices and systems. Also, ask about changes in the past year and past five years (or longer) to catch changes from the apartheid institutional arrangements.]*
- Does the organization participate in policy-making forums where it interacts with government (local, provincial and/or national)?
- How and when did the organization get representation?
- What has happened in these negotiations/discussions? *[Probe to develop an understanding of skills, practices and systems relevant to members in the informal economy. Also, ask about changes in the past year and past five years.]*
- Are there policy-making or rule-setting bodies (local, provincial and/or national) from which the organization has been excluded? Why?
- Where should the organization be represented?
- What will it take to win representation?
- What relationship does the organization have with other worker/employer organizations in the industry?
- Does the organization belong to a national or international federation? Why? What are the advantages and disadvantages of these connections?
- Does the organization interact with other NGOs? What does this interaction involve?
- Does the organization have any contact with international agencies? What does this contact involve?

Annex 3: Guidelines for focus group discussions

Introduction (±20 minutes)

[Introduce yourself and say where you're from.]

We have asked you to come here today because we want to learn about how to organize workers in the [>>>] sector/like yourselves better.

Before we begin, I must explain that discussion in the group is informal and it is very important that everyone participates. There are no right or wrong answers. Even though I'm from [the union], I still want to know what is right about what we do and what we can do better. So relax and feel free to say what you really think. You are also free to disagree with one another.

We are taping the discussion, but that is just to help us remember your input. The discussion is confidential, so you don't need to worry about us using your name in our reports. Do you have any questions we need to clear up about how this discussion group works?

To start with it will be good for us to get to know something about each other. Please tell us your name, what work you do, and what is happening with your work while you are part of this discussion. *[Spend a bit of time on each participant, asking about their work history.]*

- How long have you been doing this work?
- What were you doing before?
- Were you a member of a worker or other organization before?

Opening discussion on joining the union (± 20 minutes)

Let's talk about how it was that you came to join the union. *[Make sure each person gets a turn to answer the first question so that everyone speaks, but be more flexible afterwards.]*

- How did you find out about the union?
- When did you join the union and what did you have to do?
- Was it easy or difficult to join?
- What do you have to do to stay a member of the union?
- When you joined, what did you hope the union would do for you?

Discussion about what the union does (± 30 minutes)

Now let's talk about what the union actually does.

- What happened after you joined the union? Has the union done what you expected?
- What are the main things the union does for you?
- What are things that the union doesn't do that you would like it to do?
- Are there things the union does that you think it shouldn't?
- Can you describe a typical member of the union? *[Probe for race, gender and give pen sketches of different types of informal workers according to job category and/or job status to see if there are certain categories of workers that are more likely to join, and others that are less likely to join. And how this relates to different organizing strategies.]*
- Why do they join? Why do others not join?

Discussion about how the union works (± 20 minutes)

Let's move on to talk about how decisions are made about what the union does.

- How does the union make decisions about what to do for its members and how to spend its money? *[Probe for workers' understanding of what the structures and decision-making processes are.]*

- Do you have any influence on what decisions are made?
- What can you do if you don't like the decisions that are made?
- How do you find out about what decisions have been made?
- What are the kinds of things that members disagree about in the union? [*Probe to understand if disagreements have anything to do with different interests of workers in the formal/informal economy or of different categories of workers or race and gender issues as appropriate.*]
- What has happened with these disagreements? Were they resolved? Are they still there?

Discussion about organizing strategies (\pm 20 minutes – depending on what has been covered)

The last part of our discussion is to make sure we get all your suggestions about how best to organize workers like you.

- What are the things that make the union strong for workers like you?
- What are the things that the union needs to improve to organize workers like you better?
- Are there opportunities for organizing more people like you, or for serving members like you better that the union could take better advantage of?
- What are some of the things that could make it difficult for the union to organize people like you?

Concluding comments (\pm 10 minutes – depending on how much time you have left)

Take a minute to think about this, and then we can talk about it. Thinking about all the things we have talked about today, what do you think the union should be doing to recruit the most workers or serve workers in [>>>] sector better?

Thank you all for making the time to come here and for participating in the discussion.

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1. “Home Work in Selected Latin American Countries: A Comparative Overview” (*Series on Homeworkers in the Global Economy*), Manuela Tomei, 2000
2. “Homeworkers in Paraguay” (*Series on Homeworkers in the Global Economy*), María Victoria Heikel, 2000
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6. “Home Work in Argentina” (*Series on Homeworkers in the Global Economy*), Elizabeth Jelin, Matilde Mercado, Gabriela Wyczykier, 2000
7. “Home Work in Brazil: New Contractual Arrangements” (*Series on Homeworkers in the Global Economy*), Lena Lavinás, Bila Sorj, Leila Linhares, Angela Jorge, 2000
8. “Home Work in Chile: Past and Present Results of a National Survey” (*Series on Homeworkers in the Global Economy*), Helia Henríquez, Verónica Riquelme, Thelma Gálvez, Teresita Selamé, 2000
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