1. **Report of the Portfolio Committee on Labour based on the Report of the High Level Panel on the assessment of Key Legislation and the Acceleration of Fundamental Change, Dated 7 November 2018**

The Portfolio Committee on Labour, having considered the High Level Panel recommendations on the labour legislation in a meeting held on 5 September 2018, reports as follows:

1. **Background**

The Fourth Democratic Parliament identified the assessment of the impact of legislation passed since 1994 as a key priority to be undertaken by the Fifth Democratic Parliament. This priority was incorporated into the Strategic Plan of Parliament for 2014 – 2019. Subsequently, the High Level Panel of eminent South Africans was established by the Speakers Forum in December 2015 to undertake this task. The High Level Panel’s mandate was to review legislation, assess implementation, identify gaps and propose appropriate remedial measures. The panel’s work was divided into three main thematic areas, which were:

* 1. Poverty, unemployment and the equitable distribution of wealth;
  2. Land reform: restitution, redistribution and security of tenure; and
  3. Social cohesion and nation building.

The mandate of the HLP was, inter alia, to:

* Assume overall responsibility for the assessment of key legislation and the acceleration of fundamental change;
* Assess the impact of existing legislation and identify legislative gaps;
* Assess the possible unintended consequences, gaps and unanticipated problems in post-apartheid legislation, as well as how effectively laws have been implemented; and
* Propose appropriate remedial measures to Parliament, including amendment, repeal or additional legislation.

Of more relevance to the Portfolio Committee on Labour is the first thematic area, which is Poverty, unemployment and the equitable distribution of wealth. The Working Group on this thematic area was tasked with producing a report on the following focus areas:

1. Growth, poverty and inequality

* Wage inequality
* Wealth distribution and inequality
* Labour regulatory environment
* Unemployment
* Poverty and access to basic services

1. Unequal access to quality health care
2. Quality education
3. Spatial inequality
4. Skills development.

This summary focuses on the first thematic area, which is poverty, unemployment and the equitable distribution of wealth. More specifically, the focus is going to be on unemployment.

1. **Unemployment**

The report of the HLP on unemployment is based on the 2016 statistics of the Statistics South Africa. However, the 2018 first quarter statistics does not differ much from the 2016 statistics. As in 2016, of the 37 million people aged between 15 and 64, 16 million were employed in the first quarter of 2018. In the first quarter of 2018, 5.98 million people were actively looking for work while there were 5.8 million in 2016. The number of the economically inactive population grew from 12.8 million in 2016 to 15.3 million in the first quarter of 2018.

The report reflects that only 40% of adult black Africans were employed in 2016, while the figures for Coloured, Indian and White South Africans were 50%, 54% and 63% respectively. The Statistics South Africa figures for the first quarter of 2018 are similar to the 2016 except for the employment figure of the Indian population, which was down to 53%. Furthermore, the report reflects that only 13% of the population from 15 to 24 were employed in 2016, while 51% of those from 25 to 34 years were employed. The figure for those from 35 to 54 was over 60%. There was a slight change in the figures for the first quarter of 2018 in that employment was 12% for those from 15 to 24 and 49% for those from 25 to 34.

* 1. **Causes of unemployment**

The report classified the causes of unemployment into three, namely:

* Low levels of employment in agriculture;
* Low rates of economic growth; and
* Skill and capital biases in the economy.
  + 1. **Low levels of employment in agriculture**

South Africa’s level of employment in the agricultural sector is low compared to other developing countries. Only 5% of the South African workforce work in the agricultural sector, which is similar to Europe and far below other developing countries. South Africa’s low level of employment in agriculture is partly attributed to climatic and geographic conditions, and partly to history of dispossession and displacement. This situation was exacerbated by apartheid’s forced removals of Africans to the Bantustans, which resulted in overpopulation and; low levels of agricultural output. High level of employment in the agricultural sector is important for employment growth since agriculture is a labour intensive sector**.**

* + 1. **Low rates of economic growth**

The HLP report attributes low economic growth to the following factors:

* The low accumulation of human capital and skills in South Africa;
* The economy that is dominated by monopolies;
* Large proportion of the population located in rural areas where there is less economic activity;
* Infrastructure backlogs that raise the cost of economic activity;
* Inefficiencies in the use of scarce resources in key sectors, leading to higher costs and reducing the resources available for other activities;
* High levels of inequality resulting in poor educational and health outcomes, insufficient demand for local products and political environment s that is susceptible to policy uncertainty; and
* The high cost of local production which result in diversion of investments to emerging economies of East Asia.

According to the report, poor health status of the population, weak education system, lack of cooperation between labour and government, inflexible labour laws and high pay in relation to productivity are among the factors that retard economic growth.

* + 1. **Skill and capital biases in the economy**

The report identified mismatch between skill levels of job seekers and skills required for available job opportunities. The Public Employment Services programme of the Department of Labour is seized with the same challenge of job placements where job seekers in its database do not match available job opportunities.

This problem, the report asserts, is compounded by the Government’s labour policy choices. In this regard, the report identified policies that seek to protect vulnerable workers e.g. Basic Conditions of Employment Act and the Labour Relations Act; and wage-setting policies such as the National Minimum Wage Bill that is being processed by Parliament. The report cautions that while these policies were espoused with good intentions, in the long-run they tend to push employers to economise on the use of labour, especially unskilled labour.

1. **Recommendations of the Panel**

With regard to fighting the scourge of unemployment, the panel made the following recommendations:

1. That the time to register a new business should be reduced including getting appropriate permits, i.e. construction permits, getting telephone and electricity services, registering a property and accessing state sources of business development funding. The panel asserts that these actions, while currently fragmented, could easily be centralized through a single e-governance portal.
2. That enterprises below a certain size (in terms of employees) be exempted from certain regulations including the obligation to pay the minimum wage and specific components of BEE legislation.
3. That people below a certain age, those that have been unemployed for a long time, people in rural areas and those living with disabilities be employed without the employer being required to pay the minimum wage on the same terms. The panel recommends the setting of a separate wage for the vulnerable in the labour market.
4. That Parliament amend Labour Relations Act to remove section 32, which deals with extension of collective agreements concluded in bargaining councils to non-parties to the collective agreement or to prescribe that the extension to non-parties will not be applicable to small and medium enterprises.

The report of the High Level Panel was referred to the Portfolio Committees as well as Joint Rules Committee for consideration and report. The Portfolio Committee on Labour referred the report to the Department of Labour for inputs and the inputs were received and are included in the following table.

1. **Responses of the Department of Labour to the recommendations of the High Level Panel**

**Table 1**

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| --- | --- |
| Poverty, unemployment and the equitable distribution of wealth |  |
| High Panel Recommendations: Poverty | Department of Labour Comments |
| * The most efficient way to take a large number of people out of poverty is to create jobs that can absorb most of the unemployed. The Panel recommends that Parliament reviews the implementation of the Special Economic Zones Act 16 of 2014 to see how it could be optimized to create special zones for manufacturing production destined for export, with appropriate incentives and exemptions. * Parliament is urged to encourage government to prioritize agricultural development because it could generate more jobs for rural people and also contribute to economic growth. The tourism sector should receive renewed attention. Parliament is urged to pass legislation that will require the state to invest resources to gradually develop low-end tourism destinations in rural areas and the periphery where the majority of the population lives in order to attract tourists. * Impediments to competition and high entry barriers impose a structural constraint on growth. Parliament should enact amendments to competition legislation that enrich the powers of economic regulators to promote competition, based on fact-based inquiries and investigations, and also to discourage government policy and action that stifles competition. * The role of the informal sector in poverty alleviation is crucial. Parliament should ensure that the next budget appropriations include resources for supporting informal traders and upgrade their trading places, for example by creating low-cost kiosks, cubicles and stalls with suitable infrastructure and storage space. * Lack of access to finance is a consistent theme when it comes to the constraints facing new and small businesses. The Panel supports legislative efforts to foster the advancement of patient capital to new or small businesses, with emphasis on equity and royalty-based financing schemes, in addition to loans. | The Department of Labour provides a range of support measures to the unemployed and contributes towards lifting them out of poverty and inequality through the following interventions:   * The provision of Unemployment Insurance Fund replacement income to those that loose their employment. * The provision of income support or life pensions to those that get occupational diseases or injuries. * The provision of public employment services to assist work seekers to transition to the world of work i.e., secure employment and further learning opportunities. * Provision of minimum standards and the enforcement thereof through various labour legislations. * The Department through its 126 labour centres; located close to communities, extended satellite and visiting points; is able to take services closer to the people; and has also implemented self-help kiosks which makes it easier for citizens to receive services. * Special supported employment is provided to people with disabilities and subsidies are also granted to workers participating in other selected persons with disabilities (PWD) factories. |
| High Panel Recommendations: | Department of Labour Comments |
| * Apart from high levels of poverty, South African society is also marked by very high levels of inequality, much of it racialized. Since 1994, the overall level of income inequality (as measured by the Gini coefficient) has changed from 0.59 to 0.69 in 2014, suggesting that inequality has grown (World Bank, 2017). There have also been changes in what drives inequality. Inequality between races has diminished to some extent, while inequality within race groups has increased. * South Africa does not have a comprehensive data set that can provide robust estimates of wealth inequality. A recent study suggests that the wealth gap in inequality is much wider than that of income inequality. New tax and survey data suggest that 10% of the South African population owns at least 90–95% of all assets, which is much higher than in developed countries, where the 10% own 50-75% of the assets (Orthofer, 2016). * Land redistribution is a key element to reducing wealth inequality. Land dispossession relegated Africans to the periphery of both urban and rural areas, with a concentration in the former Bantustans, townships and informal settlements. Apartheid spatial planning placed most of the land in the hands of few commercial farmers. * The proposals start from the premise that the state can reduce inequality by using its power to introduce progressive policies aimed at addressing this social ill. The proposals accept that some level of inequality is needed to encourage innovation. | * The Department of Labour has a Labour Policy and Research unit that works closely with Stats SA to monitor trends amongst different cohorts of workers, through the extensive databases maintained by the Public Employment Services, the Unemployment Insurance Fund and Compensation Fund. |
| High Panel Recommendations: Unemployment | Department of Labour Comments |
| * A key driver of both poverty and inequality in South Africa is the fact that a very large proportion of the adult population is unemployed. Foremost among them are: low levels of employment in agriculture, low rates of economic growth, and skill and capital biases in economic policy. The Panel makes a range of recommendations to free up small business and to make it easy for it to employ unskilled and lower-skilled labour. * An active attempt to improve the ease of doing business, especially for small and medium-size business, would contribute to encouraging entrepreneurship. The Panel recommends that emphasis should be given to reducing the time to register a new business, getting appropriate permits, i.e. construction permits, getting telephone and electricity services, registering a property and accessing state sources of business development funding. Currently, all these actions are fragmented and time-consuming but could easily be centralized through a single e-governance portal. * Small and medium enterprises face high costs of doing business. The Panel recommends that enterprises below a certain size (in terms of number of employees) be exempted from certain regulations, including the obligation to pay the minimum wage and specific components of BEE legislation. * Young unemployed individuals and the disabled, as well as those in rural areas, constitute a large share of the unemployed who have never worked before. Yet, a first-time, inexperienced employee bears the same cost to the employer as an experienced worker. * The Panel recommends that people below a certain age, those that have been unemployed for a long time, people in rural areas and the disabled be employed without the firm being required to pay the minimum wage on the same terms. In effect, we recommend here the setting of a separate wage for the vulnerable in the labour market. * In terms of the Labour Relations Act, small companies in the same bargaining council as large companies are compelled to abide by the terms of the collective bargaining agreement reached by these employers and representative unions. In essence, the LRA calls for the ‘extension to non-parties’ noting that all agreements reached by representative parties during the bargaining process be extended to those parties not represented at the bargaining council. In practice, what this clause in the LRA has done, unintentionally, is to force the terms of an agreement reached by large employers and large unions onto SMEs. The result is higher than manageable wages for SMEs, arising out of agreements reached by larger firms and employers – with negative consequences for the growth of, and employment generation among, SMEs in the relevant sectors. * The Panel recommends that Parliament amend the Labour Relations Act to remove the ‘extension to non-parties’ clause or to prescribe that the extension to non-parties will not be applicable to small and medium enterprises (SMEs). * The Panel commissioned an extensive review of the legislative and policy system for skills development to assess how it enables or constrains South Africa from meeting its developmental goals of decreasing poverty, inequality and unemployment, which are inextricably linked to low levels of education particularly among Africans compared to other race groups. * When the three policy goals most directly dealing with the production of skills are considered, it is evident that the emphasis of policy goals and instruments established to achieve them is skewed to the production of intermediate and high-level skills, and much less so to developing vocational skills which have the greatest potential for promoting employability. The Panel makes a range of recommendations that respond to the imperative of global competition that requires a high skills base and a local context that requires low-wage jobs. | The Department of Labour has streamlined its operations to make it easier for businesses to register for its services, for example: -   * The U-filing system of UIF * The C-filing system of the CF * The ESSA online system * The soon to be launched National Minimum Wage Exemption system.   Other interventions aimed at assisting small businesses to operate includes   * The establishment of a commission whose task it is to look at the applicability of the National Minimum Wage. * The Extension of collective agreements will also be reviewed in line with the panel’s recommendations.   The NMW does provide for exemptions and there will be applicable regulations and guidelines to assists small businesses.  In terms of the Labour Relations Act, before the Minister of Labour can extend a collective bargaining to non-parties, the collective agreements must haves or stipulate clauses that deal with exemption or how they will consider the affairs of small business. The Minister cannot extend a collective agreement if it does not contain exemption clauses for non-parties.  Secondly, there is a Ministerial determination that automatically exempt small businesses from certain conditions of employment stipulated in the Basic Conditions of Employment Act. The Basic Condition of Employment Act also allow employers that cannot afford the minimum wage to apply to be exempted from paying the stated minimum wage, they can also apply to be excluded from certain conditions of employment. |
| High Panel Recommendations: Access to quality education | Department of Labour Comments |
| * To improve the quality of primary and higher education and training, which will contribute to a skilled workforce, five key priorities are recommended: * More reliable national assessments of learning are required. Standardized testing, in the form of the Annual National Assessments (ANA) programme, was halted in 2015 due to disputes between government and teacher unions over the program's design and purpose. While ANA was problematic in many respects, it appears to have sent vital signals to actors in the system about the importance of mastering basic language and mathematics skills, and constituted a unique tool at the primary level to gauge which schools were coping least, and which could be considered role models, in particular among township and rural schools. Since 2015, it appears as if better policies for standardized testing have been developed. In this regard, a 2016 proposal by the Department of Basic Education is important. * A new national assessment should be instituted that contains both (a) a system of universal testing that makes it possible to gauge how well individual schools perform, particularly at primary school level, and (b) a sample-based testing system with highly secure tests with ‘anchor items’ or test questions that are repeated from year to year. The latter can be used to gauge system performance and to track it over time. The DBE has committed to such a system and it appears that unions are also broadly willing to accept this if the purpose of the different assessments is spelt out clearly. There is a need to implement these assessments as soon as possible across all schools annually as a basis for better school-level accountability. On the policy side, Parliament will need to revisit the 2007 amendments to the South African Schools Act (SASA), plus related notices and regulations falling under the National Education Policy Act (NEPA), to ensure that a solid framework exists for the national assessment system. * New ways of teaching basic reading skills should be implemented with urgency. * Given that literacy forms the basis of academic comprehension and expression it is critical to improve the reading skills of South African learners. Given the impact that technology development is having on the labour market, literacy and learning competency have been identified as worker survival skills given that 47% of current jobs are destined for redundancy due to technological changes such as automation and artificial intelligence requiring workers to retrain for new jobs that will be created by these new technologies. * (c) Broader access to quality and standardized early childhood development programmes. * This will require expansion of support to Early Childhood Development (ECD), with strong emphasis on the quality of such provision in the sense of cognitive, social and emotional development of children. For this reason, the ECD programme should be transferred from the Department of Social Development to the Department of Basic Education, which is the logical institution to concentrate its efforts on standardized cognitive development programmes, which can be monitored and evaluated for their effectiveness in improving readiness for Grade R. Currently around three-quarters of children are attending some early childhood development institution, but only around a quarter receive public funding. Parliament should use its right to allocate funding to ECD to stabilize this programme by increasing funding and developing appropriate training for ECD practitioners. With regard to access to ECD, it may be best to support the rural and marginalized communities by lowering eligibility requirements for infrastructure as many children live in communities with poor services such as lack of running water, electricity and sanitation. Such children should not be deprived early childhood development services by depriving them funding. Instead, the state should offer subsidy and simultaneously improve sanitation, access to water and electricity to the communities where these children live. * (d) Tightening up school management and governance. * Across the world, a key lever for improving schooling systems is seen to be ‘decentralization’ or ‘school autonomy’, linked to adequate central funding and strong accountability of the school to the state. | Low levels of education amongst the unemployed makes it very difficult for work seekers to access new offers for employment, it does have an impact to those occupying lower level jobs and does not position workers with the flexibility they require in case of industry restructuring. DoL skills development initiatives to address these challenges were transferred to the DHET. In addressing the plight of workers and work seekers, the following initiatives continue to be undertaken jointly with other Departments and entities:   * The Labour Activation Programs funded by the UIF in partnership with various SETAs and TVET aims to provide basic training programs to assist those that are unemployed to enter work. * Public Employment Services Career counsellors provide work seekers with individual assessment through a battery SPEEX, counselling services and advise. * The Employment Practitioners assist with the Selection and Placement in various learning programmes. * The Department of Labour Minister and other Senior Officials, serve in a range of Committees and working groups that include Basic, Higher Education and Science and Technology amongst others, HRD Council, National Skills Authority; Employment Services Board etc. that are dealing with various education and training related matters. |
| Progressive realisation of socioeconomic rights | Department of Labour Comments |
| * The Panel found that because of persistent racial differences in access to socioeconomic rights and constraints on life opportunities for certain vulnerable groups, the progressive realization of socioeconomic rights in South Africa is possible only if government continues to place emphasis on designated groups in existing affirmative action legislation, policies and programs. Thus, emphasis must be placed on realizing socioeconomic rights for black people in general, women, and people with disabilities with the objective of achieving representivity and inclusion. * The Panel supports the constitutional principle of privileging the disadvantaged but is cognizant of the need to assign opportunities on the basis of merit, and representatively. Furthermore, legislating the progressive realization of socioeconomic rights should mainstream and capture the needs of the poor to facilitate access to employment, education, housing and health. As such, the concept of representivity should explicitly reference the poor of all race groups, together with members of designated groups. * Parliament should actively engage in the process of realization of socioeconomic rights by monitoring and facilitating implementation of legislation, policies and programs aimed at the progressive realization of these rights, placing emphasis on designated groups – black people in general, women, and people with disabilities – as well as the poor of all race groups, in the relevant policies and programs. | * Issues of socio-economic rights are addressed through the various labour legislation administered by the Department and also through the way it provides its services to previously disadvantaged communities. * The BCEA, LRA, OHS provides a Minimum of rights that all employers must adhere to. * The CIODA, UIF provides for income replacement. * EEA, ES provide for access and redress in the work place. * The Inspection and Enforcement Services has done its best to protect vulnerable workers and to deal with non-complying employers. |
| Social assistance | Department of Labour Comments |
| * It is important to develop and maintain an effective social security system based on solidarity, since this is an indication of one of the principal means of fostering social cohesion. The Social Assistance Act was enacted to help secure the well-being of all citizens and to provide effective, transparent, accountable and coherent government in respect of social assistance. However, the Act prevents certain sectors of society that need it the most, from benefiting from social assistance. * There are several challenges with the Act itself. A mother under 18 years cannot be registered as both a Child Support Grant (CSG) beneficiary and a caregiver recipient who receives the CSG on behalf of her infant. There is no provision in the Act for supervising adults designated to assist child-headed households to access the CSG. Lapsing of foster care grants is not addressed by the Act. For example, it is impossible for social workers managing high caseloads to have all documents and attachments to reports for extending orders ready for courts on due dates. It is therefore inevitable for orders to lapse. * Currently, there is no common definition for what constitutes a disability. The eligibility criterion for the disability grant marginalizes people suffering from HIV and other chronic illnesses. The Panel makes some recommendations to remedy these deficiencies of the Social Assistance Act. The Act should be amended to enable teen mothers and child-headed households to receive the Child Support Grant (CSG) simultaneously for themselves and the children in their care; to allow supervising adults supporting child-headed households to apply for the CSG on behalf of the children under their supervision; to deal with lapses of foster care grants; and to include a widely accepted definition of disability. | The Department of Labour provides the following forms of social assistance activities:   * Income replacement through the Unemployment Insurance Fund and the Compensation Fund for occupational deceases and injuries. * All services of the Department of Labour are offered free to members of the public. * The Department also offers supported employment to PWD, subsidies to organisations employing PWD and subsidies to Non- Governmental organisations and NPOs that provide various services to vulnerable groups. * The Department works closely with Departments such as Department of Social Development (DSD) in implementing various legislation dealing with children and other Social Sectors and has always adopted its guidelines and processes with the relevant legislations as amended. |
| Rights and discrimination Equality | Department of Labour Comments |
| * Despite the existence of several laws aimed at eliminating racism and other forms of discrimination, the Panel found that South Africa continues to experience high levels of incidents of racism, racial discrimination and xenophobic attacks. South Africa is in the process of developing a National Action Plan (NAP) to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance, to deal with various lines of fracture related to rights and discrimination, that has not yet been finalised, consequently undermining the capacity to deal with these issues. * The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA) is the country’s central mechanism to protect the dignity and ensure equality for all citizens, in particular the most vulnerable. However, several sections of the Act have not yet been promulgated, and the Act needs to be strengthened in several areas to make it more effective. * Parliament should use its powers to introduce legislative changes to the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 to strengthen the Act by promulgating certain outstanding sections of the Act, such as the requirement that each department develop equality plans, or putting in place a procedure to ascertain why these sections cannot be promulgated and what measures will be taken to ensure that these problems are addressed. * The hate speech section of the Act should be strengthened, and Parliament must ensure that definitions contained in the Act improve on the definitions currently contained in the Prevention and Combating of Hate Crimes and Hate Speech Bill (by ensuring that it is not overbroad and does not unconstitutionally limit the rights to freedom of expression). The tasks currently placed on the Equality Review Committee should be transferred to Chapter 9 institutions alongside the required funding to fulfil this responsibility effectively. | * The Employment Equity Legislation and the various Codes of Good Practice are used to drive transformation in the work places. * The Annual Employment Equity Plans and Reports are used by inspectors to monitor progress and to deal with non- compliance. |
| Refugees, migrants and stateless people | Department of Labour Comments |
| * The Immigration Act has a unique role in nation-building and social cohesion. It is a key enabler of human rights and the determination of the status of foreign nationals, and the issuance of visas and permits is important in defining their legal status and thus in protecting their rights, which are guaranteed by the Constitution of the Republic of South Africa. However, there are provisions of the Immigration Act 13 of 2002 that have been declared unconstitutional, including the denial of the automatic right of detainees to appear in court, and others that inhibit implementation of an effective immigration system. * During several encounters between the Portfolio Committee on Home Affairs, the Select Committee on Social Services, and the Department of Home Affairs, there have been several short-term and long-term recommendations that have been made to address challenges with the Act. * Parliament should consider having regular annual mandatory dedicated parliamentary social cohesion forums with the relevant departments and stakeholders to obtain feedback from departments and input from the public on progress with the implementation of legislation relating to foreign nationals, including the Immigration Act 13 of 2002, the Refugee Act 130 of 1998, the South African Citizenship Act 88 of 1995, and the Births and Deaths Registration Act 51 of 1992. | * The Department of Labour makes recommendations to the Department of Home Affairs on the issuing of work visas for non-critical skills. This is to protect local workers from being displaced by foreign national in low skill employment. * The Department participates in joint inspection operations with both Home Affairs and South African Police Service to deal with employers employing foreign nationals without permits and subverting minimum standards. * The Department also serves in the Presidential Committee and Departmental Committee addressing a range of immigration related matters. * The Department is developing a Labour Migration Policy in line with other SADC member states. |
| Building democracy through active citizenship and governance | Department of Labour Comments |
| * Several institutions are part of South Africa’s complex anti-corruption architecture. Included here are the Auditor-General’s Office, the Public Protector’s Office, and the Public Service Commission, as well as other agencies such as the South African Police Service (SAPS), Directorate for Priority Crime Investigations (DPCI), Independent Police Investigative Directorate (IPID), National Prosecuting Authority (NPA), Asset Forfeiture Unit (AFU), Specialized Commercial Crime Courts, and the Special Investigating Unit (SIU). The fact that the Constitutional Court has determined the need for an independent anti-corruption body with structural and operational autonomy is an indication of concern about the independence of these bodies. This ruling needs to be acted upon as a matter of urgency. * In line with growing concerns around corruption and action taken to combat corruption, concerns have been raised about the level of independence of key institutions, particularly in the criminal justice sector, including the National Prosecuting Authority, the South African Police Service and the Hawks. These deal mainly with the appointment process of the heads of these bodies. This would be one step in establishing a minimum degree of independence for these anti-corruption institutions. * Parliament should consider opening up debate on the desirability and feasibility of a system that incorporates public participation and Parliamentary oversight for certain categories of appointments to public office to increase independence (where required) and accountability to achieve the objectives of a capable and developmental state. | * The Department of Labour encourages active citizenships and the building of democracy, mainly through NEDLAC. * Labour laws also make provision for Boards or Committees to be established and to consist of all social partners. These Boards and Committees execute their mandates in line with the constitutions, charters, Good Corporate Governance practices and other statutes such as the PFMA. * The DoL and all its entities have established Committees and internal structures such as Risk and Ethics, Internal Audit, Risk Committees, Audit Committees, Supply Chain Management (SCM) and DBC to ensure proper procurement and accountability in the use of resources |
| Access to information | |
| * Access to information is critical for citizens to hold Government accountable and to participate effectively. However, several features of the Promotion of Access to Information Act 2 of 2000 lead to unfair discrimination against certain vulnerable sectors, while providing significant and harmful obstacles to access to information by the public. * Parliament should consider having regular annual mandatory dedicated inter-sectoral public hearings with departments and stakeholders to obtain feedback from departments and input from the public on progress with the implementation of the Promotion of Access to Information Act and the success of the Information Regulator in resolving the serious problems in accessing information. | * The Department of Labour has regular public briefings, through Imbizos and campaigns to take services to the people. |
| Public participation | Department of Labour Comments |
| * In South Africa, public participation is generally facilitated by means of, among other things, ward committees in local government, public meetings, public comment following press notices and integrated development planning in a range of different laws and policies. The Constitution (1996) prioritizes process values that support informed participation. * Public participation in existing legislation provides an opportunity to tap into the capacity, energy and resources that vest within citizens to drive change and to meaningfully participate in processes that affect their lives. There are, however, problems in the conceptualization of these existing frameworks for participation as well as in the implementation of these legislative provisions, where they exist. There is a need to rethink the role of active citizens as co-drivers of change. The existing framework for public participation often only enables the public to participate as invited guests in processes as opposed to partners and co-creators. * Parliament should consider identifying and reviewing all legislation that includes a public participation component, including those that relate to Parliaments interaction with citizens, and ensure that it conducts oversight of, and ensures adequate resources for the implementation of these provisions such that where provision is made for the public to be consulted this consultation is meaningful and effective. | * The Department of Labour encourages active citizenship and the building of democracy, mainly through NEDLAC. * Nedlac represents government, business, labour and community. Nedlac also nominates members that participates in the various boards established by Labour legislation. * The CCMA is also a forum that mediates in matters affecting the workers as citizens and employers, * Labour legislations and policies are subjected to very lengthy consultative process before they are implemented. |
| Nation-building Reconciliation | Department of Labour Comments |
| * A central component of the reconciliation project in South Africa was the Truth and Reconciliation Commission (TRC) under the Promotion of National Unity and Reconciliation Act 34 of 1994. In the process of consideration of the final TRC Report, Parliament approved only four recommendations made by the President: the individual, once-off reparations of R30,000; educational assistance, medical benefits, and housing and other social assistance; symbols and monuments; and community rehabilitation. To date, regulations for medical benefits, housing assistance and community rehabilitation have not been finalized. In addition, concerns have been raised about the manner in which the reparations process has unfolded; the prosecution policy for apartheid-era political crimes; and the special dispensation process. * Parliament should consider having a dedicated inter-sectoral public hearing with the relevant departments, including the Department of Justice and the National Prosecuting Authority, the Departments of Basic Education and Higher Education; the Department of Social Development, the Department of Human Settlements, the Department of Health, and stakeholders to obtain feedback from departments and input from the public on progress with the implementation of the TRC recommendations, as well as discussions on prosecutions, the special dispensation process, and reparations. The Department of Justice and Constitutional Development should provide regular reports to Parliament on progress with the issues mentioned above. | * The Department of Labour under takes regular customer satisfaction surveys through its research unit to assess how the public perceive its services. * The Department also reviews sections of the various acts on a regular basis depending on submissions, judgements etc. * The EE Act and Rights of workers are central in Nation building and reconciliation. |
| Distrust in institutions | Department of Labour Comments |
| * Trust is an essential element of democratic legitimacy, and the declining levels of trust in leaders and institutions impact negatively on nation-building. One reason for this is that in some instances the wrong people are appointed to senior positions, which eventually results in a loss of public trust in them and the institutions they lead. * The Constitution empowers the President and Premiers to appoint members of the National and Provincial Executives. Without abrogating from these constitutional powers, measures should be introduced that allow for more transparent and participator appointment processes. Such processes would empower the public with more information and knowledge about the new members of the executive and their relative skills, experience and merits, and would provide a forum where appointees can publicly commit themselves to applicable standards and to certain objectives, against which their subsequent conduct and performance can be measured. An empowered public will, in turn, be able to assist the legislatures to ensure that executives are more accountable to electorates. * Accountability, responsiveness and openness are foundational values in our Constitution, which also specifies transparency and informed public participation among other values and principles governing public administration (s.195). * Parliament should introduce legislation that provides for a system of public review of appointees to Cabinet, Provincial Executive Committees and Mayoral Committees. | * Nedlac represents government, business, labour and community. Nedlac also nominates members that participates in the various boards established by Labour legislation. |
| Implementation of Legislation | Department of Labour Comments |
| * In Chapter 6, the Panel reflects on the implementation of policy and legislation. The Panel’s work has revealed deep problems with implementation of policy and legislation. In many areas, government and Parliament have produced progressive policy and legislation, but with very poor outcomes. The causes of poor implementation are many, and the chapter discusses the most important causes of deficient implementation. Further evidence-based research is required to uncover the root causes of these failures and appropriate measures to resolve them. The Panel has made many specific recommendations, in the relevant chapters, on the implementation of specific laws and policies. In Chapter 6, the Panel makes recommendations that seek to sharpen Parliament’s role in facilitating and overseeing implementation of the state’s laws and policies. The most fundamental recommendations relate to the institutional reform of Parliament to make it more effective in holding government to account for its performance. The Panel has also made recommendations to guide appointments to key positions. The effective implementation of the National Development Plan is central to efforts to accelerate fundamental change, and the Panel has made recommendations to elevate the Plan into law. | * The Department regularly reports to the parliamentary oversight committees on the implementation of the legislation under its review, * The DoL and its entities also implements the recommendations of the Auditor General who provides independent assurance that there is compliance with legislation and also monitoring of performance information, which is based on how the Department implements the various pieces of legislation that it administers. |

1. **Conclusion**

The Portfolio Committee on Labour, having considered the responses of the Department of Labour to recommendations of the High Level Panel, was satisfied with the responses of the Department.