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**BRIEFING NOTES ON THE WORK OF THE  
PORTFOLIO COMMITTEE ON LABOUR**

**A. Overview**

While it is true that political change in South Africa has been profound, there is also no doubt that the prevailing socio-economic conditions are still largely determined by its apartheid past. More specifically, in 1994 South Africa inherited a problem of structural unemployment that goes back to the 1970s. The three main challenges are poverty, unemployment and inequality. The country's Gini Coefficient is at 0.69. Unemployment is the main cause of high levels of inequality and poverty in South Africa. While poverty is less severe than in many developing countries, inequality is as extreme as in any other country measured, and contributes considerably to the national risk of instability and conflict. The alienation associated with unemployment also results in social problems. This is why addressing poverty and inequality through job creation remains an urgent priority for South Africa.

The current unemployment rate is 24.9 per cent.<sup>1</sup> According to the National Development Plan, in order to address the country's challenges, government has to raise employment through faster economic growth, improving the quality of education, skills development and innovation and build the capacity of the state to play a developmental, transformative role.

In 2009, the government set the 2009-2014 job strategy that focuses on decent employment through inclusive growth. It entails faster sustainable growth, which in turn requires a coherent growth strategy, i.e. the New Growth Path, including a range of macroeconomic and microeconomic policy reforms. Government committed itself to increasing the labour-absorptive

nature of growth and to addressing the singular problem of youth unemployment. The aim was to improve the percentage of people at work to 45 per cent, to reduce the Gini coefficient of inequality from 0.70 to 0.59, and to increase the income of the poorest 40 per cent to at least 6.4 per cent of total income. Beyond this, the overall competitiveness of the economy had to be improved through sectoral and cross-cutting strategies and the cost structure of the economy had to be reduced. Further, there are commitments to improve support to small and medium businesses and to address youth unemployment. Finally, accepting that sustainable and productive jobs cannot solve unemployment in the short to medium term, there is a commitment to expand temporary public employment programmes.<sup>2</sup>

**B. Composition of the Committee**

The Portfolio Committee on Labour has a total of 14 Members; 7 African National Congress (ANC), 2 Democratic Alliance (DA), 2 Congress of the People (COPE), 2 Inkatha Freedom Party (IFP) and 1 Freedom Front Plus (FF+).

**C. The Role of the Portfolio Committee  
on Labour**

The role of committees is to ensure executive accountability to an informed Parliament. Specifically, the Portfolio Committee on Labour's role is to ensure that the Department of Labour delivers its mandate, i.e. to significantly reduce unemployment, poverty and inequality through pursuing the objectives of full and productive employment and decent work for all including: employment creation and enterprise development, standards and rights at work including equality of opportunities, social protection, and social dialogue.

The Department of Labour (DoL) is responsible for the following entities:

<sup>1</sup> Statistics South Africa (2012)

<sup>2</sup> Department of Performance Monitoring and Evaluation (2012)



**The Compensation Fund (CF):** provides compensation to employees who are injured or contract diseases through the course of their employment.

**The Unemployment Insurance Fund (UIF):** provides short-term unemployment insurance to all workers who qualify for unemployment related benefits.

**The National Economic Development and Labour Council (NEDLAC):** requires organised labour, business, community organisations and government to work as a collective to promote the goals of economic growth and social and economic equity.

**The Commission for Conciliation Mediation and Arbitration (CCMA):** is an independent and autonomous organisation that was established to conciliate workplace disputes in order to promote social justice and economic development.

**Productivity South Africa (PSA):** promotes productivity by advising, implementing, and monitoring and evaluating solutions aimed at South Africa's competitiveness.

To ensure accountability, the Committee has standing annual activities such as

- **The strategic plan sessions:** where the Committee interacts with the DoL and its entities on their Strategic Plan documents that outlines annual programmes and budget allocations. The Committee analyses the Department's budget against the overall government goals for that financial year. These goals are outlined in the President's annual State of the Nation Address (which is held during the month of February).

- **Quarterly reports:** departments have to compile and submit quarterly reports that detail their budget expenditure per quarter to the National Treasury (that monitors overall government expenditure trends).
- **Annual reports:** the Department and its entities submit and table their annual reports before Parliament and these are analysed by the Committee and then discussed. Through this process, the Committee can evaluate the Department's performance against its Strategic Plan and quarterly reports. The annual reports go through a rigorous audit process via the office of the Auditor-General.
- **Budget Review and Recommendation Process:** Following the process of annual reports, Committees can identify challenges and gaps, either in the manner in which departments and entities spend their budgets, prioritise projects, etc. The Budget Review and Recommendation Report (BRRR) is compiled by Committees to list those challenges and gaps and make recommendations on how these should be addressed by the executive.

Over and above the standing programme items, Committees draft their own sector-specific programmes which target specific challenges in various sectors. Since 2009, the Portfolio Committee on Labour has focused on these specific issues:

- **The Agricultural Sector:** in 2011 the Committee met with various stakeholders such as the Human Rights Watch. As a result of that consultation, the Committee conducted numerous oversight visits in the agricultural sector, together with the DoL in the Western Cape.



- **The Domestic Workers:** In 2011, the Committee attended the annual International Labour Conference in Geneva, Switzerland. The Conference adopted the Domestic Workers Convention 189 and the Recommendation on Domestic Workers. On returning to South Africa, the Committee met with all role players in the domestic sector to discuss a way forward. The Department was also called before the Committee to discuss progress in preparation for the ratification of the Convention by South Africa. This is currently being discussed at NEDLAC.
- **Labour Migration:** the Committee held discussions with the Departments of Labour, Economic Development and Home Affairs on the presence of foreign nationals in the South African labour market.
- **Decent Work Country Programme:** the Committee met with NEDLAC to discuss the country's Decent Work Country Programme and its implementation.
- **Labour Legislation:** since 2008, the Committee has held a series of public hearings around the country on labour broking in South Africa. Following these, the department drafted amendments to the Labour Relations, the Basic Conditions of Employment, the Public Employment Services Bill and the Employment Equity Amendment Bills. The Committee is currently busy with deliberations.

#### D. Preparing Legislation

The relationship between the legislature (Parliament) and the executive (government) is very complex. The legislature is the body vested with the power to make laws. However, while the

legislature may, after debates and discussions, adopt legislation, the executive takes primary responsibility for the formulation of policy and the drafting of legislation under the direction of a Minister or Deputy Minister. Although the legislature may initiate or prepare legislation, this rarely happens.

The preparation of a Bill involves a number of steps, for example the investigation and evaluation of the legislative proposals (which can either be proposed amendments to existing legislation or proposed new legislation) and consultation with interested parties.

##### i. Cabinet Approval

The next step is for the relevant government department to submit a Cabinet memorandum and draft Bill (containing the legislative proposals that are supported) to the Minister in order to obtain Cabinet approval for the introduction of the Bill in Parliament.

##### ii. Role of the State Law Advisor

After Cabinet has approved the introduction of a Bill in Parliament, the relevant Minister must submit a copy of the draft Bill to the Speaker of the National Assembly (NA) and the Chairperson of the National Council of Provinces (NCOP). However, before a Bill can be formally submitted to Parliament, the State Law Advisers must be approached to certify the draft Bill.

The role of the State Law Advisers in this regard is to ensure that a draft Bill is in line with the existing law and the provisions of the Constitution. If the State Law Advisers are satisfied that the Bill is technically correct and its provisions are legally sound they, approve the Bill (called the certification of a Bill). The



relevant Bill is then ready to be formally submitted to Parliament.

### iii. Introduction of Bill in Parliament

Submitting a Bill to Parliament is better known as the introduction of a Bill in Parliament. Although any Bill may be introduced in the National Assembly, only certain Bills may be introduced in the National Council of Provinces. Only a Cabinet member (Minister), a Deputy Minister, a Committee or an individual Member of the National Assembly may introduce a Bill in the Assembly, and only a Committee or an individual Member of the NCOP may introduce a Bill in the Council.

All other Bills may be introduced in Parliament only after prior notice of the introduction of the Bill has been given in the *Government Gazette*<sup>3</sup>, which notice must be accompanied by an explanatory summary of the Bill. If the Bill itself (instead of an explanatory summary thereof) is published in the *Gazette*, the notice must contain an invitation to interested persons to submit written representations on the Bill to the Secretary of Parliament.

The Constitution distinguishes between four categories of Bills, namely:

- section 74 Bills – Bills amending the Constitution;
- section 75 Bills – ordinary Bills not affecting the provinces;
- section 76 Bills – ordinary Bills affecting the provinces; and
- section 77 Bills – money Bills (that is Bills that deal with appropriations, taxes, levies or duties).

The Constitution also prescribes the Parliamentary processes through which each of these categories of

Bills must go before they can be passed by Parliament and become law (an Act of Parliament).

The first important step, after a Bill has been introduced, is for the relevant Bill to be referred to the Joint Tagging Mechanism (“JTM”) for classification into one of the above categories. If a Bill does not clearly fit into one category, or if it fits into more than one category, it is usually redrafted or split into more than one Bill.

The next step in the Parliamentary process is for the Bill to be referred to the relevant Portfolio Committee for consideration. If there is great public interest in a Bill, the Portfolio Committee may organise public hearings to allow interested parties to submit written comments and sometimes make oral representations on the provisions of the Bill. The Members of the relevant Portfolio Committee are then tasked with considering and debating the Bill in order to determine whether they are satisfied with the provisions of the Bill. If the Portfolio Committee is not satisfied with the provisions of the Bill, the Bill is amended to reflect the version which the Portfolio Committee prefers. At the conclusion of its work the Portfolio Committee submits the Bill, together with a report, to the National Assembly for debate (called the second reading debate) and a vote. If the National Assembly passes the Bill, it is referred to the NCOP for its consideration.

### iv. Signing a Bill into law

A Bill is referred to the President after it has passed through the National Assembly and NCOP. The Constitution requires that the President must assent to and sign a Bill. However, if the President has reservations about the constitutionality (whether the provisions of a Bill are in line with the Constitution or not) of a Bill, he or she may refer it back to the National Assembly for reconsideration. If the Bill affects the provinces, the NCOP must participate in the reconsideration of the relevant Bill. If a reconsidered Bill accommodates the President’s reservations, the President must assent to and sign the Bill. However, if

<sup>3</sup> Government Gazette is famously called Gazette



a reconsidered Bill does not fully accommodate the President's reservations, the President must either assent to and sign the Bill or refer it to the Constitutional Court for a decision on its constitutionality. If the Constitutional Court decides the Bill is constitutional, the President must sign it.

A Bill that has been assented to and signed by the President becomes an Act of Parliament and must be published shortly thereafter in the *Gazette*. An Act takes effect (becomes binding on everyone) when it is published in the *Gazette* or on a date determined in terms of the Act. Sometimes, an Act may require certain actions to be taken by the Department before it can be implemented, for instance subordinate legislation (**regulations**, determinations, rules etc) may have to be prepared and promulgated to further regulate aspects in terms of an Act. In such instances, an Act contains a provision that provides that the Act comes into operation on a date determined by the President by proclamation in the *Gazette*. Once the necessary actions have been finalised, the President is approached and requested to put the Act into operation on a certain date. After the President has assented to the implementation of the Act, a proclamation is published in the *Gazette* and the Act comes into **operation** on a date determined in the proclamation.<sup>4</sup>

## E. Conclusion

The biggest challenge facing South Africa is to find a balance between improving economic growth in order to create employment and preserving labour standards for all. While this is always hard to achieve, the Committee's work is to provide a platform for all South Africans to voice constructive thoughts on how to improve labour relations, improve competitiveness, and reduce poverty, inequality and unemployment through labour legislation. The Committee's greatest benefit is the high level of social dialogue amongst

social partners at NEDLAC, i.e. business, labour, government and community organisations. By the time that the Committee receives legislation, the majority of areas of major disagreements would have already been dealt with at NEDLAC. The unique role of this institution, places it at the centre of socio-economic policy-making and legislative development. As such, the Committee is also enormously tasked to ensure proper oversight over this organisation and the rest of the entities that fall into the labour sector.

Another critical area is finding a balance between the protection of workers already in the labour market and those still attempting to enter the labour market, i.e. first-time entrants. This group consists mostly of youth. In a country where the youth make up 70 per cent of the unemployed, it is critical that labour policy and legislation is developed in cognisance of these challenges. In addition, youth unemployment is not only a function of the ability of the economy to absorb labour, but it is a function of the level of education and work experience of young people. Therefore, when developing labour legislation, it is important for the Committee to find synergy with education policy. This is where the newly created Public Employment Services Bill (currently at NEDLAC) will have a huge role to play in the registration and placement of the unemployed youth. However, given a very low absorption rate into the labour market, there has been a great number of registered unemployed in the DoL's database but incredibly low number of successful placements.

While these challenges are not particularly unique to South Africa, the country's historical development has had a profound effect on the current challenges. However, since 1994, one of the biggest achievements has been the ability to establish effective labour market institutions to continuously find the balance between these challenges.

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<sup>4</sup> Department of Justice and Constitutional Development



## References

Department of Performance Monitoring and Evaluation  
(2012) Midterm Review of the Priorities of Government

Department of Justice and Constitutional Development

Statistics South Africa (2012) Quarterly Labour Force  
Survey, Quarter 1