

## REPORT COVER

## TITLE PAGE

## OPTIMISING LABOUR LAW FOR A JUST TRANSITION

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## ABSTRACT

*Optimising labour law for a Just Transition* considers the impact of climate change (focusing on the coal-based energy sector as a blueprint) and the decent work connection between climate change law and the fundamental principles and rights at work, which are the foundations for labour law. The report considers relevant aspects of labour market regulation, ranging from the provisions of labour law, arrangements for sectoral collective bargaining, to active labour market policies and integrated regulation such as the social and labour plans, that can be optimised for a Just Transition.

The challenges in planning and implementing just transition processes occur within a regulatory space spanning a range of laws and legal fields, and consequently cutting across various ministries and institutions in all spheres (national, provincial, and local) of government, and at all levels (workplace, sector, and national) of labour governance, and in this regard the report engages at a conceptual level with the emerging 'JT regulatory framework' to facilitate just transition processes. The report constructs a typology of the following labour law functions and the mechanisms that can support just transition processes at workplace, sector, and local government level: consultation and collective bargaining; restructuring and retrenchments; training and skills development; unemployment insurance and income support; health and safety (see also '*Climate-proofing*' labour law: *adapting to increased heat and extreme weather events*); and emergency and disaster management.

Drawing on stakeholder input, the report concludes with three key building blocks for just transitions: integrated institutions, integrated framework instruments, and access to social protection, and considerations for future developments of these building blocks.

## Keywords

Just transition, just energy transition, labour law, climate change law, decent work, coal-based energy sector, low-carbon economy, fundamental principles and rights at work, active labour market policies, labour and social plans, social protection, disaster management, skills development

## Acknowledgments

This report was commissioned as part of an ongoing labour law reform process to support NEDLAC social partners on the development of policy and to assess the need for legislative and regulatory responses to the evolving world of work and the impact of climate change. Earlier versions were presented to social partners and key stakeholders at numerous workshops in 2023 and 2024. We are grateful for the participation, discussions and feedback at the workshops, which informed and shaped the report and the recommendations. We received valuable input from individuals at: NEDLAC, Presidential Climate Commission (PCC), and the Southern Centre for Inequality Studies (SCIS), and extend special thanks to Crispian Olver and Devan Pillay from the PCC, and Julia Taylor and Katrina Lehmann-Grube from Wits for their insightful feedback. We appreciate the patience, support, and valuable input from Lisa Seftel and Tsholo Lelaka at the NEDLAC secretariat.

**Recommended citation:** Collier D, Godfrey S, Oniga V, Osiki A *Optimising Labour Law for a Just Transition*, NEDLAC Report, 2024.

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## **ABBREVIATIONS**

BCEA	Basic Conditions of Employment Act, 1997
CCA	Climate Change Act, 2024
COIDA	Compensation for Occupational Injuries and Diseases Act, 1993
DFFE	Department of Forestry, Fisheries and the Environment
DMA	Disaster Management Act, 2002
ECC	Employment Conditions Commission
ESA	Employment Services Act, 2014
IDP	Integrated development plans
ILO	International Labour Organization
IRFA	Intergovernmental Relations Framework Act, 2005
LAP	Labour Activation Programme
LRA	Labour Relations Act, 1995
MHSA	Mine Health and Safety Act, 1996
MSA	Municipal Systems Act, 2000
MPRDA	Mineral and Petroleum Resources Development Act, 2002
NEDLAC	National Economic Development and Labour Council
NMWA	National Minimum Wage Act, 2018
OHSA	Occupational Health and Safety Act, 1993
PCC	Presidential Climate Commission
SAREM	South African Renewable Energy Masterplan
SDA	Skills Development Act, 1998
SDLA	Skills Development Levies Act, 1999
SETA	Sector Education and Training Authority
SLP	Social and Labour Plan
UIF	Unemployment Insurance Fund
UIA	Unemployment Insurance Act, 2001
UICA	Unemployment Insurance Contributions Act, 2002

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“A Just Transition aims to achieve a quality life for all South Africans, in the context of increasing the ability to adapt to the adverse impacts of climate, fostering climate resilience, and reaching net-zero greenhouse gas emissions by 2050, in line with best available science.

A Just Transition contributes to the goals of decent work for all, social inclusion, and the eradication of poverty.

A Just Transition puts people at the centre of decision making, especially those most impacted, the poor, women, people with disabilities, and the youth—empowering and equipping them for new opportunities of the future.

A Just Transition builds the resilience of the economy and people through affordable, decentralised, diversely owned renewable energy systems; conservation of natural resources; equitable access of water resources; an environment that is not harmful to one’s health and well-being; and sustainable, equitable, inclusive land use for all, especially for the most vulnerable.”<sup>1</sup>

## 1. INTRODUCTION

The NEDLAC labour law reform process is concerned with “the impact of the Future of Work, the changing nature of what constitutes a workplace, the increasing number of non-standard workers and **the need for a climate change Just Transition**”, noting that the Presidential Climate Commission (PCC) is a social partner Commission exploring a roadmap for a just transition, which may have implications for labour law.<sup>2</sup>

In the context of climate change, relevant labour law considerations for a just transition include employer obligations in respect of **consultation and training; retrenchment provisions and facilitation; unemployment insurance and income support (social protection); and skills development and employment services** including active labour market policies, plans and programmes that support labour market transitions. In addition, climate change presents challenges for **occupational health and safety**, specifically in the context of **increased temperatures and disruptions to work** because of **extreme weather events**, which increase the risk of injuries and illnesses in the workplace. The **health and safety considerations** are important for **climate change adaptation** and are considered in further detail in the report titled “‘Climate-proofing’ labour law: adapting to increased heat and extreme weather events”.<sup>3</sup>

In “Optimising labour law for a Just Transition” we explore relevant aspects of **labour law** concerned with the employment relationship and a range of institutions, policies and instruments, including **sectoral collective bargaining, active labour market policies**, and integrated regulation such as the **social plans and labour and social plans**, which aim at maintaining stability in the labour market and are integral for achieving a Just Transition. The report outlines the regulatory context relevant for a consideration of the following –

- What are the best practices for managing retrenchment and job losses in the context of a Just Transition?
- How can the legislative framework support the labour market implications of a Just Transition?
- What are the challenges and opportunities for skills development and training in the context of the Just Transition?

The report grapples with the **complexity and regulatory challenges** in planning and implementing the processes necessary for addressing the social justice challenges (most prominent are the environmental and employment challenges) in a Just Transition. These processes occur with a regulatory space of a broad range of laws and legal fields, and consequently fall within a range of ministries and institutions in all spheres

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<sup>1</sup> [PCC Framework](#), 2022, p. 7.

<sup>2</sup> NEDLAC request for proposals for labour law reform, 2022. “**Just transition**” is defined in the Climate Change Act 22 of 2024 as “a shift towards a low-carbon, climate-resilient economy and society and ecologically sustainable economies and societies which contribute toward the creation of decent work for all, social inclusion and the eradication of poverty”.

<sup>3</sup> The “‘Climate-proofing labour law” report considers the relevant statutory rights, duties and standards, particularly in the context of **working hours and occupational health and safety** as well as **social protection** for illness due to extreme heat and short-term income protection when work is stopped. The paper concludes with general and specific recommendations for consideration.

(national, provincial, and local) of government, and at all levels (workplace, sector, and national) of labour governance, and in this regard the paper engages at a conceptual level with the emerging ‘**JT regulatory framework**’ to facilitate Just Transition processes.<sup>4</sup>

The regulatory framework for a just transition encompasses different disciplines and government ministries, and requires **cooperative governance, and policy coordination and coherence**. In terms of the relevant areas of policy, the ILO’s “**action framework for a just transition**” provides guidance, and identifies nine key policy areas,<sup>5</sup> which are set out in table 1.

**Table 1. Key policy areas for an integrated approach to sustainable development and a Just Transition**

← policy coherence and coordination <sup>6</sup> →								
Macro-economic & growth policies	Industrial <sup>7</sup> & sectoral policies	Enterprise policies	Skills development	Health & Safety	Social protection	Active labour market (ALM) policies	Rights (core labour standards)	Social dialogue & tripartism

See [ILO Guidelines for a just transition, 2015](#)

In the South African context, **cooperative governance for a just transition**<sup>8</sup> is a primary objective of the **Climate Change Act**,<sup>9</sup> (CCA) and the Act provides for **policy alignment**.<sup>10</sup> The Act falls within the mandate of the **Minister responsible for environmental affairs**<sup>11</sup> and establishes a statutory framework for the **Presidential Climate Commission (PCC)**, which has an *advisory* role. In terms of provincial and municipal institutions, the Act builds on the provisions of the **Intergovernmental Relations Framework Act (IRFA)** by mandating existing intergovernmental forums to serve (at provincial level) as Provincial Forums on Climate Change, and at district level, as Municipal Forums on Climate Change.

The report considers the broader JT regulatory framework and locates labour market regulation within this framework. Part 2. of the report is concerned with the labour market implications of a Just Transition, the significance of labour regulation for a Just Transition, and its role within the **PCC Framework** and the **Just Energy Transition Investment and Implementation Plans**.

<sup>4</sup> However, our mapping of the **JT regulatory framework** is incomplete, and we suggest a more comprehensive study and mapping of the framework, and an assessment of the mechanisms within the framework, including (a) the identification of key ‘levers’ within the framework that can be used to optimise Just Transition processes, and to provide guidance in this regard, and (b) to identify gaps in the framework with recommendations to address the gaps.

<sup>5</sup> ILO, ‘[Guidelines for a just transition towards environmentally sustainable economies and societies for all](#)’ (2015), p. 7.

<sup>6</sup> The key policy areas involve different government departments, for example, macro-economic & growth policies considerations involve fiscal / tax / investment policies (eg. treasury, finance, SARS) that target environmental & employment objectives; industrial and sectoral policies are concerned with impacted sectors (eg. the DTIC Masterplans; bargaining councils); the informal economy (including waste management & recycling) and promoting decent work; while enterprise policies are concerned with support for transitioning firms and workers, and small / MSME business development, including cooperatives and entrepreneurs. The policy areas that are primarily concerned with labour law and labour market regulation include skills development, health and safety, social protection, ALM policies, and core labour standards; and social dialogue and tripartism is cross-cutting.

<sup>7</sup> See [Table 3. A note on industrial policy and Masterplans](#).

<sup>8</sup> The objects of the Act include ‘to provide for a coordinated and integrated response by the economy and society to climate change and its impacts in accordance with the principles of cooperative governance;’ and ‘to ensure a just transition towards a low carbon economy and society considering national circumstances’. Section 2(a) and (d).

<sup>9</sup> The Climate Change Act 22 of 2024 was enacted in July 2024.

<sup>10</sup> Section 7 provides organs of state that exercise a power or perform a function that is affected by climate change to ‘review and if necessary review, amend, coordinate and harmonise their policies, laws, programmes, and decisions’ to take into account the risks and vulnerabilities associated with climate change; and to give effect to the Act.

<sup>11</sup> The Minister is empowered to develop regulations relating to implementation of the Act (s 27).

Part 3. of the report provides an overview of a range of labour market regulatory ‘tools’ relevant at various stages of a Just Transition, and these are elaborated further in parts 4. and 5., setting out the relevant provisions of labour law and active labour market policies (part 4.) and the context for integrated regulation, such as the social and labour plans, training lay-off schemes, and the statutory provisions for coordinated disaster management (part 5). Part 6 of the report considers the broader context and institutions for a coordinated just transition and maps out the relevant spheres of government and levels of labour governance, with considerations for future development. Part 7 provides an overview of stakeholder engagement and the direction from stakeholders, which we identify as the **building blocks for a just transition**: these are **integrated institutions**; **integrated framework instruments**; and **access to social protection**.

While we focus on the transition from coal-based electricity generation (**coal-based energy**)<sup>12</sup> (see [2.4 below.](#)) regarding potential job losses in the sector and new jobs in renewable energy and in other sectors) as a *blueprint* for managing job losses and transitions in other sectors,<sup>13</sup> we recognise that the dynamics differ between sectors, and that, in each sector and / or area (region) impacted, the approach should be specific to the context. In this regard, relevant factors to be considered include the number of jobs lost, the retrenched workers’ skill sets and work experience, and the potential for coordination between sectors for the transfer of workers into new jobs (possibly with a period of retraining in-between). Relevant questions and considerations that should inform the coordination and planning of **sector-based jobs transition to a low-carbon economy**<sup>14</sup> include the following –

- In which *sectors (industries)* and *workplaces* will *jobs be lost* and how many jobs will be lost; and what are the *timeframes* for the anticipated job losses?
- In which *sectors (industries)* and *workplaces* will *jobs be created*, how many job opportunities will there be, what are the *timeframes*, and (in some cases) what will be the duration of these jobs?<sup>15</sup>
- *Where* (provinces and cities/municipalities) will jobs be lost and where will job opportunities arise (provinces and cities/municipalities)?
- *When* will jobs be lost (in general and by sector) and when will job opportunities be created (in general and by sector)?
- What *interventions* are required to *optimise the jobs transition* (transfer of retrenched into new jobs), i.e. income support, skills-development education and training, and relocation?
- What needs to be done, given the medium-term time frame for the energy transition, for educating and training *new job entrants* for a renewable energy-based economy?
- Which institutions / functions need to be coordinated and integrated (and how) into planning for the jobs transition?

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<sup>12</sup> Transitioning the energy system away from coal is central to establishing a low-carbon economy, and hence a priority. As the JET Implementation Plan indicates, ‘[e]lectricity generation accounted for ... 45% [of the country’s greenhouse gas (GHG) emissions] in 2020. The majority of these emissions are generated by 15 coal-fired power plants owned by Eskom, most of which are non-compliant with air quality emissions standards, and nine of which will reach the end of their design lives between 2022 and 2034.’ [Just Energy Transition Implementation Plan 2023-2027](#) (JET Imp. Plan) at p. 70. While there will be nuances and specific institutions and policies applicable to other sectors and industries, similar patterns of coordination and processes for a Just Transition will apply in these sectors and industries.

<sup>13</sup> The notion of a ‘sector’ is important in labour law, and as an organising principle for employer and workers’ associations, and for collective bargaining structures. In the context of the CCA, see [Annexure B](#).

<sup>14</sup> Note that this also requires engagement with the sector and sub-sector greenhouse gas emission targets determined in terms of the CCA framework (see discussion below).

<sup>15</sup> For example, many jobs that are estimated to be created in the renewable energy sector will be for construction and installation, which will have a life span of about two years (compared to the much smaller number of jobs in operations and maintenance but with a life span of approximately 25 years).

In the report we foreground the transition in relation to jobs in coal mining and electricity generation, mainly in Mpumalanga, and the employment opportunities that will be created in the renewable energy sector, and we consider the role of labour law and labour market regulation in facilitating this transition. However, workers across other sectors will be facing similar transitions, and, with the above questions in mind, more needs to be known about the anticipated jobs losses and gains, and the skills development needs, to effectively manage the transition. While there will be variation between sectors, the **labour market regulatory strategies, principles, and best practices** that apply to the coal-based energy sector transition should inform and be adapted and applied to other industries or sectors where jobs are impacted.

## 2. LABOUR MARKET IMPLICATIONS OF A JUST TRANSITION

### 2.1 Climate change and a Just Transition in a fossil fuel economy

Climate change has far-reaching consequences for the environment and for human life.<sup>16</sup> The shift in climate patterns, and the necessary adaptation and mitigation strategies envisaged in an energy transition that prioritises *decarbonisation*,<sup>17</sup> has significant implications for the economy and the labour market.<sup>18</sup> Transitioning to a low-carbon economy entails a fundamental shift from an **extractive economy** to a **regenerative economy**, which, to be *just*, must address South Africa's poverty, inequality, and unemployment challenges. Broadly understood, a Just Transition is fundamentally transformative in 'showing a way forward to an alternative society.'<sup>19</sup>

A just energy transition aligns with the idea in the 2030 Agenda for Sustainable Development of 'transformative steps' towards the achievement of 'inclusive and sustainable economic growth and decent work for all.'<sup>20</sup> Conversely, an *unjust transition* might achieve decarbonisation and may follow a pathway that prioritises the environment and green technologies, while neglecting to address the socio-economic impact and conditions of workers and communities and failing to dismantle features of the economic system that perpetuate extreme levels of inequality.<sup>21</sup> To achieve a Just Transition, *no one must be left behind*.

### 2.2 The nexus between labour law and a Just Transition

The Climate Change Act defines '**Just transition**' as 'a shift towards a low-carbon, climate-resilient economy and society and ecologically sustainable economies and societies which contribute toward the *creation of decent work for all*, social inclusion and the eradication of poverty', and the PCC Framework for a Just

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<sup>16</sup> On the impacts of climate change for workers and communities see COSATU [Just Transition Blueprint for Workers](#), 2022, p. 15 – 19.

<sup>17</sup> Decarbonisation is explained in the [JET – Investment Plan](#) as 'Human actions to reduce carbon dioxide emissions from human activities; in practice, involving a transition from energy and other societal systems which emit CO<sub>2</sub>, to those which do not, over the medium to long term.' (p. 146)

<sup>18</sup> The impact on coal-mining and established industries that support coal-based energy has broader implications for the economy and employment. See Chapter 3 of the COSATU Blueprint; and more generally see Tomassetti, Paolo. 'Energy Transition: A Labour Law Retrospective.' *Industrial Law Journal* 52.1 (2023): 34-67; and Normann, Håkon E., and Silje M. Tellmann. 'Trade unions' interpretation of a Just Transition in a fossil fuel economy' *Environmental Innovation and Societal Transitions* 40 (2021): 421-434. The latter distinguishes between transitions *within* fossil fuel industries, and transitions *away* from fossil fuel, and indicates the important role of the state in leading a transition; and the need to develop a plan between employees, employers, and government to ensure justice for those affected, and the development of industrial policy aligned with an *ecological modernisation* approach. (p. 429). A key consideration in this regard is the role of the Minister responsible for Mineral Resources and Energy. In terms of the [Draft South African National Petroleum Company Bill, 2023](#), the Minister will be the sole shareholder of the National Petroleum Company (NPC), a public entity responsible for facilitating 'energy infrastructure across the energy value chain', including renewable energy, and managing petroleum and gas resources. (Although note the provisions of the [National State Enterprises Bill](#), 2024).

<sup>19</sup> COSATU Blueprint, p. 99.

<sup>20</sup> UN General Assembly *Transforming our world: the 2030 Agenda for Sustainable Development*, 2015.

<sup>21</sup> COSATU Blueprint, p. 18.



Transition, 2022, describes the *Just Transition* concept as being underpinned by the three principles of **distributive justice**, **restorative justice**, and **procedural justice** (defined below); and in this regard, the pillars of decent work<sup>22</sup> and principles of labour law<sup>23</sup> provide an important normative and legal framework contributing to the achievement of a Just Transition. *Decent work* (SDG 8) is integral to the sustainable development agenda, and the provisions and institutions of labour and employment law support the underlying principles (distributive, restorative, and procedural justice) of the JT concept. The JT Principles of Justice<sup>24</sup> are set out in table 2.

**Table 2. The Just Transition principles of justice**

<i>Distributive Justice</i>	<i>Procedural Justice</i>	<i>Restorative Justice</i>
‘The risks and opportunities resulting from the transition must be distributed fairly, cognisant of gender, race, and class inequalities. The burden of transition should not be carried by impacted workers and communities and the costs of adjustment are to be borne by those historically responsible for the problem.’	‘Those impacted by the transition must be empowered and supported in the transition, with them defining their own development and livelihoods, that is, through procedural fairness including transparency, collaboration, participation, design, and implementation.’	‘Historical damages against individuals, communities, and the environment must be addressed, with a particular focus on redress: rectifying or ameliorating the situations of harmed or disenfranchised communities environmentally, socially, and economically.’

The realms of justice that underly the Just Transition also inhere in the functions, purpose, and mechanisms of labour law. For example,<sup>25</sup> s. 1 of the Labour Relations Act (LRA) explains that the Act seeks ‘to advance economic development, social justice, labour peace and the democratisation of the workplace’, and to this end, the primary objects of the LRA include establishing a framework, at both workplace and sectoral level, for employers and worker organisations to bargain collectively on matters of mutual interest (s.1(c)(i)) and to formulate industrial policy (s.1(c)(ii)). Relevant aspects of the LRA framework are considered below.

While aspects of the labour law framework support decent work for workers in a transition, the function and scope of the JT concept is broader, encompassing aspects of both labour and environmental justice. Whereas labour justice and labour regulation are concerned with fundamental labour rights and principles at work, environmental justice is more broadly concerned with ‘the right to a safe and healthy environment for all people’ and as such is more “inclusive in that environmental concerns are not separate from housing, employment, health and education issues”.<sup>26</sup> The Just Transition is cross-cutting (multi-disciplinary and inter-governmental) and requires co-ordination across differing policy and legal disciplines. As such, the regulatory framework for the Just Transition encompasses elements from both (overlapping) realms of regulation, and its concerns extend beyond the narrower realm of labour regulation, to include within its scope “transitioning to a greener economy and wrestling with climate change through adaptation and mitigation policies [which]

<sup>22</sup> The ILO’s concept of [Decent work](#), which is integral (in SDG 8) to the 2030 Agenda for Sustainable Development, consists of the following four pillars: job creation, social protection, rights at work, and social dialogue.

<sup>23</sup> Labour and social security law support the core labour standards and principles in the 1998 ILO Declaration on Fundamental Principles and Rights at Work (amended in 2022), which are (1) freedom of association and the effective recognition of the right to collective bargaining; (2) the elimination of all forms of forced or compulsory labour; (3) the effective abolition of child labour; and (4) the elimination of discrimination in respect of employment and occupation; and (5) a safe and healthy working environment.

<sup>24</sup> From the Glossary of Terms, [JET-Investment Plan](#), p. 146 – 148.

<sup>25</sup> Each employment law statute in South Africa will reflect different aspects of the justice principles. For example, restorative and distributive justice feature strongly in the provisions of the Employment Equity Act (EEA), directed at redressing the impact of apartheid and the pronounced (race and gender) disparities in the labour market.

<sup>26</sup> Llewellyn Leonard (2018) Bridging social and environmental risks: the potential for an emerging environmental justice framework in South Africa, *Journal of Contemporary African Studies*, 36:1, 23-38, at p. 25.

involves challenges on a much greater temporal and spatial scale.”<sup>27</sup>

The need for coordination across government departments and the inclusion of multiple stakeholders is critical for achieving a Just Transition; and the Presidential Climate Commission (PCC) plays a central role in this regard. The inclusion of the Ministry of Labour and Employment and major worker and employer organisations is integral to achieving labour justice in a Just Transition, however coordinated inter-governmental relations are equally important in the context of labour regulation to govern a world of work in transition.

### 2.3 The CCA, PCC, and JET-IP Plans: Strategies and finance for a Just Transition

Achieving a Just Transition will depend on the availability of funding, and in this regard, South Africa is dependent on financial support from the international community for implementation of a just energy transition from a coal extractive economy to a low-carbon economy. International financial pledges anchor on the framework provisions of the **United Nations Framework Convention on Climate Change (UNFCCC)** and the **Paris Agreement**. The framework recognises that ‘the largest share of historical and current global emissions of greenhouse gases has originated in developed countries’, and places obligations on developed nations to ‘take the lead’ in combating climate change by assisting developing country Parties in meeting the costs of adaptation, and to ‘promote, facilitate and finance ... the transfer of environmentally sound technologies to other Parties’.<sup>28</sup>

South Africa’s commitments under the Paris Agreement to pursue **domestic measures**<sup>29</sup> to meet its **climate target** are set out in the [nationally determined contribution](#) (NDC) which commits to a mitigation range of between 398-510 MtCO<sub>2</sub>e by 2025, and to between 350-420 MtCO<sub>2</sub>e by 2030.<sup>30</sup> In terms of achieving these targets, Chapter 5 of the Climate Change Act (CCA)<sup>31</sup> establishes the framework for greenhouse gas emissions (GHG) reduction objectives, and for the setting of sectoral emissions targets, and the factors (including socio-economic impact) to be taken into account when determining the sectoral emissions targets. The CCA requires the Minister to consult with the Ministers responsible of the *sectors / sub-sectors* listed in terms of the provision (s 22). A sector is defined as ‘a collective term for a group of activities with similar characteristics which either emit greenhouse gases or are vulnerable to climate change’ and a ‘sub-sector’, for purposes of mitigation, as ‘a further subdivision of a group of greenhouse gas emitting activities as defined by the ... guidelines of the Intergovernmental Panel on Climate Change ...’. (s 1). When enacted, the Act will be an essential legal tool to translate South Africa’s emission reduction pledges in its NDC into action.<sup>32</sup>

As mentioned, the CCA provides the statutory framework for the **Presidential Climate Commission (PCC)**.<sup>33</sup> The PCC has an important *advisory* role in terms of ensuring SA’s ‘effective climate change response and the

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<sup>27</sup> David Doorey ‘Just Transitions law: Putting labour law to work on climate change’ (2017) *Journal of Environmental Law and Practice* at p. 238.

<sup>28</sup> UNFCCC Article 3 & 4.

<sup>29</sup> Paris Agreement Article 4(2).

<sup>30</sup> [Updated Nationally Determined Contribution](#) 2021.

<sup>31</sup> The Climate Change Act 22 of 2024 provides the legislative framework for SA’s commitments under the UNFCCC and the Paris Agreement.

<sup>32</sup> As mentioned, the CCA is concerned with ‘a coordinated and integrated response by the economy and society to climate change’ (s 2), which is to be guided by principles of equity and ‘a recognition that a robust and sustainable economy and a healthy society depends on the services that well-functioning ecosystems provide, and that enhancing the sustainability of the economic, social and ecological services is an integral component of an effective and efficient climate change response.’ (s 3(l) of the Act).

<sup>33</sup> The PCC was established as a result of an agreement between the social partners at NEDLAC in 2019; and its continuation as a statutory body is provided for in the Climate Change Act. Membership of the PCC includes ‘fair representation of government, organised labour, civil society, traditional leaders, the South African Local Government Association and business’ and is required ‘to advise on the Republic’s climate change response, the mitigation of climate change impacts and adaptation to the effects of climate change towards the attainment of the Just Transition to a low-carbon and climate-resilient economy and society.’ Section 10 of the Act.

long-term just transition to a low-carbon and climate-resilient-economy and society.’ (s 11(1)).

On strategy and financing, the [Just Energy Transition Investment Plan 2023-2027 \(JET Inv. Plan\)](#) was unveiled by the Presidential Climate Finance Task Team (PCFTT) in November 2022,<sup>34</sup> outlining the financial requirements of **USD 98 billion over the five years** to facilitate a continual and equitable energy transition and delineates the optimal allocation of the **initial USD 8.5 billion** pledged by donor nations (the **International Partners Group (IPG)**)<sup>35</sup> to key investment sectors within the priority sectors of Electricity, New Energy Vehicles and Green Hydrogen (GH2).<sup>36</sup> The electricity sector is a priority as it is a significant contributor to greenhouse gas (GHG) emissions in South Africa, with most of the emissions ‘produced by 15 coal-fired power plants owned and operated by Eskom and one small privately-owned coal plant which provides power to City Power – the Johannesburg city utility.’<sup>37</sup> The plan indicates that Eskom intends to close seven of its coal plants by the end of 2030, and an additional two by the end of 2035.<sup>38</sup>

A more detailed [Just Energy Transition Implementation Plan 2023-2027 \(JET Imp. Plan\)](#) was subsequently released in November 2023.<sup>39</sup> The JET Imp. P reiterates the finance requirements, and the availability of IPG pledges; and assigns key institutions<sup>40</sup> with oversight of six distinct Portfolios: Electricity, Mpumalanga Just Transition, New Energy Vehicles (NEVs), Green Hydrogen (GH2), Skills, and Municipalities. The implementation plan is described as a ‘roadmap’ towards meeting our decarbonisation commitments, and short- and medium-term objectives are identified across the focus areas. Additionally, the plan indicates that three additional Portfolios will be introduced in 2024: the [South African Renewable Energy Masterplan](#) (SAREM),<sup>41</sup> Energy Efficiency, and Road-to-Rail.<sup>42</sup>

**Table 3. A note on industrial policy and Masterplans**

<p><b>A note on industrial policy and Masterplans</b></p> <p>Since 2007, the National Industrial Policy Framework (NIPF) is the overarching industrial policy for South Africa. It aims at increasing value addition per capita through encouraging the movement of firms into the tradable non-commodity sectors. As it was introduced 17 years ago, it is not surprising that there is no explicit mention of the energy transition in the NIPF, however it does have components that are relevant to the current context: industrial financing; promotion of innovation and technology; skills and education</p>
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<sup>34</sup> [South Africa’s Just Energy Transition-Investment Plan](#) (premised on the National Development Plan (NDP) 2030). The PCFTT was established by President Ramaphosa in February 2022 to mobilise financing for the just energy transition.

<sup>35</sup> The IPG consisted of the governments of France, Germany, the UK, the USA, and the EU.

<sup>36</sup> See the [JET IP Grant Mapping Register](#) for an overview of funded initiatives to date. The JET Project Management Unit (PMU) is in the process of establishing an online register and funding platform ([reported here](#)).

<sup>37</sup> JET-Inv. Plan, p. 43.

<sup>38</sup> JET-Inv. Plan, p. 54.

<sup>39</sup> The JET Project Management Unit (PMU) was established by the Presidency ‘to drive the JET IP implementation and prepare the JET Implementation Plan.’ ([Here](#).)

<sup>40</sup> The JET-Imp Plan, p. 21 explains that: ‘The **governance and institutional architecture** for JET implementation comprises an Inter-Ministerial Committee (IMC) that reports to Cabinet, a JET Government Steering Committee that reports to the IMC, and a JET PMU in the Presidency that accounts to the Government Steering Committee and supports the institutions that are leading each Portfolio of programmes and projects. Each Portfolio is led by a co-ordinating council/forum/committee structure comprising stakeholders from government, business, labour, and civil society.’ (Underlined for emphasis). The Plan indicates that portfolios are supported by a secretariat, and that workstreams/programmes within a Portfolio are led by institutional owners (including relevant stakeholders).

<sup>41</sup> Since 2019 the cutting-edge of industrial policy has been the rolling out of Masterplans for sectors. The lead government department is the [Department of Trade, Industry and Competition \(DTIC\)](#), but Masterplans (see [the Masterplan guide](#)) are multi-stakeholder (‘social compacts’) that are developed and implemented by all major stakeholders in the relevant sectors. In the context of renewable energy (RE), the draft [South African Renewable Energy Masterplan](#) (SAREM) was published in mid-2023, and is geared towards ‘unlocking new industries and creating new jobs and skills in the rapidly transforming energy sector.’ Jet-Imp. Plan, p. 30.

<sup>42</sup> Transitioning from fossil-fuel energy, and transitioning auto-manufacturing and transport systems are key priorities.

for industrialisation; spatial industrial development; and support for small enterprises. The notion of the ‘green economy’ subsequently appeared in the context of the New Growth Path (which has elements of macroeconomic policy and industrial policy). This reference to the ‘green economy’ was picked up again in 2019 in the Reimagined Industrial Strategy (RIS), although the notion of an energy transition was not explicitly recognised in the RIS, and promotion of the ‘renewables/green economy’ was consigned to a sector strategy, albeit designated a priority sector.

The RIS formally launched the concept of Masterplans. These were a continuation of a strong sectoral orientation to industrial policy endorsed by the NIPF which saw the rolling out of sectoral Industrial Policy Action Plans (IPAPs) for just over a decade. Masterplans have a multi-stakeholder approach and promote localisation along the value chain as the core of sector strategies. However, neither the energy transition nor to climate change adaptation is given any attention across all Masterplans, so industrial policy is continuing to treat this issue by framing it within sectors (or value chains): importantly, there is a Renewable Energy Masterplan; the Automobile Masterplan<sup>43</sup> deals with electric vehicles; and the Mining and Beneficiation Masterplan<sup>44</sup> has relevance with regard to the shift from coal to renewable energy as well as the expansion of mining for metals and minerals that will support renewable energy technologies. Arguably, the NIPF and RIS need to be substantially revised or replaced by a more up-to-date framework that will articulate the broad vision for industrial policy in the context of a climate crisis.

## 2.4 Transitioning an energy system: labour market implications for Mpumalanga

The JET Imp. Plan provides context for the labour market implications of an energy transition, and implications for electricity generation, transmission, and distribution, and the importance of co-ordinated planning; and in terms of impact, the plan elaborates that ‘Mpumalanga Province will be most affected by the low-carbon transition’.<sup>45</sup> The **‘lessons from Komati**, the first power plant to be decommissioned’ emphasises the need for co-ordination, planning and partnerships in order to ‘provide new opportunities and create additional jobs in the local area, region, and value chain, in partnership between Eskom and the local and provincial governments ... [and] giving life to the principles of procedural, restorative, and distributive justice’.<sup>46</sup> The PCC Report concludes that ‘[i]t is essential to get the timing and sequencing right on decommissioning and repurposing projects; the process at Komati started too late. Communities and workers should be informed of the closure years ahead of time – as they are mapped out in the Integrated Resource Plan – and then Eskom and local and provincial governments must develop economic diversification plans for the surrounding district and region, with the involvement of workers and community members.’<sup>47</sup>

The JET Imp. Plan prioritises investment linked to the transition from coal-based energy (electricity) and specifically in the province of Mpumalanga, as coal mining and coal-fired power production is concentrated in the region.<sup>48</sup> In terms of the impact on employment in the coal mining and electrical utility industries, Borat et al estimate that there are ‘approximately 106 887 direct and indirect jobs linked to the coal value chain.’<sup>49</sup>

<sup>43</sup> Geared for Growth: South Africa’s Automotive Industry Master Plan to 2035.

<sup>44</sup> This Masterplan is apparently in process, however we were not able to get any information on its contents.

<sup>45</sup> Jet-Imp. Plan, p. 94. Moreover, the plan (p. 85 – 86) sets out a roadmap for three coal power plants to be identified by Cabinet for decommissioning and repurposing facilitated by the Accelerated Coal Transition Investment Plan, with activities scheduled from 2023 to 2027.

<sup>46</sup> See PCC Report, [‘Early lessons and recommendations from Komati’s Decommissioning and Repurposing Project’](#) (November 2023), p. 2.

<sup>47</sup> PCC Report (note 46), p. 2.

<sup>48</sup> JET-Inv. Plan, p. 94. The authors in Borat et al, ‘Just Transition and the Labour Market in South Africa: Measuring Individual and Household Coal Economy Dependence’, DPRU, December 2023, p. 2, indicate that ‘Of the 78 operating coal mines in South Africa, 65 (or 83%) are located in Mpumalanga, which accounts for 80 percent of national coal production.’ In terms of spacial distribution, the mines are located within five municipalities (Emalahleni, Govan Mbeki, Msukaligwa, Steve Tshwete and Victor Khanye); and with a concentration in five mining companies: Seriti, Sasol, Exxaro, Thungela, and Glencore). Out of Eskom’s 14 coal-fired power plants, 11 are located within Mpumalanga.

<sup>49</sup> Borat et al (note 48), p. 6.

The authors categorise the coal-industry workforce into three groupings according to occupation-education level, and identify a retirement cohort, as follows<sup>50</sup> –

- 31 187 workers (29.28%) High-skilled / semi-skilled and post-secondary education qualification (*no transition challenge*)
- 66 928 workers (62.82%) Mostly semi-skilled; and may require a skills ‘top-up’ intervention to facilitate job matching, and facilitated employment in green jobs (*intermediate just transition challenge*)
- 8 416 workers (7.9%) low-skill elementary occupations, unlikely to match into alternative employment opportunities and requiring income support (*just transition challenge*)
- 10 139 workers (9.5%) up to 19 212 (18%), the latter including workers ‘who may warrant early retirements packages’ (*retirement cohort*).<sup>51</sup>

The DPRU quantifies the jobs impacted and provides a useful categorisation of the workforce and informs the context for the types of policy interventions that should be considered, and which will be required to ensure a just transition.

A further consideration is the **timeframes for job losses** in the sector, and in this regard the Energy Research Centre (ERC) indicates that a ‘Paris-compatible mitigation pathway will mean the phase out of coal in the power and liquid fuels sectors by 2040’, which, on their estimates, will result in approximately 60 000 jobs lost in coal mining by 2050 (but possibly as many as 70 000 jobs), leaving the sector with 25 000 to 35 000 workers;<sup>52</sup> while on the other hand, the World Bank suggests that almost all coal mining and petroleum jobs will be lost by 2050.<sup>53</sup> Moreover, the World Bank (WB) study estimates total job losses more widely across 11 sectors that will be most impacted by the energy transition: using the SAGE model, the study calculates about 302 000 jobs lost by 2050 (which rises to about 600 000 with a multiplier of 2), with most of these jobs being lost in chemical sectors, coal mining and petroleum, and estimating that most of these jobs will be lost in the period 2030 to 2040 (with positive **job gains** only beginning to accelerate from the 2040s).<sup>54</sup> On the other hand, the National Business Initiative (NBI) data estimates a net gain of 1.4 million new jobs by 2040.<sup>55</sup>

**Job creation in the renewable energy (RE) sector** is a consideration in the Draft Renewable Energy Masterplan (SAREM), which focuses on the RE value chain and has a shorter timeframe: it projects that by 2030 the sector will create 36 500 new jobs plus a further 3 600 jobs created by training/retraining for youth and retrenched coal workers (stating that 10% of renewable manufacturing activities will be located in coal mining areas).<sup>56</sup> Other new **job gains** are anticipated in the platinum mining sub-sector and the mining of other metal ores as well as in the hydrogen sector and manufacture of fuel cells and electrolyzers. However, the PCC also cautions

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<sup>50</sup> Bhorat et al (note 48), p. 6.

<sup>51</sup> This fourth category appears to cut across the first three categories.

<sup>52</sup> Energy Research Centre, UCT (ERC) [Socio-economic considerations for a Paris Agreement-compatible coal transition in South Africa](#), (2019) p. 9 fig. 5.

<sup>53</sup> World Bank Group, [Country Climate and Development Report: South Africa](#) (2022), p. 35.

<sup>54</sup> WB, [Country Climate and Development Report: South Africa](#), pp. 34-36 and figures 15 and 16. The World Bank also models where and how many jobs will be created in the energy transition through to 2050. Their estimate is that about 815 000 jobs will be created (which translates into 1.6 million jobs using a multiplier of 2). It is anticipated that most of the jobs will be created in the mining sector (i.e. non-coal sub-sectors which are sources for minerals and metals that will be needed for renewable energy technologies), the renewable energy sector and value chain, green manufacturing, construction and, to a lesser extent, utilities, and services. As noted above, the bulk of these jobs will become available from 2040. See also the [National Business Initiative \(NBI\) climate pathways project for a Just Transition](#) and estimated net job gains.

<sup>55</sup> This is in contrast to the more conservative (0.6 mil) estimate in the IRP pathway. See C Oliver, [Conservation Conversations: Navigating the climate transition](#) (2024), slide 19, which would require appropriate interventions and systemic issues to be addressed.

<sup>56</sup> Draft South African Renewable Energy Masterplan: An industrialisation plan for the renewable energy value chain to 2030, March 2022, pp 3-4.



against the impact of the EU's trade restrictions that will be introduced in terms of the Carbon Border Adjustment Mechanisms (CBAM), which could potentially put jobs at risk in the automobile manufacturing, coal mining, steel manufacturing, chemical, cement, electricity generation and aluminium sector.<sup>57</sup>

Predictions of a **net jobs gain but with a time lag** also appear from the comprehensive modelling exercise undertaken by the IASS/CSIR in 2019,<sup>58</sup> which provides four scenarios and uses two timeframes for employment (as well as factoring in direct, indirect and induced job creation) in the power sector in the course of the energy transition. The scenarios all confirm net employment gains, but these vary across scenarios, with one estimate (IRPP 2018) being a net gain of 150 000 jobs in the power sector by 2050 (with 1.6 million jobs being created in the economy as a whole). While there will be a lag in new job creation the modelling suggests that the gain in jobs will rise quite steadily over the period to 2050. What is particularly useful in the study is that new jobs in the renewable energy sector are disaggregated by duration, i.e. jobs in manufacturing, development, and construction and installation will be short-term (on average between 1.5 to 3 years), whereas jobs in operations and maintenance will be long-term (on average 25 years). Further, new jobs are disaggregated by skill, with 70% of the jobs that will be created in the renewable energy sector being high skilled.<sup>59</sup>

Detailed planning from a labour market perspective is required for a just transition, which must be informed by relevant and accurate data (eg. workplace and sector audits on jobs impacted, skills audits etc.) and must obviously precede job losses. 'Job transitions' need to be integrated in the implementation of a Just Transition, and in the considerations for implementation set out in the JET Imp. Plan, which are consistent across the JET IP objectives<sup>60</sup> –

- **Social participation**, which is required 'to ensure that transition plans are co-created with the intended beneficiaries' and to ensure a broad-based distribution of the intended outcomes.
- **Social protection**, which must be designed for those affected by the transition to ensure adequate social protection for impacted workers and communities to facilitate the transition to new economic activities.
- **Capacitating municipalities** to provide the levels of resource support that is required for a Just Transition.<sup>61</sup>
  - **Enabling infrastructure (road, rail, and water)** to augment the JEP IP objectives for Mpumalanga.
- **Skills development** that responds to the impact on lives and livelihoods in the shift away from coal.

The Jet Imp. Plan adopts the Theory of Change approach (see table 4.) to national planning, and the following are elements in the interim Theory of Change, developed with the Mpumalanga provincial government, and drawing on the provincial plan for JET implementation in Mpumalanga, with the wider impact envisaged being a 'transition to a low-carbon economy and a just, climate-resilient society by mid-century'.<sup>62</sup>

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<sup>57</sup> It is not known if the impact of CBAMs is factored into the other modelling that has been done in the research we discuss here. Furthermore, a timeframe is not provided for the jobs at risk due to CBAMs but one can presume that the impact would be felt before 2030. See PCC, [Carbon Border Adjustment Mechanisms and implications for South Africa](#) (2023).

<sup>58</sup> IASS/CSIR, [Future skills and job creation through renewable energy in South Africa](#) (2019). The four scenarios are the CSIR Least Cost planning scenario, the DEA Rapid Decarbonisation scenario, the IRP 2016, and the IRPP Adjusted scenario 2018; and the timeframes are to 2030 and to 2050. See also C Oliver, [Conservation Conversations: Navigating the climate transition](#) (2024).

<sup>59</sup> Ibid p. 15.

<sup>60</sup> JET-Inv. Plan, p. 100.

<sup>61</sup> An interesting development in this regard is the recent issuing of a [New Standard by the Board of the South African Bureau of Standards](#) on *Adaptation to climate change – Requirements on adaptation planning for local governments and communities*. The standard 'supports local government and communities in adapting to climate change based on vulnerability, impacts and risk assessments.'

<sup>62</sup> JET-Inv. Plan, p. 102-103.

**Table 4. JET Implementation Plan Theory of Change**

Outputs	Short-term outcomes (changes in system & capacity)	Medium-term outcomes (changes in behaviour & performance)	JET IP Impact
Key co-ordination structures established.	Stakeholders involved & supporting activities.	Sustainable agriculture and tourism thriving.	Jobs created in the renewable energy sector, tourism, agri, industrialisation, etc.
Regular meetings and structures established for involving key stakeholders.	Economic diversification plan ... and pipeline of projects and programmes being implements.	New industrial opportunities created, eg. batteries, cables.	Reliable, affordable electricity supply GHG emissions reduced.
Strategic training interventions with SETAs, TVETs, universities, and partners.	Projects implemented to widen affordability of electricity.	Skills enhanced to support economic opportunities and providing social services.	Sustainable livelihoods and strengthened support for SMMEs/communities at risk from climate change.
	Advance planning for decommissioning, repurposing and repowering.	Economic and social interventions in at-risk communities, creating jobs & supporting livelihoods.	
	Plans for financial viability for municipalities.	Municipalities financially stable; infrastructure maintained.	

Although the JT planning takes place within the spheres of national, provincial, and local government, the implications for the labour market are significant, and in this regard, labour market regulation, in the broader sense, provides numerous tools, mechanisms, and measures that support employment and decent work, while navigating a transition in which new jobs will be created, while others will be eliminated, or transformed and substituted.<sup>63</sup> Effective labour law and labour regulation mechanisms will be crucial for managing the transition successfully.

### 3. A RANGE OF REGULATORY INTERVENTIONS: FROM LABOUR LAW TO SOCIAL PLANS

#### 3.1 Labour regulation and the phases of a just energy transition

A Just Transition is concerned with climate resilience and the impact of shifting to a low-carbon economy on **workers, communities, and vulnerable groups**, and as such extends beyond the scope of labour law and labour market regulation. **Labour law** has a narrower focus on regulating **basic conditions of employment, occupational health and safety**, and the rights, obligations, and employment relations between employers and *employees* within the workplace, which includes providing enabling mechanisms and establishing labour market institutions. This core function is an aspect of the broader scope of labour market regulation which encompasses a range of measures (beyond the employment relationship), including measures aimed at managing transitions that could threaten stability in the labour market. This includes **active labour market policies (ALMPs)**,<sup>64</sup> which comprise the broader framework for **skills development** and **employment services**.

<sup>63</sup> UNFCCC [Just Transition of the Workforce, and the Creation of Decent Work and Quality Jobs](#) 2020, p 16.

<sup>64</sup> ALMPs, distinct from labour law, encompass a range of government interventions and initiatives aimed at improving employment outcomes by directly influencing the functioning of the labour market. ALMPs are concerned with unemployment, labour market 'supply and demand' mismatches, and barriers to employment, through implementing measures such as job training, job search assistance, employment subsidies, public employment services. For more

These include key tools for reducing unemployment and to assist jobseekers, and in times of crisis (or in the planning phases and implementation of a Just Transition) ALMP interventions may play a key role in instruments such as **social (or social and labour) plans** and could involve extensive employment creation linked to the objectives and implementation of **industrial policies**.

The phases of a Just Transition will not necessarily be linear and may differ depending on the industry or sector and the dynamics concerned.<sup>65</sup> Our focus, in this paper, is on the narrower labour market transitions involved in the shift from **coal-based energy**, in particular the impact on **employment in the coal mining and electrical utility industries** in the context of the phasing out of coal-based power stations in Mpumalanga, noting that the transition to a low-carbon energy system will impact existing and future<sup>66</sup> employment, and broader labour market dynamics, in the region. Workers, whether directly or indirectly employed in the sector will be impacted and could potentially experience job losses (large-scale retrenchments) and displacement,<sup>67</sup> while new opportunities may emerge in related or alternative sectors, including jobs elsewhere in the mining sector and in the renewable energy and green technologies value chains.<sup>68</sup>

In terms of its impact on the labour market, the process within a just transition broadly involves three overlapping stages or phases (see figure 1 below) during the shift from jobs in the coal-based energy sector to alternative employment,<sup>69</sup> including new jobs in the renewable energy sector. The two book-end phases are the loss of jobs (and incomes) in the coal-based energy sector and, at the other end, the employment of such retrenched workers in equivalent (income, skills, status, and career path) jobs, including employment in the renewable energy sector or other jobs (which will likely entail geographical relocation).<sup>70</sup> The middle – interconnecting stage – is the transitional phase in which workers are assisted and prepared for the renewable energy sector jobs (or other jobs). If such an energy transition is to be *just*, the duration of the transitional phase should be as short as possible, the impact on earnings and career paths should be minimised, and affected communities (those which workers have left, and those to which workers go) must be supported, and the process must be negotiated with workers and unions.

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context on the scope of ALMPs (which can be categorised as *passive* (income replacement) and *active* (skills development and job-matching)), specifically in the context of the Just Transition, see ILO Policy Brief, [‘The role of active labour market policies for a just transition’](#) (2023).

<sup>65</sup> Sectors of the economy will obviously be impacted differently. In this regard, the JET-Imp. Plan (and the Renewable Energy Masterplan) provide additional context in terms of the impact of the JT on employment (ie. how many jobs are likely to be lost / transformed / created in the narrowly-conceived transition process).

<sup>66</sup> See discussion above.

<sup>67</sup> As indicated in Part A, the DPRU study estimates that approximately 106 887 direct and indirect jobs will be impacted, for which the DPRU creates four categories according to retirement age and occupation-education level (see above).

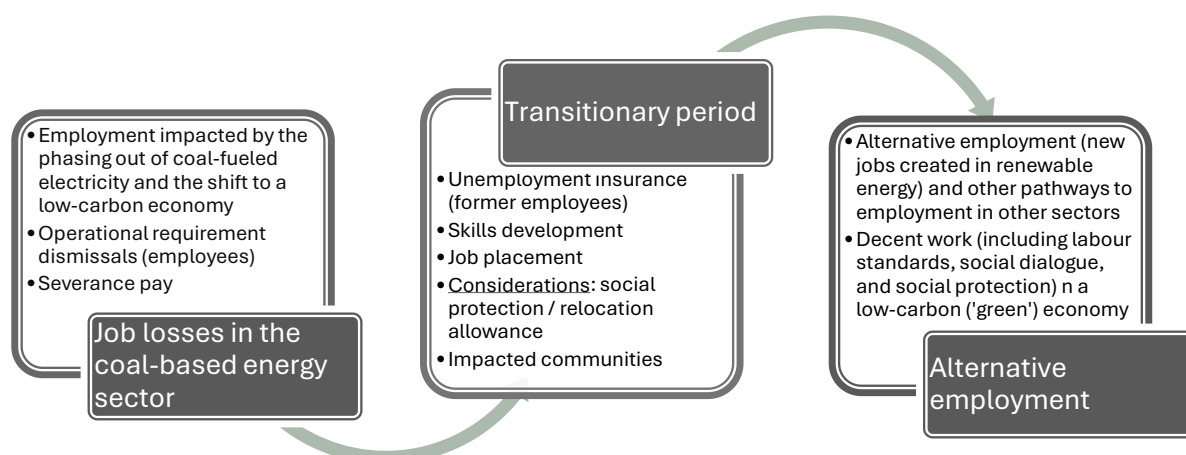
<sup>68</sup> Coordinating a Just Transition will require extensive planning to map out the alternative pathways available to workers in impacted sectors, including, for example, reskilling and redeployment, options for (early) retirement, employment in alternative sectors, or in new jobs created in renewable energy.

<sup>69</sup> Jobs in the coal sector could be extended for a period of time after coal mines are closed, for example by utilising mine rehabilitation funds, and embarking on processes for repairing and restoring land and landscapes.

<sup>70</sup> Noting that alternative pathways will be explored in the planning phase, and could include early retirement, relocation into other mining jobs, or other sectors, and retraining and employment in RE.



**Figure 1. Overlapping phases of the labour market transition from coal-based energy**



**Labour law** plays a more direct role in the first phase of the transition, i.e. when the loss of jobs is contemplated and in the process of managing subsequent retrenchments (regulated by provisions in the **LRA**, **BCEA** and **UIF**). Its reach weakens as one moves from protecting existing jobs and after retrenchment, to the transition phase where **ALMPs** and related **plans** and **programmes** become important. However, **collective bargaining**, which is enabled and promoted by the **LRA**, has potential to extend the reach of labour law to the later stages of a Just Transition, but this will depend on whether trade unions are well organised in, amongst others, the renewable energy sector.<sup>71</sup> The protective provisions and enabling mechanisms of labour regulation are complemented by the active labour market regulation in the form of the **SDA** and the **ESA**. The **SDA** (no longer strictly labour regulation under the DoEL but providing a role for organised labour), will play a critical role in the process of the transition, and provides for training/retraining and, with **ESA**, job placement to assist workers transition from redundant fossil fuel-based energy jobs to renewable energy jobs. Part C below provides a more comprehensive overview of the relevant provisions in Labour Law and labour regulation.

### **3.2 In times of crisis: Government interventions that extend the reach of labour regulation**

In the three decades since apartheid, active labour market policies and programmes that complement and go beyond legislated labour rights have been introduced to manage large-scale job loss and provide pathways to re-employment. At the national level, these programmes include the **Social Plan (from 1998)**, the **Training Lay-off Scheme (from 2009)**, which was subsequently amended and renamed the **Temporary Employer-Employee Relief Scheme (TERS)** in 2018/19, and the **Covid-19 TERS** (which seems at some point to have been folded into the existing TERS). Relevant aspects of these are considered in Part D below. In Part D, we also examine, at a sectoral level, the Social and Labour Plans required in the mining and minerals sector (from 2002).

Labour legislation is the foundation for these programmes, but their reach is more expansive (drawing in mechanisms from other legislation and policies as necessary) and require differing levels of **co-operative governance**,<sup>72</sup> as the programmes foreground services and activities of statutory agencies, departmental entities, and government officials across a range of departments to address large-scale job loss crises. These programmes will be important to achieve a Just Transition, whereas the narrower forms of labour regulation

<sup>71</sup> A critical question that needs to be addressed by a Just Transition is union organisation of workers in the renewable energy sector. Union participation in the energy transition will be undermined if they cannot organise and represent members in the latter sector as they progressively lose members in the fossil fuel-based energy sector.

<sup>72</sup> See s. 41 of the Constitution for **Principles of co-operative government and intergovernmental relations**.

play a more direct role in the earlier stages of the transition, with the possibility of collective bargaining extending beyond the first phase and supplementing social plans.

The programmes mentioned above evolved over time and, in an iterative process, have influenced the development of labour law (for example the inclusion of s. 189A of the LRA in 2002), while aspects have become embedded as dedicated services within institutions (such as the [Business Turnaround and Recovery](#) programme within Productivity SA). These developments reflect successes and refinements in the programmes, although inadvertently may have impacted the coherence of the programmes as a holistic response supporting a labour market transition,<sup>73</sup> which are considerations in the design of regulatory instruments to support a Just Transition.

### 3.3 Conceptual overview of the role of labour regulation in the Just Transition

South Africa has for decades battled an intractable crisis of unemployment, coupled with high levels of inequality and poverty. Shocks to the economy that cause job loss pose a serious threat to the economy and stability of the country, and the urgent need for measures to address historical unemployment has been on the agenda since the Presidential Jobs Summit in 1998.

In addition, sector-specific challenges such as the employment and socio-economic challenges faced in the **mining sector**,<sup>74</sup> have called for similar, more targeted, steps by government and interventions negotiated with the social partners, which have resulted in the development of instruments that supplement existing labour regulation, incorporating relevant provisions and building on these to develop a coherent programme framework that encompassed aspects of labour law and labour regulation including skills development and employment services.

These earlier programmes lay the foundation for the labour market aspects of the transition to a low carbon economy and should be developed with adaptations targeting the specific challenges of an energy transition, while recognising that a *Just Transition* has a wider policy scope. Ideally, the energy transition should reflect a certain symmetry: in which jobs lost in the established fossil fuel-based energy sector (and other declining / impacted sectors) are counter-balanced by access to alternative employment and the creation of new jobs in a growing renewable energy sector. In addition to managing the labour market impact, if the transition is to be *just*, no one is to be ‘left behind’, and the transition would need to include interventions to achieve the broader objectives of ‘a quality life for all ... decent work ... social inclusion, and the eradication of poverty.’<sup>75</sup>

Parts 4 and 5 below elaborate on the provisions of labour law and the instruments of labour market regulation that are applicable across the phases of the Just Transition.

## 4. LABOUR LAW AND REGULATION IN THE EARLY STAGES OF A JUST TRANSITION

Labour regulation, in its narrower sense, provides three mechanisms relevant for the initial and transitional phases of a Just Transition. The first are the **protective and compensatory mechanisms of labour law** (in the **LRA**, **BCEA**, and **UIA**) that impose **employer obligations** in relation to matters of mutual interest, including business restructuring and retrenchments. The second set of mechanisms are enabling; and create avenues for **social dialogue and collective bargaining** in which employers and workers can fashion nuanced responses through consensus-seeking engagements (provisions of the **LRA** and **collective agreements**). Third, are the **active labour market mechanisms** (provisions in the **SDA**, the **SETA** institutions, and the **ESA**) that facilitate **skills development** and **job placement**.

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<sup>73</sup> There are also instances where links between legislation and the programmes might have been better, e.g. the creation of Future Forums in the Social Plan without any reference to workplace forums enabled by the LRA (although there might be sound reasons for this apparent substitution).

<sup>74</sup> See the Social and Labour Plan Guidelines for the Mining and Production Industries. In the context of the energy transition and [stabilising the mining sector](#) amidst the various challenges, see NBI, [Decarbonising the South African Mining Sector](#).

<sup>75</sup> The JET-IP definition of Just Transition.

## 4.1 Labour Law's protective & compensatory mechanisms

### 4.1.1 Employers' obligation to consult

Before, and at the time that retrenchments are contemplated, a range of labour law protections apply. In the world of work, employers are restricted from implementing **unilateral changes to terms and conditions**; and issues that affect employees and the employment relationship, including business restructuring, are a **matter of mutual interest**, and are intended to be resolved through **consultation** and **collective bargaining**. In this regard, examples of **matters of mutual interest**<sup>76</sup> and **matters for consultation**<sup>77</sup> in the workplace (consultations in the context of retrenchments are discussed further below) that are relevant to a Just Transition include the matters for consultation indicated in Part C of the Collective Bargaining Code, namely -

- Changes to job responsibilities, and the introduction of new (green) technologies or automation in the workplace, that might impact employees' responsibilities, workflow or job security; and training and support related to new technologies / business restructuring;
- A shift in work location, or relocation of a workplace, or requiring employees to work remotely; and
- Changes to policies or procedures, and changes to working conditions, including –
  - health and safety
  - opportunities for career advancement
  - skills development and training.

In addition, the LRA lists specific **matters for consultation** (see below) in the context of a **workplace forum** (workplace forums are established in terms of Chapter V, LRA). In the absence of a statutory workplace forum, these matters could be included on the agenda of similar participatory decision-making structures that could be established by way of collective agreement (including a **bargaining council agreement**). Forums for consultation are important mechanisms for workplace democracy and dialogue in the workplace,<sup>78</sup> and may take shape based on statutory imperatives, such as the consultation requirements in Chapter III of the EEA, elaborated in the EE Plan Code of Good Practice,<sup>79</sup> which envisages the establishment of a consultative forum (see 6.1.2.5 of the EE Plan Code) 'or using an existing forum to consult ... on employment equity matters', or in the context of the SDA, a skills development forum may have been established for the purposes of skills development and developing a workplace skills plan. In some firms, EE and skill development consultations take place in a combined forum. Building on the existing statutory framework, a requirement for a forum (existing or new) for consultation on matters relating to the just transition, including skills development i could be considered (if an existing forum is place, then the requirement would be to explicitly include JT considerations on the agenda).<sup>80</sup> (In this regard, see also [Annexure A. Model Agreements for a Just Transition](#)

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<sup>76</sup> Although the scope of 'matters of mutual interest' is broad, the term is generally understood in the context of collective bargaining; and a 'dispute of mutual interest' is defined, in the Code of Good Practice: Collective Bargaining, industrial action and picketing (2018) (the 'Collective Bargaining Code') as 'a dispute concerning employment or labour relations that cannot be resolved through enforcing existing rights. It can be described as a dispute to create new rights. A dispute of mutual interest is the legitimate scope of a collective bargaining agreement and the matters which may legitimately form the subject of a protected strike or lockout.' (Paragraph 17 (1)(b).)

<sup>77</sup> Collective Bargaining Code, Part C.

<sup>78</sup> The benefits of **workplace forums** compared to other participatory decision-making structures is that they are rooted in the LRA which provides them with a framework of rights.

<sup>79</sup> Code of Good Practice on the Preparation, Implementation and Monitoring of the Employment Equity Plan, 2017, issued by the Minister of Labour in terms of s. 54(2) of the EEA.

<sup>80</sup> In general, it appears that skills planning for restructuring / energy transition has been inadequate. For example, although skills development is a focus area for Eskom (including in the context of the JET) (see Sustainability Report, 2023), it is not clear which of Eskom's Consultative Forums is responsible for consulting and developing appropriate skills programmes, and it is evident from the decommissioning of [Komati power station](#) that skills planning was inadequate to deliver on a just transition. Eskom's employee engagement programme and related training appear to

for elements that may be relevant for a workplace-based forum). The table below indicated the matters included on the agenda of a workplace forum (LRA s. 84 **specific matters for consultation**).

**Table 5. Specific matters for consultation at a workplace forum**

<b>EXTRACT FROM s. 84 LRA - SPECIFIC MATTERS FOR CONSULTATION ...</b>	
(a)	restructuring the <i>workplace</i> , including the introduction of new technology and new work methods;
(b)	changes in the organisation of work;
(c)	partial or total plant closures;
(d)	mergers and transfers of ownership in so far as they have an impact on the <i>employees</i> ;
(e)	the <i>dismissal</i> of <i>employees</i> for reasons based on <i>operational requirements</i> ;
(f)	exemptions from any <i>collective agreement</i> or any law;
(g)	job grading;
(h)	criteria for merit increases or the payment of discretionary bonuses
(i)	education and training;
(j)	product development plans; and
(k)	export promotion.
(2)	A <i>bargaining council</i> may confer on a <i>workplace forum</i> the right to be consulted about additional matters in <i>workplaces</i> that fall within the <i>registered scope</i> of the <i>bargaining council</i> .
(3)	A representative <i>trade union</i> and an employer may conclude a <i>collective agreement</i> conferring on the <i>workplace forum</i> the right to be consulted about any additional matters in that <i>workplace</i> .
(4)	Any other law may confer on a <i>workplace forum</i> the right to be consulted about any additional matters.
(5)	Subject to any applicable occupational health and safety legislation, a representative <i>trade union</i> and an employer may agree—
(a)	that the employer must consult with the workplace forum with a view to initiating, developing, promoting, monitoring and reviewing measures to ensure health and safety at work;
(b)	that a meeting between the workplace forum and the employer constitutes a meeting of a health and safety committee required to be established in the workplace by that legislation; and
(c)	that one or more members of the workplace forum are health and safety representatives for the purposes of that legislation.

#### 4.1.2 Retrenchments and income support

As soon as job losses (**retrenchments**) are contemplated, the **LRA** framework for **operational requirements dismissals**<sup>81</sup> comes into play. Dismissals for operational requirements (related to the ‘economic, technological, structural or similar needs of the employer’)<sup>82</sup> will occur as a result of downsizing (eg. as mining companies experience a decrease in the demand for coal) or restructuring as part of transition to a renewable energy system (eg. coal-fuelled power plants are larger and more labour intensive than renewable energy systems).

emphasis executive / leadership skills, retaining ‘top talent’, middle and senior, and management level skills. Going forward it is likely that skills development planning will take account of the lessons from Komati, however this is an area for further exploration, and consideration should be given to the need for development of an appropriate regulatory response.

<sup>81</sup> See **LRA ss. 189 and 189A**; the **Code of good practice on dismissal based on operational requirements, 1999** (Retrenchment Dismissals Code), and the **Facilitation Regulations, 2003**.

<sup>82</sup> Retrenchment Dismissals Code, paragraph 1.

If retrenchments are contemplated, the LRA require extensive engagement by employers with workers and trade unions at an early stage to reach consensus on appropriate measures to avoid retrenchments, to minimise the number of retrenchments, to delay the dismissals, and mitigate the adverse effects on the relevant workers. Specifically, **LRA s. 189(2)** requires a **meaningful joint consensus-seeking process and attempt to reach consensus on appropriate measures** –

- i) to avoid the dismissals;
- ii) to minimise the number of dismissals;
- iii) to change the timing of the dismissals; and
- iv) to mitigate the adverse effects of the dismissals;=.

In addition, consensus must be reached on **the method for selecting employees to be dismissed**; and **severance pay** for dismissed employees.

Importantly, the concept of **consultation** differs from the collective bargaining idea of ‘**negotiations**’, and the orientation of consultations should be open-minded and directed at ‘**joint problem-solving**’. Consultation in the context of retrenchments envisages the adequate disclosure of information (LRA s. 189(3)), including –

- a) the reasons for the proposed dismissals;
- b) the alternatives that the employer considered before proposing the dismissals, and the reasons for rejecting each of those alternatives;
- c) the number of employees likely to be affected and the job categories in which they are employed;
- d) the proposed method for selecting which employees to dismiss;
- e) the time when, or the period during which, the dismissals are likely to take effect;
- f) the severance pay proposed;
- g) any assistance that the employer proposes to offer to the employees likely to be dismissed;
- h) the possibility of the future re-employment of the employees who are dismissed;
- i) the number of employees employed by the employer; and
- j) the number of employees that the employer has dismissed for reasons based on its operational requirements in the preceding 12 months.

If the proposed dismissals make up a significant proportion of the workforce the employer (or employees/their representatives) may apply (it is not compulsory) to the CCMA for the appointment of a **CCMA facilitator** to assist the parties in the consultations. The facilitation process was added in the 2002 amendment that introduced **s. 189A**,<sup>83</sup> signalling recognition by the legislature of “the devastating systemic impact of large-scale retrenchments”,<sup>84</sup> and thus “sequestering off large-scale retrenchments for special treatment”.<sup>85</sup> Experienced facilitators must be satisfied that the proposed dismissals are related to an operational requirement, and will conduct up to four meetings (may be increased) with a view to reaching agreement on the matters for consultation. Section 189A ss (5) and (6) makes provision for Facilitation regulations, which could be revisited with a view to directing aspects of the facilitation in the context of a retrenchment linked to the energy transition.

The emphasis in the LRA on **joint problem-solving and exploring alternatives** provides scope for retrenchment consultations to be conceptualised in the broader sense of a Just Transition, rather than a narrow focus on ‘workplace’ based alternatives to dismissal, and in that sense the provisions are not inconsistent with the principles of a Just Transition; and the **requirement for disclosure of specific information** related to the proposed dismissals ensures transparency and empower employees and trade unions to participate effectively

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<sup>83</sup> On the use of facilitators in collective bargaining and negotiations more broadly, see Paragraph 10 of the Collective Bargaining Code.

<sup>84</sup> R le Roux *Retrenchment Law in South Africa* (2015) at 171 (citing Cameron J).

<sup>85</sup> Cameron J in *Steenkamp and other v Edcon Limited* [2016] ZACC 1, cited in Le Roux *Retrenchment Law* 171-172.

in the consultation process. Moreover, the provisions in **LRA s. 189A** for the appointment of a **CCMA Facilitator** where contemplated dismissals constitute a significant number of employees suggests a recognition of the complexities involved in retrenchment consultations. Facilitation can help streamline the process, improve communication, and potentially resolve disputes more effectively, which could contribute to a more equitable labour market transition.

However, the retrenchment law provisions in South Africa are not explicitly aligned with the principles and goals of a Just Transition, which could present challenges in transitioning to a low-carbon economy, particularly where there is resistance to the phasing out of fossil-fuel activities.<sup>86</sup> To build support for a transition, ‘the state should take greater leadership; a plan for a transition needs to be developed between employers, employees, and the government; and justice for those affected by transition is important.’<sup>87</sup> Among other interventions, **revision of the OR Code** could be considered; or alternatively the introduction of a new **Just Transition Code** (or new provisions in existing instruments – and not only at retrenchment stage (**the OR Code**), but also in the context of collective bargaining (**the CB Code**)), with a view to introducing provisions that are comprehensive in terms of seeking to integrate the principles of a Just Transition within the scope of labour market regulation.<sup>88</sup>

Matters to be considered in retrenchment consultations include **severance pay** to be provided to retrenched workers, as well as access to **income support** (and a **relocation allowance** if necessary) after retrenchment, to enable workers to transition to alternative employment, including new jobs in the renewable energy sector.

The minimum **severance pay**, i.e. if no collective agreement regulates severance pay, or if the parties cannot reach agreement, will be determined by **section 41 of the BCEA**, which provides that the employer must pay the retrenched employee one week’s wages for each completed year of service. However, the section privileges **redeployment** or **re-employment** over redundancy (and severance pay): and if the employer can find (acceptable) alternative employment / redeployment within its organisation,<sup>89</sup> or can arrange (acceptable) alternative employment at any other employer, it is not required to pay severance pay (i.e. severance pay is a second-best solution). If there is no acceptable alternative employment, the employer pays severance pay, and the employee becomes entitled to claim **unemployment benefits** in terms of the **UIA**.<sup>90</sup>

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<sup>86</sup> The resistance is typically out of concern for social and economic wellbeing of workers, communities, and fossil-fuel industries. See for example [NUMs pro-coal stance](#); and for analysis in the Norwegian context, see and Normann, Håkon E., and Silje M. Tellmann. ‘Trade unions’ interpretation of a Just Transition in a fossil fuel economy’ *Environmental Innovation and Societal Transitions* 40 (2021): 421-434.

<sup>87</sup> Normann et al (note 86) p. 429.

<sup>88</sup> Provisions in a Code could consider both the workplace as well as sector collective bargaining dynamics. In this regard, Industrial’s [A trade union guide of practice for a Just Transition](#) (2022) provides guidance and in the Appendix sets out a short general framework, and a specific collective agreement (from Australia’s Electrical Trades Union) as well as a detailed framework, which provides for a shared commitment and a co-operative approach regarding risks to the business and to job security, and sets out minimum consultative provisions for agreement on, among other matters, a lengthy notice period (‘of at least 5 years of future intention to close or substantially change technologies’) and to ‘provide lead time to building replacement processes, and associated obligations, in relation to the impacts of energy transitions.’ The framework makes provision for: **Establishment of a Transition Working Group; Internal Employment Transitions; External Employment Transitions; Support for Impacted Employees; and Support for Impacted Communities**. See [Annexure A. Model Agreements for a Just Transition](#).

<sup>89</sup> For example, mining companies like [Seriti](#) and [Exxaro](#) are investing in and developing renewable energy projects, and are ‘upskilling and training their employees, suppliers and communities.’ Other schemes for job matching and upskilling could be considered where job losses are anticipated (eg. Eskom), for example, within the framework of the ESA, an employment scheme could be considered to facilitate matching. Eskom workers where retrenchments are contemplated, with jobs being created in the renewable energy sector or employment opportunities in mining and other sectors.

<sup>90</sup> See **UIA ss 15 to 18**.

UIA unemployment insurance provides **short term income support**<sup>91</sup> to former employees (**contributors**) who have been retrenched, provided that the claimant is registered as a work-seeker with a labour centre and is willing available to work (**UIA s. 16**) **Partial unemployment insurance**, if for example working time is reduced in any sector, may also become payable.<sup>92</sup> However unemployment compensation is limited, and arguments have been advanced for a more expansive approach, including extending coverage to those who leave their employment to pursue further education or training, or to become self-employed, or for compelling reasons relating to their families.<sup>93</sup> The extent to which workers have **access to income support** for a Just Transition will need to be expanded (including relocation expenses) and forms part of the broader enquiry regarding the **design of social protection** raised in the JET-Imp Plan (in relation to impacted workers and communities).<sup>94</sup> These are matters within the scope of the **Unemployment Insurance Board (UIB)**, which is tasked, inter alia (**UIA, s. 48**), with (a) advising the Minister on –

- (i) unemployment insurance policy;
- (ii) policies arising out of the application of this Act;
- (iii) policies for minimising unemployment; and
- (iv) the creation of schemes to alleviate the effects of unemployment;

(b) make recommendations to the Minister on changes to legislation in so far as it impacts on policy on unemployment or policy on unemployment insurance.

In exercising its powers and duties, the **UIB** is required to take into account any directions issued by the Minister; and any guidelines determined by the D-G.

Facilitating access to income support has also been an important consideration in the plans and programmes (discussed in Part D below) that provide an integrated approach in times of economic crisis and when retrenchments are anticipated. For example the **1998 Social Plan** (discussed below) envisaged a ‘one-stop shop’ combining measures to prevent retrenchments, with measures to manage retrenchments ‘humanely’ if dismissals were unavoidable, including access to UIF benefits, and provision of a range of employment services (aspects of which have subsequently been codified in the ESA in 2014).

#### 4.1 Collective bargaining and related mechanisms

In addition to workplace collective bargaining and the provisions in the LRA for trade union involvement in the retrenchment process, the LRA’s framework for the promotion of collective bargaining includes enabling provisions for sectoral collective bargaining – i.e. bargaining councils - which provides for an institution with the potential for more extensive (ie. beyond the workplace) interventions regarding the design and

<sup>91</sup> A contributor’s entitlement to benefits ‘accrues at a rate of one day’s benefit for every completed four days of employment as a contributor subject to a maximum accrual of 365 days benefit in the four-year period immediately preceding the day after the date of ending of the period of employment’. (**s. 13(3)(a)**). Unemployment benefits must be paid to the contributor, if the contributor has credits, regardless of any other benefits received within the four-year cycle. (**s. 13(3)(b)**).

<sup>92</sup> **UIA, s. 12 (1B)**.

<sup>93</sup> Such as the arguments advanced in Dupper, Ockert, Marius Olivier, and Avinash Govindjee. ‘Extending coverage of the unemployment insurance-system in South Africa’ *IMIESA* 36.1 (2011): 438-462 Olivier, Marius, Ockert Dupper, and Avinash Govindjee ‘Redesigning the South African Unemployment Insurance Fund: selected key policy and legal perspectives’ *Stellenbosch Law Review* 22.2 (2011): 396-425; Olivier, Marius P., and Avinash Govindjee ‘A critique of the Unemployment Insurance Amendment Bill, 2015’ *Potchefstroom Electronic Law Journal* 18.7 (2015): 2739-2776. and see Govindjee, Avinash ‘Social protection and vulnerable workers in South Africa’ *Social Security Outside the Realm of the Employment Contract* 3 (2019): 120.

<sup>94</sup> In addition to statutory social protection schemes, see [Annexure A. A Detailed Framework for a Just Transition](#).



implementation of a Just Transition,<sup>95</sup> and to manage the impact of the Just Transition on the labour market. The functions of a bargaining council, in relation to its registered scope<sup>96</sup> are set out in the table below.

**Table 6. The functions of a bargaining council**

(a)	to conclude collective agreements;
(b)	to enforce those collective agreements;
(c)	to prevent and resolve labour disputes;
(d)	to perform ... dispute resolution functions ...;
(e)	to establish and administer a fund to be used for resolving disputes;
(f)	<u>to promote and establish training and education schemes;</u>
(g)	<u>to establish and administer pension, provident, medical aid, sick pay, holiday, unemployment and training schemes or funds or any similar schemes or funds for the benefit of one or more of the parties to the bargaining council or their members;</u>
(h)	<u>to develop proposals for submission to NEDLAC or any other appropriate forum on policy and legislation that may affect the sector and area;</u>
(i)	to determine by collective agreement the matters which may not be an issue in dispute for the purposes of a strike or a lock-out at the workplace;
(j)	<u>to confer on workplace forums additional matters for consultation;</u>
(k)	<u>to provide industrial support services within the sector; and</u>
(l)	to extend the services and functions of the bargaining council to workers in the informal sector and home workers.

**Sectoral bargaining** provides scope for trade unions to be involved in **job creation** in the **renewable energy sector**, as trade unions can make demands at workplace and sectoral levels that could contribute to more proactive and seamless management of the transition of jobs to the renewable energy sector. Moreover, at the **workplace level**, the LRA provides for the establishment of **workplace forums** for engagement between trade unions and employers' senior management (see discussion above).

The scale of the energy transition will require **intra and inter-sectoral coordination**, with implementation and finer details worked out in **enterprise-level collective bargaining**. **Bargaining councils** could therefore have an important role to play. Currently there is no overarching bargaining council for the energy/electricity sector, neither the coal-based energy sector (which is relatively well organised by trade unions) nor the renewable energy sector (and we would speculate that union organisation is low in this sector, with limited collective bargaining). However, in the coal-based energy sector, **Eskom's Central Bargaining Forum (CBF)** provides, to some extent, a quasi-sectoral bargaining structure,<sup>97</sup> in relation to Eskom's coal power stations. Furthermore, although Eskom's CBF does not extend to the coal mining sector, centralised bargaining arrangements are in place between the coal mining employer members of the **Minerals Council of South Africa (MCSA)** (formerly the Chamber of Mines of South Africa) and NUM, UASA and Solidarity. The MCSA Framework Agreement/Protocol to Govern the Coal Wage Negotiations<sup>98</sup> makes provision for a Central Bargaining Forum

<sup>95</sup> See **LRA ss 23 to 32A**.

<sup>96</sup> A bargaining council is established for a **sector and area**, and the applicant (one or more trade unions and one or more employers' organisation) must be **sufficiently representative** in the sector and area. The registrar will forward the application and any objections, relevant information, to NELAC to consider the appropriateness, and to demarcate the sector and area in respect of which the bargaining council should be registered. (**LRA s. 29**).

<sup>97</sup> Besides management, the Eskom Central Bargaining Forum comprises the National Union of Mineworkers (NUM), the National Union of Metalworkers of South Africa (NUMSA), and Solidarity.

<sup>98</sup> However, note that the arrangements appear to have been abandoned (see <https://chro.co.za/articles/coal-sector-abandons-centralised-bargaining-process-for-wage-negotiations/>).



and the MCSA Wage Agreements apply to the member companies and all union members and other employees employed by these companies. While the MCSA facilitates bargaining for its members, the number of non-member coal mines and how many are engaging in enterprise level or mine level collective bargaining with recognised unions is not known.

The coal mining sector is well-organised (high levels of union density), and many workers are likely to be covered by the centralised bargaining arrangement with the MCSA. Given the symbiotic relationship between the coal mining sector and the coal-based energy sector, consideration should be given as to whether it might be beneficial and feasible to establish an **energy sector bargaining council** to coordinate the transition from coal to the emerging renewable energy sector.<sup>99</sup> However, bargaining councils cannot be set up by ministerial fiat – in terms of the LRA they are established **voluntarily** and must meet representativity thresholds to be registered and to have collective agreements extended. It is therefore not a foregone conclusion that one would be established for the energy sector, as it depends on employers and unions in the sector and their levels of representativity. Arguably, the LRA's provisions for a **statutory council**, which set a lower representativity threshold and allows the DoEL registrar to play a more active role in facilitating the establishment of a statutory council, could be a more feasible option in the short-term and may provide a stepping stone towards an energy sector bargaining council. However, the legislative framework for statutory councils has proved unwieldy and few statutory councils have been established, and the legislative framework provides statutory councils with a very limited range of functions.<sup>100</sup>

The absence of a bargaining council for the energy sector is to some extent mitigated by the presence of numerous sector education and training authorities (**SETAs**) situated in and around the energy sector. The key SETAs in the energy sector are the **Energy & Water SETA** and the **Mining Qualifications Authority** (which covers the coal mining sector), while other SETAs will have an important role to play in the broader Just Transition to a low carbon economy (e.g. the **Agri SETA**, the **Construction SETA**, the **Chemical Industry SETA**, and the **Transport SETA**). It should also be noted that **SDA** authorises the Minister of Higher Education and Training to define sectors for SETAs,<sup>101</sup> so rearrangement of the current SETA demarcation is possible.

SETAs are important for facilitating and financing skills development and training for employees in the energy transition (see below) and the SETA governance structures include representation from the social partners for purposes of **sectoral coordination**.<sup>102</sup> In addition, the **National Skills Authority**<sup>103</sup> includes trade union and community representatives, nominated by NEDLAC. Notably, **Skills** is one of the six Portfolios identified in the JET Imp. Plan, published in November 2023, and it is envisaged that the **JET Skills Portfolio** will form part of the **Master Skills Plan** which is currently being developed by government.<sup>104</sup> One of the flagship interventions envisaged in the JET Imp. Plan is a three-tier JET skills ecosystem in which the DHET is a lead partner (with the

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<sup>99</sup> A bargaining council could also be a useful mechanism for engaging around issues such as coordinated approach to mine rehabilitation and economic diversification.

<sup>100</sup> Although the parties to a statutory council may extend its functions by agreement.

<sup>101</sup> In terms of the SDA, **s.9 Establishment of SETA**, the Minister may (for a period notified in a gazetted notice) establish a SETA with a constitution for any national economic sector, having regard to any relevant [SIC Code](#).

<sup>102</sup> Each SETA is governed by an Accounting Authority (AA). The SDA, **s. 11 Composition of Accounting Authority of SETA**, prescribes that at least six members of the AA must be nominated by organised labour. Further, provision is made for representatives on the AA to be nominated by a **bargaining council** with jurisdiction in the sector and by a **government department that has an interest in the relevant sector**.

<sup>103</sup> SDA, **Chapter 2 National Skills Authority**.

<sup>104</sup> The JET Imp Plan (p. 212) envisages that the **JET Skills Plan** will strengthen existing skills planning processes and 'seeks eventually to be anchored into the mainstream skills system targets, such as occupations in high demand, and the National Skills Masterplan and human resource development (HRD) strategy'. The JET Skills Implementation Plan sets out a **Three-Tier JET Skills Ecosystem** that is envisaged for the development of **skill formation systems** that support the **three core value chains** (new energy vehicles, green hydrogen, and renewable energy and transmission), and it proposes additional interventions 'to address the broader challenges around skills development.' (p. 226.) The plan sets out a number of challenges within the skills sector (p. 215-216) and explores the root causes of these (p. 217).

HRDC); and coordination (and policy coherence) between the JET skills ecosystem and portfolio governance structures within the broader governance framework for skills development will be a priority.

## 4.2 ALMP mechanisms: An ecosystem for skills development & employment services

The third set of labour regulatory mechanisms, enabled by the provisions of the **ESA** and the **SDA/SDLA**, constitute the active labour market mechanisms in the post-1994 suite of labour statutes and have a critical role to play in the energy transition. The SDA and SDLA (together with the **SA Qualification Authority Act**) replaced the apartheid-era training system, creating a new institutional and financial framework for training and skills development. Although the system was introduced and initially administered by the Department of Labour, in 2009 the administration, power and functions of the SDA and SDLA were transferred to the newly created Department of Higher Education and Training,<sup>105</sup> while **Productivity SA** retained responsibility to administer certain employment services functions within the DoEL.<sup>106</sup>

The apex of the training dispensation is the **National Skills Authority (NSA)**, which is tasked with advising the Minister on skills development policy and the formulation of the **National Skills Development Strategy (NSDS)**.<sup>107</sup> The next level of the system is constituted by over 20 sector education and training authorities (**SETA**),<sup>108</sup> which are tasked to develop **sectoral skills plans** within the framework of the **national skills development strategy** and with implementing those plans and establishing learnerships. However, the training itself is conducted by employers and training providers, in accordance with **workplace skills plans**, while SETAs administer the **skills development grants** paid to employers, training providers and workers.

Skills development initiatives are financed primarily from payroll levies introduced by the **SDLA** which are shared between the **National Skills Fund (NSF)**, which receives 20% of the skills development levies, while **SETAs** receive 80% of the levy income.<sup>109</sup> In addition, the SDA makes provision for SETAs to be financed from 'grants, donations and bequests made to it' and 'money received from any other sources.'<sup>110</sup> Similarly, the **National Skills Fund** (established by s. 27 of the SDA) may be credited with 'donations to the Fund, and money received from any other source'.<sup>111</sup> **NSF** funds may be used 'only for the projects identified in the national skills development strategy as national priorities or for such other projects related to the achievement of the purposes of the SDA as the Director-General determines.'<sup>112</sup>

The skills development eco-system is crucial for a Just Transition, and in this regard the JET–Imp. Plan identifies 'challenges within the skills sector that must be overcome for South Africa to deliver on the JET.'<sup>113</sup> The challenges identified in the plan include systemic concerns with the skill formation systems at a national level, the long-term planning cycles for education provision, limitations with current skills anticipation systems, and a disconnect between training institutions and communities.<sup>114</sup>

In the broader context of employment services, the **ESA**, enacted in 2014, supplements the **SDA**, and by amendment to the **SDA**, affirmed its mandate over the **employment services** functions administered by the **DoEL**, and became the new legislative home for **Productivity SA**,<sup>115</sup> whose functions include, inter alia, 'to support initiatives aimed at preventing job loss.'<sup>116</sup> At the same time, the **ESA** expanded the existing

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<sup>105</sup> Presidential Proclamation 56 of 2009.

<sup>106</sup> See Du Toit et al *Labour Relations Law: A comprehensive guide* (2023) at 39-44.

<sup>107</sup> SDA s. 5 **Functions of National Skills Authority** sets out the functions of the NSA, which includes

<sup>108</sup> Initially 25 SETAs were established but over time some were amalgamated. SDA s. 10 **Functions of SETA** set out the functions that a SETA is required to perform.

<sup>109</sup> SDA, s. 14 **Finances of SETA**.

<sup>110</sup> SDA, s. 14 (1)(c) and (f).

<sup>111</sup> SDA, s. 27 **National Skills Fund** ss.(2)(e) and (f).

<sup>112</sup> SDA, s. 28 **Use of money in Fund**.

<sup>113</sup> JET–Imp. Plan, p. 215.

<sup>114</sup> JET–Imp. Plan, p. 215-216.

<sup>115</sup> **ESA, Chapter 5, Productivity South Africa**.

<sup>116</sup> **ESA, s. 32 Functions of Productivity SA**.

employment service functions and established the **Employment Services Board (ESB)**, which advises the Minister on inter alia the development of criteria and guidelines for the implementation of the Act, and on regulations, and 'any other matter related to employment services, on request of the Minister or NEDLAC'.<sup>117</sup> As with the NSA, NEDLAC nominates representatives from organised labour, organised business, and the community constituency to sit on the ESB. In addition, representatives of organised labour and organised business are nominated to the board of Productivity SA.

Objectives of the ESA include (s. 2) improving the employment and re-employment prospects of employees facing retrenchments and to facilitate access to education and training for work seekers, in particular vulnerable work seekers; which are to be achieved, inter alia, by coordinating the activities of public sector agencies whose activities impact on the provision of employment services and establishing schemes and other measures to promote employment<sup>118</sup> and schemes to assist employees in distressed companies to retain employment (*preamble*). ESA mechanisms include the registration of work seekers and employment opportunities in the Employment Services SA database. Other services include providing counselling to work seekers, and to match and place work seekers with employment opportunities. The ESA activities are closely aligned with the SDA skills development ecosystem and its employment services are funded from UIF and Compensation Fund allocations as well as grants and donations made for this purpose to the Department.<sup>119</sup>

The SDA skills system generates its own financing for training, co-ordinated by the SETAs, which are tasked with implementation of **sector skills plans**; and through targeted / strategic training funded by the NSF. This system was central to the expanded schemes made available through the **Social Plan** and the **Training Lay-off Scheme/Temporary Employer – Employee Relief Scheme**, which establishes a precedent and a foundation for the role of the skills ecosystem in a comprehensive plan to achieve a Just Transition. Similarly, the services coordinated under the ESA are important for a Just Transition and have already played a part in the Social Plan and subsequent programmes, which are considered next.

A recent development that has elements of active labour market policies is the [Labour Activation Programme \(LAP\)](#), financed by the UIF, which is intended to skill and up-skill unemployed youth and IUF beneficiaries to gain access to the labour market.

## 5. INTEGRATED REGULATION FOR LABOUR MARKET TRANSITIONS

By 1998, the apartheid labour regulatory system had largely been overhauled and reformed. A suite of new statutes was introduced by the first democratically elected government: the 1995 **LRA**, the 1997 **BCEA**, the 1998 **EEA**, the 1998 **SDA**, the 1999 **SDLA**, and the 1996 **MHSA**; while two statutes - **OHSA** and **COIDA** – were introduced by the apartheid government in its last year. Within a few years the reform process was completed with the new **UIA** (2001) and **UICA** (2002). But the new labour regulatory system was being buffeted by economic pressures, which exacerbated the unemployment crisis in the country. Much of the new system was rights-based and defensive, i.e. protective of workers' rights while in employment, although enabling provisions for collective bargaining gave scope for advancing workers' interests. **Active labour market measures** included the new skills development system and the embryonic employment services emerging within the Department of Labour (as it then was). As described below, these have been supplemented from time to time when the need arises.

### 5.1 The Social Plan – A 1998 intervention in response to the unemployment crisis

In 1998 the first Presidential Jobs Summit took place in the face of a growing unemployment crisis. The Social Plan is a result of the summit. The Plan was designed to proactively facilitate employment retention and re-employment as a way to address the unemployment crisis, and to ensure that retrenchments, where unavoidable, would be 'managed humanely' and workers supported in finding alternative employment. At this

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<sup>117</sup> **ESA s. 22 Functions of Board.**

<sup>118</sup> A '**work scheme**' is defined as 'any programme aimed at assisting people to find or remain in employment or to set themselves up in self-employment'.

<sup>119</sup> ESA s. 12 and in the context of Productivity SA, s. 40.

stage, the new skills dispensation was still being established. The Plan was concerned with large scale job losses at either workplace or sector level (defined as over 500 employees or 10% of an organisation's workforce). The aim was to identify the risk of job losses early, to devise turnaround strategies for firms, and put in place mitigating and redeployment measures.

The Social Plan should be understood against the backdrop of section 198 of the LRA, **operational requirements dismissals** (retrenchments), and the Code of Good Practice for Operational Requirements Dismissals (1999).<sup>120</sup> These regulatory instruments provide a rights-based foundation which the Social Plan sought to build on through the programmatic introduction of 'early warning systems' and services to support responses that would avoid or mitigate job losses.

Consultation between employers and employees was at the core of the Social Plan process but they could receive technical and advisory support from the **National Productivity Institute (NPI)** (subsequently established under the ESA as Productivity SA), the **Department of Labour**, and the **Department of Provincial and Local Government**. The Social Plan had three components or phases, each of which was linked to one of these supporting bodies: (1) *Saving jobs*; (2) *Managing retrenchments*; and (3) *Creating jobs for local economies*.

The NPI was responsible for the first phase: *saving jobs*. The **NPI** promoted the establishment of **Future Forums (FFs)** comprising employers / managers and workers and their representatives. FFs would look ahead to identify threats and problems as well as develop possible solutions. FFs would be supported by the NPI's **Social Plan and Productivity Advisory Council (SPPAC)** and its **Social Plan Technical Support Facility (SPTSF)**, and the Social Plan Centres which would be set up. The Technical Support Facility intended a 'one-stop-shop' that would prioritise 'troubled sectors', and provide information and technical assistance to the parties and FFs to enable them to develop long-term strategies and implementation plans, while Social Plan Centres would provide members of FFs with 'an inventory of accredited technical experts who could analyse problems and identify solutions, relevant assistance programmes and other information or advisory services pertaining to the Social Plan'.<sup>121</sup>

The second phase of the Social Plan fell under the **Department of Labour (DoL)** and provided **retrenchment counselling** (e.g. how to best use retrenchment packages) and **labour market information** (i.e. opportunities for further training or retraining and employment). If the retrenchment involved more than 500 workers or 10% of the labour force of an enterprise, the employer or the FF notified the Department of Labour, which would make available a **Retrenchment Response Team (RRT)** to provide support for the employer and workers. The **RRT** liaised with the FF to determine the type of assistance or services needed; what financial resources were required and available; the technical services needed, and information sharing about further sources of assistance (i.e. Social Plan Centres, Job Advice Centres or Labour Centres) which could provide information in respect of job searching or self-employment.

The third phase went beyond the workplace and labour market to address the impact of large-scale retrenchments on communities, i.e. its target was the local and regional economy impacted by large-scale job loss. This final phase of the Social Plan fell under the **Department of Provincial and Local Government (DPLG)**, but a further three government departments were linked by the Social Plan besides DoL, i.e. the **Department of Public Works**, the **Department of Water Affairs**, and the **Department of Trade and Industry**, along with institutions such as the **IDC** and **Ntsika**).<sup>122</sup> In this phase local authorities affected by large scale retrenchments

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<sup>120</sup> And later the Facilitation Regulations, introduced in 2003.

<sup>121</sup> Department of Labour, Directorate of Employment Services. 1999. The Social Plan Guidelines (p. 6).

<sup>122</sup> The DPLG has been renamed the **Department for Cooperative Governance**. The Department is tasked with overseeing and managing the relationship between national government and local and provincial governments. It therefore has a critical role to play as to how governance of the energy transition is scaled. Furthermore, with respect to the broader climate crisis, in particular climate-related natural disasters, the Department is responsible for disaster management. It is notable that the **Covid -19 TERS** (see further below) was introduced under the **Disaster Management Act** (57 of 2002).

could apply for **Social Plan Fund** assistance ('local authorities' were defined as including those where residents had lost jobs and those in labour sending areas impacted by large number of returning retrenched).<sup>123</sup>

## 5.2 A sectoral variation (Social and Labour Plans) to manage transitions in the mining sector

Subsequently, the **Mineral and Petroleum Resources Development Act (MPRDA)**<sup>124</sup> was introduced in 2002 to transform the mining sector, and to ensure benefits for historically disadvantaged persons, and the socio-economic development of areas in which mining-right holders operate. The Act introduces a **Social and Labour Plan (SLP)** as a pre-requisite for the granting of mining or (mining and minerals-related) production rights. The procedures, contents, reporting requirements, etc. for SLPs are detailed in the consolidated **Mineral and Petroleum Resources Development Regulations** (items 40 to 46C).<sup>125</sup> Administration of the MPRDA falls under the Department of Mineral Resources and Energy and additional details and provisions for SLPs are provided in the 2018 **Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry** (the **Mining Charter**).<sup>126</sup>

The requirements of the **MPRDA** and the consolidated **Regulations** with respect to the contents of SLPs is more comprehensive than the Social Plan, probably as it has a narrower focus on the mining sector and the exact nature of the challenges facing the sector are better understood. In this respect it is possibly a more useful reference point for the narrowly conceived energy transition. A detailed [Guideline for the Submission of a Social and Labour Plan](#) was issued by the Department of Mineral Resources in 2010. The Guideline recommends that a SLP should comprise a number of components (or sub-plans or programmes): *a human resources development programme* (which would include a detailed skills development plan, a career progression plan, and a mentorship plan); *an employment equity plan*; *provision for mine community development* (which includes host communities and labour sending communities); *measures to address workers' housing and living conditions*; and *processes to manage job losses* in relation to mine downscaling and/or closure. It must also deal with the financial aspects of these programmes, plans, and processes.

The Guideline provides extensive detail on the contents of the SLP, and notably the section on the **management of downscaling and job loss** explicitly references the Social Plan as well as section 189 of the LRA. The Guideline requires<sup>127</sup> that a plan or process for managing downscaling and regenerating local economies must be developed for implementation when needed, and that the plan must be aligned with the **DoL's Social Plan Guidelines**, which includes the establishment of a **Future Forum (FF)**. The purpose is to promote ongoing discussions between worker representatives and employers about the future of the mine, look ahead to identify problems, challenges, and possible solutions regarding productivity and employment, develop turnaround and redeployment strategies to help reduce job losses and improve business sustainability, and implement any other strategies agreed by the employer and worker parties.

Moreover, the SLP should include mechanisms to ameliorate the social and economic impact on individuals, regions and economies, which must include but are not limited to: comprehensive self-employment training programmes; comprehensive training and re-employment programmes; a comprehensive portable skills development plan; and an outline of projects for absorbing retrenched workers. These provisions appear to

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<sup>123</sup> Although no longer operative, this involved application to the **DPLG**, which at the time provided for a R50 000 grant for the local authority to undertake a local economic regeneration study. The outcome of such a study would be a business plan for the local authority, to be submitted to the **Steering Committee of the Regeneration of Local Economies** programme, for discussion of potential sources of funding to finance identified regeneration projects.

<sup>124</sup> Act 28 of 2002.

<sup>125</sup> GNR. 527 dated 23 April 2004.

<sup>126</sup> The first **Broad-Based Socio-Economic Empowerment Charter for the Mining Industry** was introduced in 2004. It was replaced by a new **Charter for the Mining and Minerals Industry** in 2017, which was repealed and replaced in 2018 by the current 2018 Mining Charter. The main thrust of the Mining Charter is directed at transforming ownership in the sector, but it also deals with the relationship of the mining and minerals sector with workers and their communities. It therefore complements and intersects with SLPs, with sections dealing with inter alia Human Resource Development, Employment Equity, Mine Community Development, and Housing and Living Conditions.

<sup>127</sup> In line with s. 52 of the MPRDA and item 46(e) of the consolidated Regulations.

have been informed by the example of the Mine Development Agency, originally set up by the National Union of Mineworkers (NUM) but now an NGO, to assist retrenched mineworkers to find employment or pursue self-employment.

Research has found, however, that despite their comprehensive nature and more targeted focus on the mining sector, there had been shortcomings in the implementation of SLPs: including inadequate engagement with the reality of communities (in particular the absence of fieldwork to inform the SLP); inadequate information provided on consultation with communities; failure to address gender inequality; failure to make SLPs available to workers and communities; failure to plan (in particular, conduct feasibility studies) for local economic development projects; lack of liaison and coordination between SLPs and municipalities' local integrated development plans and inadequate assignment of roles and responsibilities; and, lack of clarity on how mining companies will facilitate housing for workers and communities (in particular absence of coordination and agreement between government housing projects and housing plans provided by the mining company).<sup>128</sup>

For the purpose of planning and co-ordinating a regulatory instrument for a Just Transition, it is notable that most of the shortcomings are in the community sphere and relate to alignment between what the mining company plans, what is being done by government and municipalities, and how the community is involved. In this regard, CALS argues that “we need an urgent shift in how SLPs are designed and implemented to achieve social justice”. As an output of the CALS project – a [SLP Mining Community Toolkit](#) is provided to assist workers and communities, both in the design of SLPs, and to engage critically with existing SLPs and assist with monitoring compliance. The use of SLPs for a Just Transition is a possibility, and consideration should be given as to how the SLP framework could be improved.

### 5.3 The Training Lay-off Scheme – the 2008 global economic crisis and 2018 amendments

A decade after the launch of the Social Plan the county was hit by the 2008 global economic crisis, and in the **Framework for South Africa's response to the International Economic Crisis** (2009) government signalled the introduction of inter alia the **Training Lay-off Scheme (TLS)**.<sup>129</sup> Amendments to the LRA in 2002 had introduced section 189A, which substantially fleshed out regulation of **large-scale retrenchments**, including provision for appointment of a **facilitator** by the CCMA to assist the parties in such retrenchments. In effect the introduction of section 189A codified key aspects of the Social Plan with respect to large-scale retrenchments. The Framework acknowledged the codification and proposed that the TLS would pick up other parts of the Social Plan and orient it to what was envisaged to be a short-term crisis (i.e. it therefore did not have a placement or re-employment component).<sup>130</sup> The focus of the TLS was therefore mainly on training and re-training.

The training infrastructure for skills development had already been put in place in 1998/99 via the SDA and SDLA (see above). The TLS, drawing on financial support from the **National Jobs Fund** (with funds contributed from the NSF and the UIF), would provide for training lay-offs “for workers whose employers would ordinarily retrench them, and which can be introduced on terms that would keep them in employment during the economic downturn, but re-skill them as an investment for the future economic recovery”.<sup>131</sup>

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<sup>128</sup> Centre for Applied Legal Studies. 2018. [Phase 3: Alternative models for mineral-based social benefit. The Social and Labour Plan Series.](#)

<sup>129</sup> Another proposal in the Framework was for the development of incentives for investment in a programme to create large numbers of renewable energy (green) jobs, which it defined as “employment in industries and facilities that are designed to mitigate the effects of climate change”. (p. 11).

<sup>130</sup> The relationship of the TLS with the Social Plan is not entirely clear from the Framework. The latter document acknowledged the need to improve and scale up social plans, including at sector and workplace levels, so as to ‘ensure that job losses are avoided, workers are retrained, and communities are cushioned from the effects of the economic crisis’ (p. 18). The ‘social plan policy framework’ was therefore the subject of a review by the social partners at NEDLAC. It is not known what the outcome was of the review by NEDLAC.

<sup>131</sup> Framework for South Africa's response to the International Economic Crisis (2009) at 17.



The TLS was aimed at employers and employees at risk because of the economic downturn. To participate in the TLS, employers had to be compliant with tax and labour laws (including bargaining council agreements) and had to be contributing its skills development levy to the relevant SETA. The TLS's key features were: (1) it was voluntary; (2) it entailed a temporary suspension of work used for training that would be funded for a maximum period of six months; (3) the employment contract continued (i.e. workers remained in employment); (4) the type of training would be flexible but would be linked to the skills needs of the employer; (5) a training allowance amounting to 75% of the worker's wage would be paid to the worker over the training period; and (6) the employer would carry the cost of a basic package of social benefits for workers over the period.

There were a number of agencies and departments involved in delivering under the TLS: the **CCMA** was responsible for facilitating, overseeing and verifying all training lay-off consultations and agreements (and would ensure all agreements comply with the rules of the TLS); **SETAs** were responsible for facilitating provision of training, funding training costs, applying to the NSF for training allowances, and disbursing funds to employers; the NSF (with financial support from the UIF) was responsible for processing applications for training allowances (and training costs in certain cases); the **DoL** was responsible for oversight and monitoring of the TLS; the **Department of Trade and Industry (DTI)** was responsible for ensuring distressed sector support was coordinated with the TLS; and, the **Economic Development Department (EDD)** was responsible for assessing the impact of the TLS.<sup>132</sup>

It is not known if the EDD conducted assessments of the impact of the TLS, but according to the Institute for Economic Justice (IEJ) the TLS was initially implemented successfully but became beset by problems after a few years which rendered it increasingly ineffective.<sup>133</sup> It was reported that 'government simply does not treat the TLS as an urgent and priority intervention', and that the 'relevant government committees do not meet regularly [and are] not quorate when they do meet'.<sup>134</sup> As a result, it appears that delays occurred in processing TLS applications, and by the time outcomes became known, it was generally too late.

The TLS was endorsed at the **2018 Jobs Summit**, albeit with some changes, including being renamed the **Temporary Employer / Employee Relief Scheme (TERS)** (not to be confused with the COVID-19 Temporary Employer / Employee Relief Scheme (**Covid-19 TERS**)). Under the **TERS** the duration of **training and income support was extended to 12 months**, support could be provided in situations where short-time was being worked (rather than just for fully-fledged lay-offs), and payment of the allowance would be direct from the UIF rather than via the relevant SETA and the employer. The applicant can request the CCMA to facilitate a TERS Agreement, and a Single Adjudication Committee (the CCMA, Productivity SA, Department of Trade, Industry & Competition and UIF representatives) recommend participation (a Recommendation Ruling) in the TERS. As from early 2020 the TERS ran parallel with the Covid-19 TERS, but they appear to have merged at some point (see below).

As mentioned, the **Labour Activation Programme (LAP)** (financed by the UIF) was recently initiated to provide Labour Activation Schemes,<sup>135</sup> which includes training lay-off schemes as an aspect of supporting companies in distress.

#### **5.4 The Covid-19 TERS & the KZN floods in 2022 – coordinated disaster management**

The **Covid-19 TERS** programme responded to the threat to jobs and incomes and was coordinated in terms of the **Disaster Management Act 2002 (DMA)**. The DMA is administered (**s. 3** – by a Minister designated by the President, which was the **Minister of Cooperative Governance and Traditional Affairs**), who may make **Regulations (s. 27) authorising the issue of directions**. This was the case with Covid-19, and the **Minister of**

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<sup>132</sup> Department of Labour, "A Guide to the Training Layoff Scheme" at 3.

<sup>133</sup> See also the recommendations in Hoosen Rasool's ['Benchmarking Study of Models of Training Lay-off and Retrenchment Mitigation Schemes'](#) (2018)

<sup>134</sup> Institute for Economic Justice. Jobs Summit Policy Brief Series. Training Layoff Scheme, August 2018 (p. 2).

<sup>135</sup> The pillars of the LAP strategy are: partnerships with various stakeholders; training of the unemployed; supporting companies in distress; and enterprise development and business skills.

**Employment and Labour** Covid-19 was authorised to issue directions and established the Temporary Relief Scheme which was administered by the UI Commissioner. The Covid-TERS initially targeted employers and employees where businesses were required to close for a period of three months or less during the first Covid-19 lockdown period and was later restricted to **UIF contributors** (i.e. employers and employees) only. The Covid-TERS provided for payments to be made to workers in the form of benefits for reduced working hours. Employers in all sectors could apply for the benefits on behalf of their employees; and in some sectors **bargaining councils** fulfilled this function, subject to agreement on the modalities with the **UIF Commissioner**. In May 2021 the Minister reported that over the period April 2020 till 31 March 2021 the TERS made payment to 267 000 employers and to 5.4 million individual employees in a total amount of R58.7 billion.<sup>136</sup>

In the context of a co-ordinated response to a disaster, or similar national threat, the role of the **Department of Cooperative Governance and Traditional Affairs (COGTA)** is important. COGTA's mandate extends to aspects of the Just Transition,<sup>137</sup> and the consequences of extreme weather events.<sup>138</sup> The Declaration of a State of Disaster in terms of the **DMA** allows for the prioritisation of assistance and relief to the public. The response and multiple funding commitments in the aftermath of the devastating floods in KwaZulu Natal in April 2022,<sup>139</sup> demonstrate the need for a multi-faceted approach to recover and to rebuild in the event of a crisis,<sup>140</sup> and similarly in the planning of a transition.

However, although the provisions of the **DMA** were successfully used in the context of labour regulation during Covid-19,<sup>141</sup> the Declaration of a State of Disaster is required to trigger an intervention; and in this regard, the use of similar enabling provisions in labour regulation could be more effective, particularly in the absence of a triggering disaster, for example to provide income (or other social) protection and benefits (under the **UIF**) in the context of a Just Transition / climate change scenario.<sup>142</sup> That being said, the **DMA** is interesting as a model for a **an integrated and co-ordinated ... response** which provides a regulatory framework that coordinates across the three spheres of government establishes institutions and representative forums and enables a range of regulatory mechanisms including mechanisms to trigger funding, regulations and directives,

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<sup>136</sup> Godfrey S and M Jacobs. 2021. Collective bargaining and the COVID-19 pandemic: South Africa. Research report submitted to the International Labour Organisation.

<sup>137</sup> The **COGTA** oversees elements of sustainable development and is concerned with coordination of basic service delivery at local government level and implementation of the [National Framework for Local Economic Development: Creating Innovation-driven Local Economies](#) (2018 – 2028)

<sup>138</sup> The impact of severe weather events has resulted in the declaration of both provincial and national disasters on a number of occasions recently, for example in April 2022 in terms of heaving rain, flooding, strong winds, landslides, etc in KwaZulu-Natal, Eastern Cape and other provinces, and in January 2023, as a result of the magnitude and severity of flooding incidents in Gauteng Province; and in February 2023, as a result of flooding in Eastern Cape, Mpumalanga and other provinces; and in November 2023 as a result of flooding, storm surges and gale force winds in September 2023 in the Eastern Cape and Western Cape.

<sup>139</sup> Thousands of houses were destroyed, and people displaced, and more than 400 people were killed.

<sup>140</sup> See the [Auditor-General's Report](#). The floods affected '[at least 826 companies](#)'; and rebuilding was financed through donor funds as well as the allocation of budget from National Treasury, and an SMME and Co-Ops Relief Fund, approved by the Provincial Treasury, in the amount of R67.5 million, repurposed from the Department of Economic Development and Tourism. The private sector also played an important role in the economic recovery in the region – Toyota South Africa experienced '[the most extensive damage to any production facility within Toyota globally](#)' – and co-ordination within the group meant that the plant could reopen after 3 months.

<sup>141</sup> In addition to the DoEL Directions regarding the Covid-TERS Benefits, further Directions issued in terms of the DMA during Covid-19 include the Minister of Transport's Directive (December 2021) providing once off *ex gratia* relief funds to the value of R1, 135 billion to assist taxi operators (defined as a person holding a license to ferry passengers for reward) in the amount of R5 000 per qualifying operator.

<sup>142</sup> Which could involve a consideration of the role and powers of the Unemployment Insurance Board, the Minister and Director-General and the UI Commissioner. [An example of the use of the UIF for providing temporary relief when a business is damaged or destroyed is the relief scheme set up by way of UI Regulations in GN 712 of 10 August 2021: Destroyed, Affected or Looted Workplaces: Temporary Financial Relief Scheme, 2021 \(Government Gazette No. 44978\) Regulations issued by the Minister in terms of section 54 \(b\) of the Unemployment Insurance Act, 2001.](#)



and requires the design of strategies and plans. The DMA framework, and its use, could provide some context for the effective implementation and use of the CCA provisions.

A typology of the various labour law mechanisms and active labour market policies that are relevant in the context of a Just Transition are provided in table 7.

**Table 7. Typology of labour law functions and mechanisms supporting a Just transition**

## TYPOLOGY OF LABOUR LAW FUNCTIONS AND MECHANISMS SUPPORTING A JUST TRANSITION

The diagram below provides a typology of relevant labour law functions and mechanisms, and industrial and active labour market policies (ALMPs) that support climate change adaptation and mitigation and a Just Transition to a low-carbon economy -

	WORKPLACE	SECTOR	COMMUNITY <sup>143</sup> / LOCAL AUTHORITY
LABOUR LAW MECHANISMS THAT SUPPORT A JT -	<i>Provisions and framework for the implementation of mechanisms, financing, and direction towards a JT:</i>		
<b>1. Consultation and collective bargaining framework (worker representation and participation)</b>	LRA ss 23, 24 (collective agreements) LRA ss 78 – 94 (workplace forums) Social Plans (future forum)  <i>Direction: See <a href="#">Annexure A</a>.</i>	LRA ss 27-32 (bargaining councils) Master plans (industrial policy) co-created by business, labour & government  <i>Direction: See <a href="#">Annexure A</a>.</i>	<i>Direction: collective representation and participation mechanisms for self-employed workers and communities in relation to local authorities; note the <a href="#">New SABS Standard on Adaptation to climate change – Requirements on adaptation planning for local governments and communities</a>. (See also ILO R.204; C. 190).</i>
<b>2. Regulating retrenchments: restructuring and job losses</b> <i>(see below for income support and relocation)</i>	Retrenchment processes: LRA ss 189, 189A & OR Dismissal Code BCEA ss 41 (severance pay) Social Plans (SLPS in mining sector) ESA job-seeking assistance	Sector charters (eg. mining charter)  <i>Direction: Ensuring compensation and social protection for workers in affected sectors [ILO adaptation]</i>	ESA job-seeking assistance Public employment schemes ( <i>promoting environmental sustainability</i> )
<b>3. A skills development framework for training and reskilling workers for new jobs, job transitions (transfers), employment &amp; job creation</b>	SDA & SDLA (NSF) ETIA Youth employment incentive TERS / Training lay-off schemes ESA	SDA & SDLA (NSF) Sector skills plans SETAS eg. EWSETA, CHIETA, MQA SETA; AgriSETA, CETA, TETA <i>Direction: Role of the SETA's (rearranging the SETA formation?)</i>	SDA/ESA (improve access) <i>Direction: Role of local authorities – improved service delivery; waste, recycling, and circular economy; supporting entrepreneurship. Job creation in the green economy; worker ownership and cooperative development</i>

<sup>143</sup> Community includes self-employed and informal economy workers who fall outside the boundaries of labour and employment law, and the broader interests of the community/ families impacted by the loss or gain of workers because of job transitions in the labour market. Local authorities play an important, active role in leading and coordinating a Just Transition.

<b>4. Unemployment insurance and income support</b> <i>(see below for income support in an emergency and in the course of disaster management)</i>	UIA/UICA unemployment benefits for retrenched workers  TERS income support for working time reduction and skills development	<i>Direction: Financing mechanisms for improved income support and reallocation allowances supporting a JT</i>	<i>Direction: public employment schemes; income support and investment in green energy / tax incentives for energy-poor households; improved service delivery</i>
<b>5. A safe and healthy working environment (including BCEA regulation of working hours)</b> <i>(See Paper 2: Climate-proofing labour law and protecting workers from heat stress)</i>	OHSA Extreme heat and environmentally induced stress at work BCEA Schedule 1 Reduction of working hours Income protection (UIA, COIDA) <i>Direction: Extreme heat regulation (hours of work, breaks, hydration, appropriate clothing)</i>	OHSA Extreme heat and environmentally induced stress at work Reduction of working hours Income protection <i>Direction: Extreme heat regulation (hours of work, breaks, hydration, appropriate clothing)</i>	<i>Direction: Service delivery; extending access to social protection / assistance</i>
<b>6. Emergency and disaster management</b> <i>(Temporary relief when a business is damaged or destroyed)</i>	DMA Regulations and Directives UIF Regulations	DMA Regulations and Directives UIF Regulations <i>Direction: Sectoral policy measures</i>	DMA Regulations and Directives <i>Direction: Integrated and coordinated response, role of local authorities</i>

## 6. CONSIDERATIONS FOR A JUST TRANSITION

### 6.1 Mapping the regulatory framework for a Just Transition

The **regulatory framework for a Just Transition** is multifaceted and extends beyond the realm of labour market regulation. Although our focus in the paper is labour market regulation (and optimising its tools, mechanisms, and institutions for a Just Transition), we have also tried to identify key elements of the evolving 'JT regulatory framework'. However, we suggest that a more comprehensive mapping of the evolving framework be undertaken, in which key institutions, roles, powers and responsibilities, are identified, and which reflects how the various realms of regulation interact within the broader framework. Mapping of the JT regulatory framework will be important to facilitate cooperative governance, policy alignment, and a coordinated and integrated response to climate change. A better understanding of the regulatory framework will also facilitate dynamic interactions between relevant institutions and will provide the context for strategic interventions at key 'points of leverage', and opportunities for the co-ordinated design of regulatory measures, tools, and mechanisms that promote and support an effective and just transition.<sup>144</sup>

More generally, considerations for a Just Transition include the need for expanded access to social assistance 'to mitigate poverty and job losses during the transition',<sup>145</sup> and, in addition to labour market considerations (retrenchment law, unemployment income, skills development, employment services and EPWP programmes), the health and wellbeing challenges of **communities must be addressed**, for example in the coal sector (and mining more generally). A low carbon transition cannot be achieved in the absence of adequate social protection. In addition, **local authorities**, particularly municipalities that have resource and capacity constraints, need to be strengthened. As urbanisation increases, and the transmission of energy is decentralised, the **role of local authorities will be critical for a Just Transition** and needs an enabling framework, and in this regard the **Municipal Systems Act, 2000 (MSA)** is likely to be pivotal for the inclusion of JT considerations in planning.<sup>146</sup> In terms of the **MSA**, municipal planning must be developmentally oriented and must occur within a system of co-operative governance. Municipalities are required to participate in national and provincial development programmes (**s. 24**), and each municipal council (within a prescribed period after start of elected term) must (**s. 25**) 'adopt a single, inclusive and strategic plan for the development of the municipality', and the core components (**s. 26**) of the **IDP** must include the council's –

- **development priorities and objectives** for its elected term, including **its local economic development aims**;
- **development strategies** that must **be aligned with any national or provincial sector plans** and planning requirements in terms of binding legislation;
- **a spacial development framework** including guidelines for a land use management system;
- operational strategies; and
- applicable disaster management plans.

In addition, district municipalities, in consultation with local municipalities, are required to adopt a **framework for integrated development planning** in the area as a whole. The integrated development planning processes required by the MSA present an opportunity for **embedding the JT processes** towards a low-carbon economy **within communities** (see table 8 on the meaning of "community") while prioritising skills development, local economic development and job creation to ensure that the transition benefits workers and communities at the local level.

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<sup>144</sup> On the idea of points of leverage and institutional dynamism within regulatory frameworks, see Deirdre McCann and Judy Fudge, '[A strategic Approach to Regulating Unacceptable Forms of Work](#)' (2019).

<sup>145</sup> Annecke, Wendy, and Peta Wolpe. 'What role for social policies in the framework of the Just Transition in South Africa?' *AFD Research Papers* 230 (2022): 1-33.

<sup>146</sup> **Municipal Systems Act 32 of 2000.**

**Table 8. The meaning of “community”**

<p>In relation to a municipality, the MSA defines “<b>local community</b>” or “<b>community</b>” to mean –</p> <p>“that body of persons comprising –</p> <p>the residents of the municipality;</p> <p>the ratepayers of the municipality;</p> <p>any <u>civic organisations and non-governmental</u>, <u>private sector</u> or <u>labour organisations</u> which are involved in local affairs within the municipality; and</p> <p>visitors or other people residing outside the municipality who, because of their presence in the municipality, make use of services or facilities provided by the municipality,</p> <p>and include, more specifically, the poor and other disadvantaged sections or such body of persons.”</p> <p>(emphasis added)</p>
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The provisions of the MSA are augmented by the Climate Change Act (CCA), which includes institutions such as the Municipal Forums of Climate Change (s. 9) and its Chapter 3 provisions requiring a climate change response from municipalities after the publication of the National Adaptation Strategy. The climate change response entails a **needs and response assessment** and an “**implementation plan** as a component of ... municipal planning instruments, policies and programmes” (s. 17). **The needs and response assessment must “identify and spatially map ... risks, vulnerabilities, areas, ecosystems and communities ... that are vulnerable to the impacts of climate change.”** (s. 17(2)(c))

Coordination and alignment between the three spheres of government is important, as governance and management of the transition will involve multiple ministries, government bodies, statutory agencies, stakeholder organisations, and companies; and a significant challenge for governance and management is **coordination** across and between the many departments and other key constituents, which is envisaged in the structures established by the CCA.

At a more practical/implementation level the **governance and institutional architecture** for the JET implementation<sup>147</sup> may also be important and includes an Inter-Ministerial Committee (IMC) that reports to Cabinet, as well as a co-ordinating council (or forum/committee) for each Portfolio (ie. for electricity and for Mpumalanga) that comprises stakeholders from government, business, labour, and civil society.’

A key challenge is the **alignment of the labour regulatory architecture within the broader architecture of government**,<sup>148</sup> which should take account of the three levels of labour governance (national, sectoral, and enterprise/workplace), and the three spheres of government (national, provincial, and local), as represented in table 9 below.

<sup>147</sup> See footnote 40 above.

<sup>148</sup> Note in this regard the growing recognition of the role of public authorities for realising core labour standards (see ILO Recommendation 204, Transition from the Informal to the Formal Economy, 2015, and ILO Convention 190, Violence and Harassment, 2019). This may require some reflection in terms of [NEDLAC’s mandate and the scope of work within its chambers](#), specifically: the Labour Market Chamber (ie. ‘all matters pertaining to the world of work and the associated institutions of delivery’); the Development Chamber (ie. all matters pertaining to development, both urban and rural, implementation strategies, financing of development programmes, campaigns to mobilise the nation behind government associated institutions of delivery’); and Trade and Industry Chamber ‘all matters pertaining to the economic and social dimensions of trade, industrial, mining, agricultural and services policies and the associated institutions of delivery’.)

**Table 9. Levels of labour governance and spheres of government**

<i>Levels of labour regulation / governance</i>	<i>Spheres of government</i>
<p><b>National</b> – legislation and most labour services are national in scope (although provision of many services devolves to provincial and local levels), trade union federations and peak-level business associations are national, and most major employers’ organisations and trade unions are national (albeit divided along sectoral lines).</p> <p>NEDLAC is the peak labour governance institution.</p>	<p><b>National government</b> – ministries, departments and their regulatory instruments (legislation, regulation, policy, and statutory entities) are national, but they tend to be distanced from the grassroots level (although the distance can be reduced by provincial and local branches) and they tend to operate in silos (which has led to various attempts at coordination, either from above in the form of the expanding Presidency, or at the ministerial level via clusters,<sup>149</sup> or in dedicated interministerial structures created by statutes (see, for example, the governance framework created by the Disaster Management Act).</p>
<p><b>Sectoral</b> – key collective bargaining structures (including bargaining councils) and education and training authorities (SETAs) are sectoral, and most of the major trade unions and employers’ organisations are sector-based or organised along sectoral lines.</p> <p>Note also the sectoral approach in the CCA.</p>	<p><b>Provincial government</b> – its scope is more limited; and traditionally has no role with respect to labour regulation; but it is responsible for provincial and regional planning and will play an increasingly important role. The Climate Change Act envisages existing intergovernmental provincial forums to serve as Provincial Forums on Climate Change.</p>
<p><b>Workplace*</b> – collective bargaining takes place at the workplace and participatory decision-making structures (i.e. workplace forums and Future Forums) are also located at this level, and trade union organisation and recognition (and statutory organisational rights) are grounded in the workplace.</p>	<p><b>Local government (municipalities)*</b> – traditionally their role has been limited; but municipalities will play an increasingly important and a vital role in achieving a Just Transition, each municipality should have an <b>IDP</b> and municipalities are closer to communities for the delivery of services.<sup>150</sup> The Climate Change Act envisages existing district forums to serve as Municipal Forums on Climate Change.</p>

\* **Workplaces** and **municipalities** provide the physical spaces where employees and workers perform work (and the areas in which communities reside). The permeable boxes reflect movement as workers may transition out of employment or between jobs.

The energy transition is first and foremost a dynamic process that at different points will trigger connections within and across the realms of labour regulation, climate change law, and the public governance framework outlined above. The challenge will be to co-ordinate the processes to ensure an effective and Just Transition. Some of the challenges could be addressed explicitly in legislation, but most could be dealt with through (more flexible) **guidelines, codes of good practice or regulations**,<sup>151</sup> and via integrated planning and inter-

<sup>149</sup> [Clusters](#) are effectively sub-committees of the Cabinet which group government ministries/departments that are jointly involved in cross-cutting policies or programmes with a view to achieving a more integrated or coordinated approach by government, e.g. the Economic Sectors, Investment, Employment and Infrastructure Development Cluster (ESIED).

<sup>150</sup> See the [New Standard by the Board of the South African Bureau of Standards](#) on Adaptation to climate change – Requirements on adaptation planning for local governments and communities.

<sup>151</sup> Regulations, codes, and guidelines are regulatory instruments that can be issued by a delegated authority enabled in primary legislation (eg. LRA, s 208 Regulations; s. 203 Codes of Good Practice; CCA, s. 27 Regulations).

governmental programmes. Sector-focused mechanisms include sectoral charters and bargaining council agreements, supported by industrial policy and enterprise development initiatives.

In terms of precedent, the coordination of different entities of government, and the integration of legislative provisions, dedicated services, and financing mechanisms has previously taken the form of social plans and simple programmes. The foundations of the social plan and **social and labour plan** models are, in many respects, sound (and can be improved upon by ‘lessons learnt’):<sup>152</sup> at the base of these are the provisions in the LRA to deal with retrenchments; training and re-training by SETAs; and assistance with job-matching and placement under the ESA.

However, effective implementation of the SLPs has been a challenge, and will require greater **coordination** between the labour regulation sphere and the government sphere, particularly as workers move out of the ‘protected’ space of an employment relationship, and adequate mechanisms will need to be in place to *bridge the gap to the final phase of the transition* (access to jobs in a low carbon-economy, and the creation of new jobs in the RE sector, and relocation of workers and their families in new communities). In this regard, consideration should be given to the *asymmetry between labour regulation and the framework for national, provincial, and local government, and the possibility for ‘equivalent’ mechanisms and regulation within the local authority regulatory space to support a Just Transition for workers and communities*.

Notably, a **sectoral framing** is common to both the Just Transition and labour market regulatory approaches, and the current regulatory frameworks for both have mechanisms for sectoral regulation<sup>153</sup> that could potentially be used to crafting provisions for a coordinated approach that support labour market transitions.

## 6.2 Optimising labour market regulation for a Just Transition

The potential for optimising integrated regulation for labour market transitions through mechanisms such as the social plans and the **social and labour plans (SLPs)** is explored further in part 7. In the discussion below, [the typology of labour law functions and mechanisms supporting a JT](#) serves as a framework to consider the use and possible developments of the various labour law mechanisms in the context of climate change and the just transition, to ensure that the functions and mechanisms of labour market regulation are optimised at the levels of workplace, sector and local authorities.

- **Consultation and collective bargaining**

*Considerations for workplace, sector and local authorities*

Guidelines / a code of good practice / collective agreements could be developed to promote **workplace consultation and bargaining** (see [Annexure A. Model Agreements for a Just Transition](#)) including the possibility of workplace forums or ‘futures forums’; and at **sector** level, bargaining could be facilitated by interventions aimed at existing or new co-ordinated bargaining council (e.g. for the energy sector, and other impacted sectors); while at **local authority** level, mechanisms for consultation for communities / self-employed workers (including the [SABS standards](#)) should be considered; Regulatory instruments could be introduced in terms of the CCA or, in the context of labour regulation, in terms of the LRA.

Moreover, the role of the **JET-IP Portfolio co-ordinating council/forum/committee structures**<sup>154</sup>

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<sup>152</sup> The plans provide a working ‘template’ for a transition, and the challenges in their implementation should inform improvements, and the shaping of an appropriate instrument for implementation of a Just Transition. (See [CALS study on SLPs](#) (2014-2018).

<sup>153</sup> Under the LRA and BCEA: this includes bargaining and statutory councils, sectoral and ministerial determinations, and regulations, which could also be designed on a sectoral basis. On the elements of a sectoral approach in the CCA, see [Annexure B](#).

<sup>154</sup> I.e. each ‘Portfolio’ has its own governance structures and includes tripartite representation - which could be the starting point for informal discussions with sector social partners etc. with a few to establishing more formal industry / sector bargaining councils.

should be clarified.

- **Restructuring and retrenchments**

*Considerations for workplace and sector level*

Similar to above, guidelines / a code of good practice (revisions or new) / regulations (such as the Facilitation regulations) / collective agreements could orientate retrenchment processes towards a just transition pathway; with mechanisms for additional (income and relocation) support (within the UIF or bargaining council regulatory framework) for retrenched workers, with considerations for affected communities, and local authorities should be capacitated to achieve a Just Transition.

- **Skills development, training and reskilling**

*Considerations for workplace, sector and local authorities*

At sectoral planning level, a mapping and review of the SETA 'landscape' may be useful to ascertain if new formations are required; in addition, SETA (SDA) reporting (as well as EEA reporting) may be a useful source of data for skills development planning

The possibility of linking SETAs to bargaining councils or similar forums should also be considered.

The SDA provides for regulations requiring employers to submit **workplace skills plans** to SETAs (which SETAs are required to approve)<sup>155</sup> as well as the rights of trade unions or other employee representatives to consult with their employer on developing, implementing and reporting on workplace skills plans.<sup>156</sup> However, the SDA framework does not require skills audits to be conducted and reported, nor does it specifically require workplace consultation in terms of skills planning (although a consultative forum is required in terms of the EEA (6.1.2.5 of the EE Plan Code)<sup>157</sup> which is comparable in terms of its objectives and the need for planning at a workplace level. This is a gap in the SDA framework, and in this regard a regulatory instrument (which could be an LRA Code of Good Practice; SDA s. 36 Regulations;<sup>158</sup> or even in terms of the CCA s. 27 Regulations in respect of sectors and sub-sectors) could be introduced, which could provide for a coordinated and coherent approach to sector skills planning processes in the context of the JT). A regulatory instrument could be introduced that requires periodic reporting for firms in designated sectors, including the provision of data related to a workplace skills audit / inventory, and anticipated employment changes (jobs lost, transformed, substituted or created in the context of climate change management) and information relating to the employer's skills programme to address skills gaps; redeployment programmes; early retirement programmes etc.

- **Unemployment insurance and income support**

*Considerations for workplace, sector and local authorities*

Improvements to the current framework for income support (unemployment insurance)<sup>159</sup> should be considered, including provision for relocation allowances; which may require legislative amendments

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<sup>155</sup> SDA, s. 10. Mandatory grants are paid to employers who develop and implement workplace skills plans.

<sup>156</sup> SDA, s. 36.

<sup>157</sup> Skills development is integral to employment equity processes and is an aspect of the integration of employment equity into human resource policies and practices; and is also a criteria (the Skills Development scorecard) within the framework for Black Economic Empowerment.

<sup>158</sup> SDA 30B also makes provision for a national standard of good practice in skills development.

<sup>159</sup> See in this regard Hoosen Rasool's '[Benchmarking Study of Models of Training Lay-off and Retrenchment Mitigation Schemes](#)' (2018) where he considers South Africa's Training Lay-off Scheme and recommends shifting from **Unemployment Insurance** to an **Employment Insurance Scheme**, which has a greater focus on getting workers back to employment; and benchmarks the approaches of Malaysia, South Korea and Sweden.



and/or an enabling instrument issued by the delegated authority in terms of the UIA.

Options in this regard include UIA Regulations (s. 54), read with and UIA s. 5(d) which provides for “financing of the retention and re-entry of contributors into the labour market and any other scheme aimed at vulnerable workers”.

Ongoing engagement is required on developments in relation to –

- UIA and the TERS (noting the [Labour Activation Programme \(LAP\)](#) developments);
- Improved income support and funding mechanisms for relocation; and
- Department of Social Development (DSD) Grants.

- **A safe and healthy working environment**

*Considerations for workplace, sector and local authorities*

See ‘Climate-proofing Labour Law: Adapting to increased heat and extreme weather events, NEDLAC report (2024).

Consideration should also be given to the **local authority and community** context; and the development of appropriate measures for managing safe and healthy working environments in the absence of an ‘employing entity’ (eg. street vendors, waste reclaimers, etc.)

- **Emergency and disaster management**

The DMA provisions, guidelines and regulations are potential regulatory mechanisms in ‘disaster’ circumstances, that could for example clarify income (or other social) protection or benefits / relocation allowances in appropriate circumstances; although more ‘routine’ labour market regulatory mechanisms may be more effective in planning for a Just Transition, including responding to emergencies and disasters, for example the UIF or temporary relief when a business is damaged or destroyed (eg. the Temporary Financial Relief Scheme, 2021 Regulations issued by the Minister in terms of section 54 (b) of the Unemployment Insurance Act, 2001.

Further consideration –

- Development of UIF temporary relief schemes;
- Developing policy and measures or schemes at sectoral level; and
- Linkages with DMA framework as well as municipality IDPs.

Government (at all three levels) already addresses employment creation and community development in legislation and through numerous plans and programmes (for example the Employment Tax Incentive Act, the EPWP, the Presidential Employment Stimulus, the entrepreneurship and cooperatives development programmes of the department of Small Business Development, investment promotion by the DTIC as well as provincial investment promotion agencies, the sectoral master plans developed under the aegis of the DTIC and other government departments (including the Renewable Energy Masterplan), the Integrated Resource Plan, and provincial and municipal development planning).<sup>160</sup> There are also many NGO and CSOs active in this space. The challenge is to coordinate, and optimise, the services and ensure their accessibility to workers and communities impacted by the transition.

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<sup>160</sup> Organised labour has representation to different degrees in the many bodies and forums, and a role in the design and implementation of these regulatory instruments and programmes, including participation in NEDLAC (at the apex level).

## 7. STAKEHOLDER ENGAGEMENT & RECOMMENDATIONS ON THE BUILDING BLOCKS FOR A JT

### 7.1 Direction from NEDLAC workshop

In August 2024, a NEDLAC workshop, attended by social partners and key stakeholders including the PCC was constituted to consider a draft of the report with a view to informing the direction of labour law and regulatory developments in the Labour Market Chamber. Additional considerations were provided by Haroon Bhorat,<sup>161</sup> who presented the findings of the study on the coal sector. The study categorised affected workers into four groups: the no just transition challenge; the intermediate just transition challenge; the just transition challenge; and the retirement cohort;<sup>162</sup> and considers four policy options (recognising that each group, and individuals within each group would have different needs) to guide the just transition, namely: job matching and skills transferability; retraining; income support; and early retirement funded by provident and pension schemes. Bhorat stressed the importance of a coordinated policy framework and the need for data-driven approaches, including using company data to accurately assess the number of workers, their ages, and their skills; and the importance of involving stakeholders from government, industry, and labour unions to ensure that the transition is fair, inclusive, and adequately funded through a combination of public and private resources, such as retirement and provident funds.

Considerations raised at the workshop by organised business, labour, government and stakeholder included the following –

- The need to consider downstream businesses, as their survival is closely tied to coal and electricity sectors, even though they are not directly involved; and more generally the importance of a holistic approach addressing all sectors affected by the just transition, not just coal, as other sectors (e.g., agriculture, water use, manufacturing) will also face significant changes. Lessons from Mpumalanga should be heeded: the impact of plant closures extends beyond the plant to host communities and related industries, requiring a broader approach to addressing the impact on communities and sectors linked to coal. The community impact of coal mine closure was raised, and that efforts should be made to support communities reliant on coal for employment.
- The need for interdepartmental cooperation, involving business chambers, local authorities, and government departments, to ensure a coordinated response to the just transition; and the coordination of NGOs and organisations involved in just transition efforts, with sharing of resources and knowledge, ensuring a more unified and effective approach.
- Concerns about the timeline(s) for the transition and when companies would begin to wind down and consider alternatives for impacted workers, and whether impacted companies would continue to hire new employees; and the possibility of impacted companies contributing to a fund or mechanism to cushion the financial impact of the transition, similar to social plans used in the mining industry; and options for sharing the burden of responsibility for managing the transition between employers. In addition, the importance of considering different time frames — short-term, medium-term, and long-term — when planning for a Just Transition was raised, as the transition is not homogenous and will vary across sectors. In the short term, some sectors may manage to replace jobs, but in the long term, workers, especially those in the coal sector, will need to find alternative livelihoods in different sectors. For this, reskilling is crucial to help workers transition into more sustainable industries as the economy evolves. Sector analysis should clearly differentiate between short-, medium-, and long-term impacts and strategies, providing a clearer roadmap for transitioning workers over time.
- Concerns regarding the difficulty of job matching, particularly since jobs in the renewable energy sector often have different standards, packages, and skill requirements compared to coal jobs; and that earnings differentials and the issue of income disparities between coal workers and potential jobs

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<sup>161</sup> See Bhorat et al (note 48).

<sup>162</sup> Although the point was raised that workers may have already accessed their pensions multiple times, leaving insufficient funds for a comfortable retirement, suggesting the need to review the role of pension funds; as well as social impact investments, in terms of contributing to a just transition and sustainable development.

in other sectors should be considered. Many coal workers earn relatively high wages and support multiple families, making the transition particularly challenging for these workers and their dependents. Discussions on reallocating workers to new jobs should not focus too much on energy-for-energy job swaps, particularly in the coal and renewable energy sectors, as workers might end up in entirely different sectors, not renewables.

- An enabling environment is required for new job creation in emerging sectors, ensuring that workers losing jobs and new entrants to the labour market are accommodated; and the role of the Skills Development Act is important in providing training to workers and host communities, highlighting the need for skills development in the broader context of the just transition.
- Existing processes and institutions, such as the Presidential Climate Commission (PCC), Social and Labour Plans (SLPs), and Integrated Development Plans (IDPs), are useful frameworks, and if performing at optimal levels, could handle the complexities of the just transition.
- Developments in the Platinum Group Metals (PGM) sector were raised, noting the global shift from internal combustion engines to electric vehicles, and key lessons from the PGM sector, and the need for preparedness (and an 'early warning system') in sectors that are impacted.
- There is uncertainty about the pace of the coal transition, including how long the global export market for coal will last and how quickly renewable energy will ramp up in South Africa. However, planners must avoid wishful thinking and prepare for the worst-case scenarios. Clarity is needed on the decommissioning of coal plants; as uncertainty about timelines (e.g., extensions of coal plant lifespans) complicates planning for the just transition, causing workers to delay preparations for job transitions.
- Concerns regarding the adequacy of the Unemployment Insurance Fund (UIF) and its capacity to meet the demands of the just transition were raised.
- The occupational health and safety (OHS) legislation in the context of long-term climate-related health issues, pointing out that existing legislation, such as the Mine Health and Safety Act (MHSA), had expanded recently to cover illnesses that might develop long after exposure to hazardous conditions.
- The possibility of expanding current social and labour plans, possibly through amendments to the Labour Relations Act (LRA), to accommodate just transitions, particularly for industries like coal; and tailoring severance packages for workers displaced by the just transition, with a focus on ensuring adequate funding. It was suggested that work should be undertaken to ensure that social and labour plans are used as dynamic tools for just transition planning and not a 'tick-box exercise'.
- The importance of a bargaining council (or similar structure) for the coal/energy industry (in 2019, employers withdrew from the Minerals Council SA bargaining structures) was raised;<sup>163</sup> a council could address an industry-wide transition and facilitate discussions on a just transition.
- Concerns were raised that the existing social security net is not comprehensive enough to support workers and communities affected by the just transition; and there are significant disparities in social security coverage across employers in the coal sector, hence the need for a uniform and comprehensive approach.
- Addressing the just transition in the public sector, particularly at the Public Sector Coordinating Bargaining Council (PSCBC). Many public sector institutions still rely on coal-powered boilers, and the integration of green energy solutions has been slow or absent. The public sector and its facilities will also be affected by the just transition, and this should be included in future reports and analyses. Service providers and contractors working with public institutions should be included in the broader conversation on the transition, as they too will be impacted by the shift away from coal.
- The informal economy should be included in just transition considerations, and more attention should be given to informal workers who will be affected by the transition, noting that there has been insufficient focus on this issue.

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<sup>163</sup> See <https://chro.co.za/articles/coal-sector-abandons-centralised-bargaining-process-for-wage-negotiations/>.

- The National Business Initiative's Pathways to Net Zero report offers valuable insights into what business finds acceptable in emissions reduction; and these pathways could be used as a basis for sector-level discussions, such as in bargaining councils, to assess their impact on jobs.
- The just transition provides an opportunity to promote gender parity in new job creation; and new opportunities in emerging industries that achieve gender equality in employment and pay.
- Urgency, and the need for clear timelines and a legislative drafting process for the introduction of new laws or regulatory mechanisms addressing the just transition

## 7.2 Workshop consensus: Building blocks for a Just Transition

The general consensus at the workshop was that it is not realistic to expect certainty and a predictable transition from one sector to another, but that immediate action and measures are needed to prevent large-scale job losses and to create new opportunities for workers.

A key focus of the workshop was the idea of **institutional integration** ('intersection of institutions and authorities') between local government, businesses, and various government departments. Coordination was needed between institutions including engaging local government and relevant industries (across sectors) (e.g. on a regional or provincial basis, e.g. Mpumalanga) through forums like bargaining councils. More information was also needed on the opportunities for drawing on existing institutional frameworks, including the Climate Change Act (CCA) and sector master plans, which should inform coordination and institutional development. The need for **an integrated instrument like the social and labour plans** to delineate responsibilities and harness synergies for a just transition, including interventions at the workplace and community / local authority levels, was also highlighted as a priority. In addition, expanded access to unemployment insurance and income support was raised as a concern, within the need for **access to adequate social protection** during all the stages of a Just Transition.

Our recommendations below relate to these three elements – **integrated institutions; integrated framework instruments; and access to social protection** – which provide the **building blocks for a just transition**.

## 7.3 Institutional integration – building bridges to support just transitions

A just transition requires both robust institutions and well-designed instruments to manage responses to the complex social, economic, and environmental challenges and the processes of shifting to a low-carbon economy. In terms of institutions, a **differentiated (sectoral) approach** allows for targeted interventions in 'at-risk-value chains and sectors',<sup>164</sup> i.e. sectors such as energy, transport, agriculture, tourism, and the automotive value chain. However, interventions for a just transition should not be limited to these sectors.<sup>165</sup> Improved access to broader labour market mechanisms, including training and skills development, employment services, and access to social protection for workers and communities outside of established sectors, should also be prioritised to ensure that the processes are not exclusionary. In particular, the needs of vulnerable workers, including workers in the informal economy, and the need to address social security gaps, should be considered.

A sectoral approach acknowledges the need for interventions to be tailored to the specific needs and dynamics of each sector. For example, the energy sector may require instruments and interventions focusing on decommissioning coal plants and retraining energy workers, while agriculture might need mechanisms addressing sustainable farming practices and rural job creation. While in the municipal context, just transition imperatives specific to the area could be included in integrated development plans. By embedding the just

<sup>164</sup> [Just Transition Framework](#) at 10. However, *all* sectors should be engaging in dialogue on measures for the mitigation and adaptation to climate change, and not only sectors or industries where the phasing out of greenhouse gas emissions is likely to result in employment disruptions.

<sup>165</sup> In all industries and sectors, workers and employers should be cooperating on ways to adapt the operations of the employer to reduce emissions, and to address the risks to sustainable development, regardless of whether the business or sector itself is impacted by the just energy transition.

transition processes within sectors, the evolving JT framework can more effectively support economic restructuring while also supporting workers and communities.

At the **sector level**, more work is needed on the **mapping of stakeholders and institutions** and clarifying the roles and responsibilities of each, and there needs to be engagement with the relevant stakeholders and institutions on the co-ordination of just transition processes. The role of **bargaining councils** and **SETAs** should be considered; and, in the absence of existing bargaining councils for sectors, the possibility of establishing sectoral bargaining structures should be explored e.g. a bargaining council for the coal and energy sector, which currently lacks a central platform for industry-wide negotiations. These may also consist of temporary and ad hoc arrangements for the purposes of providing effective consultation and dispute resolution mechanisms during a just transition process or project.

It is critical that the mandate, and the mode of operation, of sector level institutions move **beyond narrow distributional bargaining** and that an **informed collaborative approach** is adopted to address the broader challenges associated with the impact of climate change on industries and workers. Sector bargaining institutions should play a key role in just transition planning: which requires meaningful participation in the **formulation of industry policy** (a primary object of the LRA)<sup>166</sup> and strategies that align the industry with climate adaptation and mitigation plans, while facilitating re-employment, reskilling, and access to income support where needed.<sup>167</sup>

The planning and implementation of a just transition should **leverage existing institutions**, including any relevant **bargaining councils**, or similar industry / consultative forums, and the statutory training bodies (**SETAs**)<sup>168</sup> should be included in such deliberations. In some sectors, the establishment of new sectoral institutions<sup>169</sup> will be required to support the transition. Relevant government ministries and departments should be identified and included in the dialogue to ensure that sectoral institutions are effectively integrated into broader governmental strategies, and to fostering collaboration between various stakeholders and sectors. It will be important to also include relevant industrial/ sectoral policy processes such as master plans, which provide context on the relevant stakeholders and the strategies for the sector. In this regard, table 10 below provides a very cursory and incomplete ‘mapping’ of selected institutions, industry policies, and oversight ministries across selected sectors. It should be noted that the DTIC is the key government department in respect of most master plans but that other departments take the lead on certain master plans. Although we recommend a sectoral approach, **workers and communities** who may not fall neatly within defined sectors must not be neglected. Many workers, particularly those in **informal work, self-employment, or small-scale enterprises**, might operate across multiple sectors or in spaces outside of formal sectoral boundaries, requiring that we reimagine labour standards and social protection to be inclusive and adaptable, ensuring that workers on the margins of the economy are not left behind.<sup>170</sup> Importantly, the role of **local government**<sup>171</sup> and provincial and municipal **integrated development planning processes** will be increasingly relevant and we have included these in the mapping exercise.

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<sup>166</sup> **LRA (s. 1(c)(ii))** provides that a primary objective of the Act is to “provide a framework within which employees and their trade unions, employers and employers’ organisations can ... formulate industrial policy.”

<sup>167</sup> These fall within the powers and functions of bargaining councils (LRA, s. 28)

<sup>168</sup> [List of SETAs](#).

<sup>169</sup> These can be voluntary; and in terms of statutory council, the LRA must provision for bargaining councils and statutory councils (Chapter III, LRA). Both are discussed in part 4.1 above.

<sup>170</sup> Worker organisations that engage on behalf of their members with local authorities include for example organisations such as the waste pickers organisation(<https://wastepickers.org.za/>)representing waste reclaimers.

<sup>171</sup> One aspect of this is the engagement between local authorities and communities regarding climate change adaptation (dealt with in the [SABS Standard](#) on Adaptation to climate change – Requirements on adaptation planning for local governments and communities; other relevant standards include ILO Transition from the Informal to the Formal Economy, 2015 (No. 204).

**Table 10. A cursory and incomplete mapping of selected sectors (institutions, policies, ministries)**

SECTOR	'SECTORAL' INSTITUTIONS	INDUSTRIAL / SECTORAL POLICY (MASTERPLANS) (DTIC)	MINISTRY/ DEPARTMENT	LOCAL LEVEL PLANS & INSTITUTIONS
<i>Note: Relevant SETAs have not been mapped onto the sectors</i>		<i>Note: when the CCA is operationalised, the Sector Adaptation Strategy and Plan by the Ministers listed in Schedule 2 will also be relevant (see <a href="#">Annexure B</a>)</i>	<i>Note: On labour, employment services, and skills development, the DoEL and DHET are relevant in all sectors. Other cross-cutting ministries include: Small Business Development; Social Development; SARS</i>	
Agriculture	AAMO Oversight Committee <a href="#">AgriSETA</a>	<a href="#">Agriculture and Agro-processing MasterPlan</a> (AAMP)	Department of Agriculture, Land Reform and Rural Development (DALRRD)	Municipal Integrated Development Plans (IDP) (provincial plans)
Energy	<a href="#">Energy Council of South Africa</a>	Renewable Energy Masterplan (SAREM)	Mineral Resources and Energy (DMRE)	IDPs
Mining	Minerals Council South Africa	Mining and <a href="#">Beneficiation</a> Masterplan <sup>172</sup>	Mineral Resources and Energy (DMRE)	IDPs
Tourism	National Tourism Sector Forum (?)	<a href="#">Tourism Sector Masterplan</a>	Department of Tourism	IDPs
Automotive industry	Motor Industry Bargaining Council ( <a href="#">MIBCO</a> ) National Bargaining Forum (NBF)	<a href="#">Automotive Masterplan to 2035 (Geared for Growth)</a>	Department of Trade, Industry and Competition (DTIC)	IDPs
Transport sector	NBF; Transnet BC, Logistics and Road Freight BC, Road Passenger BC (?)	<a href="#">National Transport Master Plan</a> (NATMAP) 2050	Department of Transport	IDPs
Construction sector	Various regional and local building industry bargaining councils	<i>The following may be relevant policy-setting institutions:</i> Construction Sector Charter Council Construction Industry Development Board	Department of Public Works & Infrastructure  Council for the Built Environment	IDPs
Local government sector	SA Local Government Bargaining Council ( <a href="#">SALGBC</a> )  SALGA	Municipal Integrated Development Plans (IDP)	Department of Local Government COGTA Human Settlements Public Works & Infrastructure Water and Sanitation	IDPs EPWP
Provincial and National	PSCBC & sectoral councils. <sup>173</sup>	National Development Plan	DoEL DFFE	

<sup>172</sup> This master plan is apparently in process, however we were not able to get any information on its contents.

<sup>173</sup> The Public Service Coordinating Bargaining Council (PSCBC) is a national and provincial coordinating council, with four designated sector councils: General Public Service Sectoral Bargaining Council (GPSSBC); Public Health and Social Development Sector Bargaining Council (PHSDSBC); Safety and Security Sector Bargaining Council (SSSBC); and the Education Labour Relations Council (ELRC).



government sector	ELRC SSBC PHSDSBC GPSSBC		DoH DMRE PME	
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Collaborative and functional integrated sectoral institutions should be a priority, and in this regard, the possibility and feasibility of establishing an energy sector bargaining council<sup>174</sup> has been flagged as a mechanism for coordination, which could, ‘as a sector and area,’ include both the coal-based and renewable energy sectors and could coordinate with the relevant SETAs (and possibly the JET Imp. Plan governance and institutional architecture for the electricity and Mpumalanga Portfolios) for overseeing the transition of employees into a renewable energy sector. The bargaining council system is voluntarist however, and constituting such a council would depend on the willingness, the strategic objectives, and the representativity of relevant employers’ organisations and trade unions in the energy sector, although government (PCC or JET-IP governance structures) could play a proactive convening and brokering role to bring the relevant parties together to deliberate on the establishment of an overarching bargaining structure, either as a permanent structure or one dedicated to the transition.<sup>175</sup> Possible alternative sectoral pathways include statutory councils or the use of regulations or ministerial<sup>176</sup> or sectoral determinations.<sup>177</sup>

At municipal level, community/or local-authority based consultation mechanisms, economic development initiatives and access to employment services and skills development must be accessible by workers and communities within the local authority context if we are to achieve an equitable and inclusive Just Transition. The challenges in Mpumalanga Province and ‘**lessons from Komati**’, discussed in part 2, emphasise the importance of this objective; and the importance of timing and sequencing in planned transitions, as well as an ‘early warning system’ that triggers when an industry, sector, or employer is in crisis or anticipates a crisis. In this regard, the potential for **an integrated instrument like the social and labour plans** to provide certainty and to delineate responsibilities and coordinate interventions at the sector, enterprise and workplace levels as well as at the community or local authority level, was highlighted as a priority during stakeholder engagements.

#### 7.4 Integrated framework instruments – just transitions by design

Existing regulatory mechanisms for labour market transitions such as the social plans and the **social and labour plans (SLPs)** provide a useful approach and a ‘template’ that can be augmented, taking into account ‘lessons learnt’<sup>178</sup> for an integrated framework instrument – ‘**a JT social and labour plan**’ – for the coordination of mechanisms, policies and interventions supporting workers in employment transitions. Part 5 of the report

<sup>174</sup> Note the undertaking in the Collective Bargaining Code that – ‘The Government and the federations of trade unions and employer organisations in NEDLAC undertake to engage on a periodic basis to develop legislative and other measures to promote collective bargaining at centralised, sectoral and workplace levels and to deepen the representativeness of trade unions and employer organisations.’

<sup>175</sup> The bargaining council would prioritise a transition plan for the energy sector; and would have to deliberate on how the relationship between the bargaining council and government is structured. At one extreme, the bargaining council could take a unique form in providing government with seats at the negotiating table. But a more feasible and flexible approach would be for the relationship to be structured and managed in the form of an overarching energy jobs transition programme. The objective of such a programme would be to achieve the final phase of the transition, with the responsibilities and roles agreed for stakeholders at all levels. This would arguably provide a vehicle to extend organised labour’s role in representing workers into the job creation and community development in phase of the energy transition.

<sup>176</sup> Ministerial determinations that have been published include the small business sector; the welfare sector; and the Ministerial Determination and Code of Good Practice for Expanded Public Workers Programmes.

<sup>177</sup> Sectoral determinations include Contract Cleaning Sector; Civil Engineering Sector; Private Security Sector; Clothing and Knitting Sector; Learnership; Private security sector; Domestic Workers; Farm Workers; Wholesale and retail sector; Children; Taxi Sector; Forestry Sector; Hospitality Sector.

<sup>178</sup> The challenges revealed in the [Cals SLP study](#) (2014-2018) are reported in three reports: First report: Design Phase; Second report: Implementation Phase; Third report: Alternative Models for Mineral-Based Social Beneficiation.

briefly sets out the context for social plans and SLPs (as well as the Training Lay-Off Scheme and TERS) and their use as mechanisms for employment transitions. The Centre for Applied Legal Studies (CALS) conducted a comprehensive [study on SLPS](#) (2014-2018) which revealed a number of shortcomings, as mentioned, these include –

- inadequate engagement with communities (in particular the absence of fieldwork to inform the SLP);
- inadequate information provided on consultation with communities;
- failure to address gender inequality;
- failure to make SLPs available to workers and communities;
- failure to plan (in particular, conduct feasibility studies) for local economic development projects;
- lack of liaison and coordination between SLPs and municipalities' local integrated development plans (IDPs) and inadequate assignment of roles and responsibilities; and
- lack of clarity on how mining companies will facilitate housing for workers and communities (in particular absence of coordination and agreement between government housing projects and housing plans provided by the mining company).<sup>179</sup>

Most of the shortcomings are in the community sphere and relate to alignment between company plans and the activities and interventions by government and municipalities, and how the community is involved. As a result, CALS researchers argue for 'an urgent shift in how SLPs are designed and implemented', and published a [SLP Mining Community Toolkit](#) to assist workers and communities. In their third report, [Alternative Models for Mineral-Based Social Beneficiation](#), the authors conclude with recommendations for an improved SLP system (also providing model legislative provisions), which they divide into immediate interventions (there are 11 proposals) and two types of longer term interventions – these are set out in table 11:

#### **"Immediate interventions" –**

"These relate to:

- Making the process of requesting information from the DMR under PAIA more accessible to communities;
- **Clearer legislative provisions regarding transparency of SLPs and annual compliance reports coupled with positive obligations to translate and disseminate them to communities;**
- **Mining laws, regulations and policy** need to be developed in a manner **that recognises communities as a central role player;**
- **... a problem solving service to address the grievances of mine-affected communities;**
- **... a community capacitation fund** that is designed to complement the problem solving service;
- Specify **requirements for community participation** in the design and amendment of SLPs;
- Specify **Requirements for periodic reporting back to communities** on progress made in SLPs;
- Impose **clearer requirements in legislation with regard to addressing gender inequality** associated with mining;
- Formally **integrate the development of SLPs into the IDP annual review** and require community participation in this process;
- Quantify the **formula for determining required financial provision for each mining operation;** and
- Greater **regulation on securing companies' financial commitments** with respect to SLPs."

#### **"Two longer term and more fundamental interventions" This includes alternatives to the SLP model –**

"First, the changes that we recommend pursuing regardless of the particular model followed. These include **amending mining law** to give effect to the principle of free prior and informed consent, **a more robust**

<sup>179</sup> Centre for Applied Legal Studies. 2018. [Phase 3: Alternative models for mineral-based social benefit. The Social and Labour Plan Series.](#)

**framework for addressing the negative social and economic impacts of mining** and greater regulation of the trusts and other vehicles held on behalf of the communities on whose land mining takes place.

Second, we set out ... three possible alternatives to the present SLP model. The first of these was **negotiated SLPs**. This entails the **retention of the model of SLPs to be implemented by mining companies but requires the content of these to be the product of a formal negotiation between communities, organised labour, mining companies and government**. The **second model** involves the **replacement of project-based SLPs by a regional participatory structure**. The essence would be a **participatory process that moves to a regional forum which is designed to elicit mandates on projects directly from communities**. In our view, this is **the most promising approach, since it marries direct community involvement with regional multistakeholder co-ordination**. The **last model we have put forward is for a government agency** tasked with overseeing the implementation of local economic development of mine-affected communities, as per the Mining Charter of 2017.

(Bold added for emphasis)

The first of the alternatives to the present SLP model proposed by CALS arguably runs the risk of entrenching power imbalances, and the third raises questions about capacity and duplication of roles with existing authorities. The idea of **regional forums** and how this could relate to **sector institutions** and integrated planning should be considered. In addition, CALS recommend ‘immediate’ interventions that could inform the development of statutory provisions or a regulatory instrument as an enabling framework for the design and implementation of ‘**JT SLPs**’.

If an enabling framework for **JT SLPs** was to be designed, numerous questions arise, including –

- Roles and responsibilities and statutory mandates: which entity or entities would be responsible for designing the enabling framework and for its implementation and enforcement?
- Could sectoral institutions be engaged to develop **JT SLPs** without requiring an enabling framework?
- Could **JT SLP processes** be attached to **current statutory development plans** and built into current development processes: such as the CCA sector strategies and plans; and/or the MSA’s integrated development plans? Arguably, this should be the aim, so as to avoid duplication or conflict between different authorities and plans.
- Which statute should ‘house’ an enabling framework, and what type of instrument or instruments should be adopted (e.g. a ‘National Just Transition SLP Framework’ under the CCA; or ‘Integrated Social and Labour Plan Regulations’ under employment law)?

**NEDLAC** and the **PCC’s** involvement in responding to these questions should contribute to a coordinated and integrated (**labour** and **environment**) approach to the just transition rooted in inclusive social dialogue.

An important consideration is the need for community-based projects and interventions,<sup>180</sup> as well as interventions for individual workers (such as job matching, retraining, or income support) that are based on the specific needs of each worker; with funding mechanisms where this is required.<sup>181</sup>

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<sup>180</sup> Options for funding for community based economic development projects, suggested in the [CALS Phase 3 report](#) at 39, include a single fund “for each minerals complex, or municipality, in which all mining companies would ... contribute ... run be local government or housed at an inter-governmental level”, and that a process for allocating the fund would be determined through democratic processes within communities, and in alignment with IDP processes.

<sup>181</sup> Bhorat suggests that this should include a consideration of provident and pension funds, with the state playing a role when top-up funding is needed. For example, employers in the coal sector contribute to provident and pension funds (and administer the contributions of workers) as well as the Unemployment Insurance Fund (UIF).

## 7.5 Social protection in times of transition

Social protection<sup>182</sup> considerations include income support: and in this regard, not only unemployment insurance or the possibility of a universal basic income grant, but also pension funds, which could include possibly pension funds at a sector level; and contributions for workers affected in the future by the just transition.

In respect of workers who may need relocation allowances, considerations regarding funding (where will funding come from; whose obligation is it) include the circumstances of the relocation and whether the worker was an employee or self-employed; whether the worker is transitioning to equivalent work or formal employment; or relocating home (or elsewhere) without prospects for work in the foreseeable future, etc. Social protection mechanisms may also be necessary to bridge income gaps for workers transitioning to new sectors with lower wages.

**Table 11. Funding mechanisms for a Just Transition: social protection and social plans**

### **The Workfare Programme Fund**

Part VII of the [Workers' Rights Act, 2019](#) in Mauritius makes provision for a Workfare Programme Fund, with funds paid by a levy specified by the Human Resource Development Act and monies appropriated by the National Assembly, as well as social security contributions by employers. The Programme Fund is used for "**transition unemployment benefits**" and the "financing of such **social plan** for the benefit of workers as may be prescribed" (s 77(d), and "remuneration due to a worker ... in the case of force majeure", which would likely include circumstances such as floods, hurricanes, fire, etc.

### **A social plan to provide income support when work is stopped due to impossibility of performance**

The Workers' Rights [\(Social Plan\)\(Income Support to Workers\) Regulations 2024](#) makes provision for "monthly income support equivalent to the basic wage or salary of an eligible worker" – in this particular regulation, from April 2024 to November 2024 in a particular region where employers cannot operate "due to infrastructural workers being undertaken by the Road Development Authority."

It was noted that the PCC is planning a conference on social protection in 2025, to explore gaps in the current system and ways to support workers, and bridge gaps in income arising from the transition.<sup>183</sup>

Institutional integration, coordination and synergies are central to the just transition processes. Many of the issues raised in the report will continue to be explored within the Labour Market Chamber and in collaboration with the PCC to consider how to move forward with a just transition in terms of legislation and regulatory developments, including the development of integrated framework instruments and improving access to social protection.

<sup>182</sup> The ILO Social Protection Floors Recommendation, 2012 (No. 202) identifies a floor of protection as the "basic social security guarantees which secure **protection aimed at preventing or alleviating poverty, vulnerability and social exclusion**" (Clause. 2), comprised of (in a combination of benefits and schemes) "at least the following basic **social security guarantees**: (a) ... **essential health care**, including maternity care ...; (b) **basic income security for children** ... providing access to nutrition, education, care ...; (c) **basic income security ... for persons** in active age who are **unable to earn sufficient income**, in particular in cases of sickness, unemployment, maternity and disability; and (b) **basic income security ... for older persons**." (Clause 5)

<sup>183</sup> In the context of social protection, two lines of enquiry were identified: (1) The Department of Social Development (DSD) grants, which could include considerations for a universal income grant, or a basic income grant. (2) The UIA schemes, which is on the agenda for revision (and could be dealt with separately by NEDLAC, or jointly with the PCC); noting that NEDLAC has experience with the TERS scheme.

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## ANNEXURE A. COLLECTIVE BARGAINING - MODEL AGREEMENTS FOR A JUST TRANSITION

### **Model 1 – A shorter more general model agreement<sup>184</sup>**

*The (employer) and (union) acknowledge the immediate threat to the ongoing viability of the business and to job stability and security presented by rising greenhouse gas emissions which have been the cause of increasing average global temperatures and climate instability.*

*The parties to this agreement commit to a cooperative / collaborative approach to reducing those risks through actions which reduce emissions. It is recognized that there is likely to be fundamental changes required to the operation of whole sectors and to individual enterprises.*

#### **Climate, Environment and Sustainability**

1. *The parties to this agreement recognize the shared benefits to the employer and employees of taking a cooperative approach to addressing key risks to the ongoing viability of the business and to job security.*
2. *The parties to this agreement recognize the risks arising from the climate crisis and commit to adopting a collaborative and consultative approach to reducing greenhouse gas emissions and mitigating risk.*
3. *The employer will provide information on the greenhouse gas emissions from its own operations and from within its supply chain at least annually. The employer will give a presentation to workplace union representatives and relevant union officers on the risks to business viability and job security posed by climate instability, how the emissions are measured, emission targets and plans for reducing emissions.*
4. *If the employer does not record, measure or plan to reduce emissions, the union and employer will meet to develop a step-by-step process to measure emissions, set targets and review progress.*
5. *The employer and the union will establish a climate, environment and sustainability committee which will reflect the diversity of the workforce and include women in its membership. The committee will engage in meaningful consultation and planning around the risks presented by the climate crisis and the implications for jobs and job security of measures which are planned to reduce emissions. Proposals shall be gender sensitive and ensure equal opportunities for both women and men. Agreements should protect against discrimination of any kind during transition to new ways of operating and new jobs and work organization.*
6. *As part of its mandate to address the risks to sustainable employment presented by the climate crisis, the committee will:*
  - 6.1 *Consider the information presented by the employer pursuant to clause 3*
  - 6.2 *Consider and discuss initiatives to increase job security by addressing the climate crisis including:*
    - 6.2.1 *Sourcing workplace energy needs from renewable energy*
    - 6.2.2 *Improving energy efficiency of company buildings, equipment and machinery*
    - 6.2.3 *Reducing the environmental impacts of a company's supply chain*
    - 6.2.4 *Reducing emissions from company logistics and transport operations whether in house or outsourced.*
    - 6.2.5 *Improving recycling and environmental protection across the business*
    - 6.2.6 *Waste reduction*
    - 6.2.7 *Considering changes to work organization, working hours and shift patterns which could help mitigate the effects of the climate crisis on job security. Any proposed changes should involve full consultation with employees and take into account family care responsibilities.*
  - 6.2.8 *Considering the external risks to the business and job security presented by the climate crisis and identify mitigation strategies which might be implemented to ensure sustainable and safe employment*
  - 6.2.9 *Considering health and safety measures and policies during heat waves and other extreme weather events, including their specific impacts on women workers*

<sup>184</sup> Industrial [A trade union guide of practice for a Just Transition](#) (2022) at p. 31.

## **Model 2 – A more detailed model agreement regarding the energy transition<sup>185</sup>**

1. *The parties to this agreement recognise the shared benefits to the employer and its employees from taking a co-operative approach to addressing key risks to the ongoing viability of the business, and to job security. This clause sets out minimum consultative processes, and associated obligations, in relation to the impacts of energy transitions. The parties acknowledge:*
  - a. *That there is significant uncertainty in the future of electricity generation,*
  - b. *That this uncertainty constitutes major change for the purposes of the consultation, and*
  - c. *That this clause applies in addition to the provisions contained in the consultation clause.*
2. *The parties to this agreement recognise the risks and impacts to job security and the economy presented by climate change and the current energy transition. The parties commit to adopting a collaborative and consultative approach to mitigating and/or avoiding those risks and impacts and facilitating a fair and just transition for employees impacted by any changes.*
3. *During the term of the Agreement the parties recognise there may be the introduction of, and use of new technologies/plant, and/or retirement of existing technologies/plant which may impact the employment of employees. To mitigate these impacts, the parties commit to developing and establishing processes and plans which provide for:*
  - a. *No forced redundancies or relocations coupled with pooled voluntary redundancy schemes where appropriate, which allow for older workers at non-impacted work areas to nominate for voluntary redundancy creating a job or longer- term employment prospects for younger workers from the impacted area.*
  - b. *Lengthy notice periods of at least 5 years of future intention to close or substantially change technologies, to provide lead time to build replacement generation and / or plan orderly closures and to maximise opportunities for the workforce and their unions to negotiate fair outcomes. All notices of closure provided to [government agencies], including amendments to notices of closure, will also be provided in writing to employees and their Unions.*
  - c. *Comprehensive site rehabilitation plans which can provide an additional source of employment and deliver community benefits.*
  - d. *Funding and support to retrain power station workers including supporting their participation in any industry or Government programs in consultation with employees and their Unions.*
  - e. *Cooperation and participation in any announced funding and support initiatives which diversify the regional economy that the employer operates in.*

### **Establishment of a Transition Working Group**

4. *The employer commits to notifying and consulting with employees and their unions where the employer has made a preliminary decision on a proposal to introduce a change to generation technology which may include:*
  - a. *Retirement of some part or all its generation assets,*
  - b. *Planning, design, construction, maintenance, or operation of new generation assets,*
  - c. *Augmentation or upgrades to existing generation assets,*
  - d. *Planning, design, construction, maintenance, or operation of additional emissions reduction technologies, and / or*
  - e. *Any associated upgrades to existing technology resulting from any of the above.*
5. *Within 3 months of the approval of this agreement, the employer will facilitate the establishment of a consultative group to be known as the “Transition Working Group” which will include:*
  - a. *X representatives chosen by the employer*
  - b. *Y representatives chosen by the employees*
  - c. *One representative of each Union party to this agreement*

<sup>185</sup> Industrial [A trade union guide of practice for a Just Transition](#) (2022) at p.32 - 34.

6. *The work of the Transition Working Group will focus on the matters contained at clause 3. and 4. above and any other energy transition matters agreed by the parties.*
7. *The parties commit to making a joint representation to the relevant Government Departments and Ministers to seek appropriate engagement and representation to maximise transition opportunities for impacted workers as they arise. The parties will allow relevant Government representatives to participate in working group meetings if requested.*
8. *Where a broader industry / community transition group is established, the parties commit to supporting and participating fully in those processes and the employer will support employee representatives reasonably participating in that forum without loss of pay.*
9. *The employer will ensure employee representatives of the Transition Working Group have reasonable access to all the resources they require to undertake their work effectively including:*
  - a. *Mobile phone, computer, internet, and email*
  - b. *Printing, scanning, and photocopying*
  - c. *Relevant training supplied by their preferred provider*
  - d. *Reasonable paid time to attend meetings of the working group and to attend individual and group meetings of employees they represent*
  - e. *Reasonable paid time to perform work arising from the working group including collating employee feedback, researching proposals, preparing proposals and meeting with all relevant stakeholders.*
10. *At the first meeting of the Transition Working Group the employer will provide details of the preliminary decision, including:*
  - a. *The introduction of the proposed change,*
  - b. *The likely effect of the proposed change on impacted employees including the effect the proposed change could have on other employees including secondments, Fixed-Term employees, and contractors on site, including OH&S considerations,*
  - c. *Measures the employer proposes to take, or could take, to avert or mitigate the adverse effects of the change on employees, and*
  - d. *The likelihood of requiring redeployment through either internal and / or external employment transitions.*
11. *The working group will develop an agreed timeframe for the consultation period taking into account the consultation obligations contained in this clause and having regard to employee roster arrangements, the ability to consider the proposed changes, to seek advice, and to make and respond to detailed proposals.*

#### **Internal Employment Transitions**

12. *The employer will prepare and provide to the working group a matrix of all persons working in the business including current secondments, fixed term, casual and contract roles which will be used to identify possible opportunities to maximise permanent employment outcomes for impacted employees at the workplace they are currently engaged at.*
13. *Where it is identified employees may become surplus to ongoing operational / maintenance requirements due to the proposed change, a skills audit will be conducted to identify the skills/competency bank of impacted employees to identify the requirements for the workplace to continue to operate safely and efficiently as well as identifying any skills employees may have which will assist with an internal transfer to another role at the same work location.*
14. *These employees will be provided with the first option to take up any new positions created where there is an introduction of new or alternate generating technologies at the current work location they are engaged at.*
15. *Where a surplus employee/s is identified, and internal positions are either available or will become available, an analysis of any skills gaps will be conducted in consultation with the affected employee/s and a training plan will be developed with the relevant training occurring during the course of their rostered hours and at the cost of the employer.*
16. *The employer will ensure that any offers of internal transfer to vacant positions are transparent and orderly*

by applying the following process:

- a. [notice] will be provided to all Employees identifying the positions available and skill requirements (acknowledging that training will be made available to successful candidates as required).
  - b. Successful candidates will be selected using [an agree upon selection process]
  - c. Any dispute in relation to the suitability of a selected candidate/s will be dealt with by the convening of a conference of the workplaces regular Consultative Committee.
  - d. If it cannot be resolved there, then the grievance/ disputes procedure will apply including progressing the matter to the [relevant regulatory agencies] for resolution if required.
17. Where it becomes evident that the internal transfer of employees at a particular location will not absorb all surplus employees an [agreed-upon] process will be utilised to identify Employees who wish to take up redeployment via external employment transition opportunities at a different location to where they are currently engaged.
18. Prior to advancing external employment transition arrangements all options for retraining and redeployment of staff including potential reorganisation of working hours arrangements shall be exhausted.

#### **External Employment Transition**

19. Employees who will be displaced after all internal employment transition options have been exhausted will have first priority to transfer to other work locations of the employer including new and proposed greenfield sites, existing sites under construction and roles within wholly owned subsidiaries of the employer.
20. The employer will ensure that all contracts entered into for planning, design, construction, maintenance and / or operation of new generation units will include enforceable terms requiring the contracted entities to accept reasonable secondments and permanent transfer of employment opportunities.
21. Where a successful secondment or permanent transfer requires an employee to first acquire additional skills and training, the employer will arrange for the relevant training as a priority during the course of the employees rostered hours and at the cost of the employer.
22. Where the employer plans, designs, constructs, maintains and / or operates new generation units which requires employment of additional staff the employer will ensure that existing employees are provided opportunities to acquire skills, knowledge and experience in the new technology. A transition plan will be developed for employees who work on equipment that is or will be phased out to transition to the vacancies associated with the new plant.
23. If there remains vacant positions following the above process, the parties will work to create a process to fill vacancies with workers from the local community and from the power generation industry who have been or are facing displacement from the energy transition elsewhere.

#### **Support for Impacted Employees**

24. The Transition Working Group will support impacted employees and their families by actively exploring assistance through:
  - a. Recognition and transfer options for [long service leave] accruals, and conditions (qualifying period, level of payment, how and when it can be accessed etc.).
  - b. Relocation expenses, including relocation grants to assist with the disruptive costs of moving such as changing schooling, partners having to give up work to move with the main "bread winner".
  - c. Training subsidies for individuals, to be available up to 12 months from the date of being displaced, in a field of their choosing which will assist in securing ongoing and permanent employment.
  - d. "Top up" payments to employee's [pension/ superannuation] funds who were nearing retirement age and have had to leave the industry prematurely.
  - e. Mitigating any costs associated with the employee's employment being affected by the changes such as breaking of real estate leases, vehicle leases, early termination of contracts etc.
  - f. Assisting employees to access financial advice in relation to Small Business Loans/Grants, low interest packages for affected employees.

#### **Support for Impacted Communities**

25. *The Parties recognise the employer has benefitted from the extensive community infrastructure which supports both the employer and the employees. Therefore, the parties commit to working together to advocate for Government support initiatives, including:*
- a. Access to Small Business Loans/Grants, low interest packages for affected employees.*
  - b. Assistance for communities who lose residents due to station shutdowns e.g. assistance packages for small businesses and public utilities/services who are adversely impacted by the reduction in population.*
  - c. Housing losses where a closure causes the housing market to collapse via a purchase guarantee for employees who must relocate.*
  - d. Low interest loans for house purchases for employees who have had to relocate to gain employment.*
  - e. Increased funds for Social Services to assist with the pressures of losing employment, e.g. suicide prevention programs, child support group etc.*
  - f. Incentives to employers to “take on” anyone affected with losing their job because of shutdowns, especially if there is a re-training requirement for a new employee.*
  - g. The employer commits to funding a detailed study into the economic and social impacts on the local community of any proposed restructure or closure, with a particular focus on the effects on Schools, Hospital, Policing and social services funding and staffing impacts.*

## **ANNEXURE B. ELEMENTS OF THE SECTORAL APPROACH WITHIN THE CLIMATE CHANGE ACT**

Ministers who are responsible for the **functions listed in schedule 2** of the CCA are required to develop and implement a Sector Adaptation Strategy and Plan identifying risks and vulnerabilities within areas, ecosystems and communities as a result of climate change; and the mechanisms and measures in response. (s.22 CCA)

### **SCHEDULE 2**

#### **NATIONAL DEPARTMENTS AND STATE-OWNED ENTITIES RESPONSIBLE FOR CERTAIN FUNCTIONS REQUIRED TO DEVELOP A SECTOR ADAPTATION STRATEGY AND PLAN**

<ul style="list-style-type: none"><li>• Agriculture;</li><li>• Education;</li><li>• Cooperative Governance;</li><li>• Forestry;</li><li>• Fisheries;</li><li>• Disaster Risk Reduction;</li><li>• Energy;</li><li>• Environment;</li><li>• Health;</li><li>• Human Settlements;</li><li>• Manufacturing;</li></ul>	<ul style="list-style-type: none"><li>• Public Enterprises;</li><li>• Rural Development;</li><li>• Land Reform;</li><li>• Science;</li><li>• Technology;</li><li>• Tourism;</li><li>• Traditional Affairs;</li><li>• Transport;</li><li>• Water Affairs; and</li><li>• Sanitation.</li></ul>
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After the CCA comes into operation, a list of greenhouse gas emitting sectors and sub-sectors that are subject to sectoral emissions targets must be published by the DFFE minister (ss. 25 CCA), who is required to take into account the socio-economic impacts of introducing the targets and must adopt policies and measures towards the achievement of the targets. The targets must be reviewed on a 5-year basis taking into account “the strategic importance of the sector or sub-sector as a catalyst for growth and job creation in the economy” and “the agreed approach to the just transition.”

### **SCHEDULE 1**

#### **FUNCTIONS RELEVANT TO THE DEVELOPMENT OF SECTORAL EMISSIONS TARGETS**

<ul style="list-style-type: none"><li>• Agriculture;</li><li>• Forestry;</li><li>• Fisheries;</li><li>• Cooperative Governance;</li><li>• Traditional Affairs;</li><li>• Economic Development;</li><li>• Energy;</li><li>• Environment;</li><li>• Health;</li><li>• Human Settlements;</li><li>• International Relations;</li><li>• Mineral Resources;</li></ul>	<ul style="list-style-type: none"><li>• National Treasury;</li><li>• Public Enterprises;</li><li>• Public Works;</li><li>• Rural Development;</li><li>• Land Reform;</li><li>• Science;</li><li>• Technology;</li><li>• Trade;</li><li>• Industry;</li><li>• Transport;</li><li>• Water Affairs; and</li><li>• Sanitation.</li></ul>
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Level	Forum/Institution	Laws, policies and programmes	Issues for reform/labour law responses
<b>National / Economy-wide</b>	Presidential Climate Commission (PCC) Dept of Forestry, Fisheries & Env (DFFE) CoGTA (Dept of Coop Governance & Traditional Affairs) SALGA	Just Transition Framework Climate Change Act	Consultation regarding mitigation and adaptation measures, including public financing for such measures
	NEDLAC (Labour Market Chamber and Development Chamber)	LRA; OHSA	Consultation re. amendments to s 189 of LRA and extension to own-account workers
	NEDLAC (Labour Market Chamber and Development Chamber, i.e. NGOs)	SDA/SDLA	National Skills Fund re. training & retraining programmes for informal e/ers, self e/ed & e/ees
	NEDLAC (Labour Market Chamber)	ESA / National Employment Policy	Job database for employment and re-employment including counselling
	UIF	UIF/UIA	Unemployment benefits
	SETA (IUF)	LRA (CCMA)	Training lay-off scheme/TERS (UIF for Covid-19TERS)
	PES (Presidential Employment Stimulus) DPWI (Dept of Public Works & Infrastructure)	BCEA (Ministerial Determinations)	Public Employment Programmes & EPWP
<b>Sector / industry / value chain</b>	Bargaining councils	Bargaining council agreements	Negotiation/Consultation – see s 28 re. scope of issues that councils can regulate
	SETAs	Sector skills plans	Consultation and retraining
	Master Plan SCs or EOCs	Master Plans	Consultation, employment creation/retention/transfer as well as skills development
<b>Workplace</b>	Workplace collective bargaining	Collective agreements	Agreement or strikes re. retrenchments
	Workplace forums	Workplace agreements re. rules and policies	Consultation re. new technologies, restructuring and retrenchment
	Workplace skills committees	Workplace skills plans	Training and retraining
	Occupational health & safety committees.	Workplace health & safety rules and policies	Consultation re. adaptations to impacts of climate change on workplace
	DMRE (Dept Mineral Resources & Energy)	Social and Labour Plans (Mines)	Consultation, training and retraining, community development, downsizing and retrenchments
<b>Local</b>	Municipal Forums	IDPs Climate Change Act	Consultation with inter alia local government by trade unions & NGOs representing the self-employed and informal employees

