Overcoming the Triple Challenge

A Report to the High Level Parliamentary Committee from the Centre for Development and Enterprise

DRAFT REPORT

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Introduction

This report constitutes the Centre for Development and Enterprise's response to a request from the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change (hereafter 'HLP'). The panel commissioned CDE to produce an analytical, evidence-based report for Working Group 1 with concrete recommendations on the legal and regulatory changes required to accelerate employment creation and reduce of poverty and inequality in South Africa. This has been defined by the HLP as the 'triple challenge of poverty, unemployment and inequality'. The first step in the process was the production of a research plan, which was discussed at a HLP meeting in Cape Town on the 7th of December 2016. Following the meeting, a mutual agreement was reached on the limits to what CDE could do in the time available and the way forward. (See Appendix 1).

As a result of this process, CDE agreed to prepare a report that broadly covers the scale and dimensions of inequality, poverty, and unemployment in South Africa. We agreed that coverage of these issues will depend on – among other things – the nature, quality and accessibility of relevant data.

CDE also agreed to reflect, as fairly as possible, some of the approaches to South Africa's challenges that differ from ours. CDE would also identify the legislation that is relevant and would make recommendations which laws to reform and how. Lastly, we agreed that we would be ready to present this document at a workshop and to listen carefully to all reasonable requests for additions or amendments to what we have done within the frame of the December brief. We will then make a judgement on what it is possible to fix or add in the time available to produce a final report by the end of March.

Work done

To produce this draft report, CDE:

- Reviewed all the written submissions made to Working Group 1 and summarised a selection the submissions, mostly made by organisations, Appendix two).
- Attended public hearings in both Johannesburg and Cape Town during 2016.
- Drew on previous CDE reports and research commissioned by CDE on growth, unemployment, poverty, and inequality, especially the seven documents released in 2016 entitled *The Growth Agenda: Priorities for mass employment and inclusion*.[1] These documents are, in turn, based on considerable background research as well as over 15 workshops on specific topics either lacking sufficient treatment in the academic literature or where there is considerable debate regarding evidence or interpretation.
- Examined reports, surveys and bulletins from government sources to obtain up-to-date information and reviewed recent work on the subject by international organisations such as

the World Bank and IMF, reputable South African research institutes (especially SALDRU), academic research, and articles and opinion pieces in the national press.

During the process of gathering key information, we were guided by the following questions:

- What data exists? What definitions are used?
- What academic literature exists on a particular subject?
- What key pieces of relevant legislation are in place? How has legislation evolved over time?
- What does the literature say about whether the legislation is working and its impact on poverty, inequality and unemployment? What are the main arguments for and against legislative reform?

Having developed a comprehensive assessment of the issues, we sought the advice of a large legal firm on specific aspects of our law and regulatory regime.

In a meeting with the chairman of this firm, it was agreed that they would assist CDE to set out the major pieces of legislation requiring some substantive amendments to give effect to the policy recommendations CDE is advocating in this paper. Specific legislative changes will require detailed legal drafting to be done, and the lawyers argued that the panel will need to reach consensus on the broad thrust of its proposals before there is any value in undertaking such detailed drafting. *In the final version of this paper*, we will therefore, in consultation with the lawyers, identify the major pieces of legislation requiring remedy, and propose certain high-level suggestions as to how this key legislation should be amended, without engaging in a detailed, section by section, revision of the relevant legislation. (See list of relevant laws in Appendix 3.)

Structure of the report

This draft report is divided up as follows:

- **Section One: The Nature and Extent of the Triple Challenge**

We provide detailed, up-to-date information on various dimensions of inequality, poverty, and unemployment,

- **Section Two: How to Tackle the Triple Challenge**

We set out contrasting perspectives on how to tackle the challenges detailed in the previous section, as well as how the three elements of the triple challenge relate to one another. We then outline CDE's broad conclusions on how the triple challenge can be overcome in South Africa, in the light of all that we have learned.

- **Section Three: Priorities and Reforms for Overcoming the Triple Challenge**

We start by outlining a general perspective on how we should think about tackling inequality and poverty in South Africa. We then discuss the areas of focus that CDE feels should be the priorities in overcoming the triple challenge. In each section we discuss why this area is important, how it could or should be contributing to overcoming the triple challenge, how this is being undermined by current legislation, regulations and practices, and what kind of regulatory changes we would like to see so that we can initiate fundamental change. The priorities that we identify and explore are:

1. Promoting competition in the economy and reducing barriers to entry for business (both big and small);
2. Generating employment-conducive labour laws and regulations;
3. Building a Black Economic Empowerment (BEE) programme that is truly broad-based and which enhances growth and employment for the majority, not just an elite; and
4. Enhancing skill levels through immigration policy.

An absolutely vital issue in tackling the triple challenge in South Africa concerns education and skills acquisition, especially for poorer and mainly black South Africans. Although this falls outside the scope of this report CDE has conducted extensive research and convened many workshops to better understand the challenges in the education sector and to find solutions that will increase access to quality education and training. (See list of recent education publications in Appendix 4.)

- **Section Four: Implementing Legislative Reforms Incrementally: The Case for EPZs and Exemptions**

We explore the desirability and benefits of implementing legislative reforms in a more piecemeal fashion by exempting specific activities and particular geographical regions. We are thinking particularly about the possibility for creating export processing zones and other industrial regions where certain growth and employment inhibiting reducing laws and regulations would not apply for a period of time.

Section One: The Nature and Extent of the Triple Challenge

Inequality, poverty, and unemployment are interdependent socio-economic phenomena labelled the 'triple challenge' in South Africa. All stakeholders agree that they require urgent attention from policymakers and leaders across South African society. There is, however, much less agreement on what drives inequality, poverty and unemployment and, more importantly, on what to do about them.

This section sets out the dimensions, severity and trends for each of these challenges by pulling together the latest figures available and the most up to date and important academic work on this topic.

The extent and dimensions of inequality

Income Inequality

Income includes the revenue streams from wages, salaries, interest on a savings account, dividends from shares of stock, rent, and profits from selling something for more than you paid for it. Some studies try also to estimate the value of housing services by imputing rental income to those with homes they own. Income inequality refers to the extent to which income is distributed equally across a population. The most widely used single measure of income inequality is the Gini coefficient (or Gini).

The Gini is derived from the Lorenz curve, which sorts a given population (for example, of a country or a city) from poorest to richest, and shows the cumulative proportion of the population on the horizontal axis and the cumulative proportion of expenditure (or income) on the vertical axis. A Gini coefficient is a ratio with values between 0 and 100. At zero, everyone has the same income; at 100, one person earns all the income. While the Gini coefficient has many desirable properties it does not reveal the sources of inequality.

With a Gini of 63.38 in 2011, South Africa is probably the world's most income unequal country, ranking above the other countries in the top five of the World Bank's list of the world's most unequal countries: Botswana, Namibia, Haiti, and Suriname.[2] As the table below reveals, between 1993 and 2011, South Africa's Gini increased from 59.3 to 63.4 (an increase of almost 7%).[3] According to the World Bank, income inequality in South Africa is expected to increase yet further, in 2017, largely due to the impact of the drought on agriculture and the widening gap between those with and without jobs.[4]

Table 1: South Africa's Gini coefficient: 2011-2017

	2011	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**
Gini coefficient (x100)	63.38	63.46	63.53	63.61	63.73	63.87	63.95

World Bank, 2016[5]

It is important to note that the Gini is calculated before taxes, cash transfers, free basic services, and government spending on education and health are taken into account. Include these and the Gini drops to around 60 for South Africa.[6] That said, the Gini of other countries who redistribute income through these and other means would also fall depending on the extent and effectiveness of their own policies in this regard. Moreover, the World Bank's analysis does not take into account the quality of government provided services, which is particularly pertinent to the analysis of the impact on inequality of spending on health, education, and basic services in our country.

Inequality by race

Given South Africa's history, inequality is strongly correlated with race, and it is important to identify whether and to what extent this has changed over time. The table below shows trends in the per capita incomes across races. The data reveal that the differences between white and black incomes have remained largely the same over the period covered.

Table 2: Annual income[7] per capita by race: 1996 – 2014 (selected years)

Year	African	Coloured	Indian/ Asian	White	Total Population	Ratio of white to black incomes
1996	R5 946	R8 040	R19 210	R44 589	R10 988	7.5
2001	R9 118	R14 098	R28 224	R71 394	R16 656	7.8
2006	R15 050	R22 988	R47 122	R113 331	R26 140	7.5
2011	R23 346	R36 055	R85 280	R172 235	R39 388	7.4
2014	R28 856	R43 317	R109	R215 356	R48 187	7.5
Increase: 1996 - 2014	**385.3%**	**438.8%**	**468.5%**	**383.0%**	**338.5%**	

IRR, 2016[8]

A further dimension regarding inequality and race is the extent of inequality within racial groups and how much this intra-race inequality drives the overall levels of income inequality. The table below presents an inequality index for the major racial groups in South Africa between 1993 and 2006.[9]

Table 3: Inequality by race: 1993 – 2006

	1993	1995	2000	2004	2006
Blacks	0.478	0.535	0.615	0.586	0.656
Coloureds	0.443	0.392	0.460	0.496	0.534

Indians	0.306	0.315	0.376	0.468	0.422
Whites	0.274	0.264	0.316	0.377	0.487
Total	**0.905**	**0.927**	**0.938**	**0.910**	**0.949**
Within-race	0.444	0.484	0.562	0.552	0.621
Between-race	0.461	0.442	0.376	0.358	0.328
Contribution of within-race inequality to total inequality	**49%**	**52%**	**60%**	**61%**	**65%**

Van Der Berg et al 2009[10]

The table reveals increasing income inequality within racial groups between 1993 and 2006. In 2006, income inequality was most pronounced within the black population and least pronounced amongst Indians. In 2006, *intra*-race inequality constituted 65% of total income inequality in SA. In other words, compared to inequality between racial groups, income inequality within racial groups accounted for almost two-thirds of overall inequality in 2006. This is largely because inequality in post-apartheid SA has been driven by two forces: (i) the expanding gap between rich and poor and (ii) the partial de-racialisation of prosperity. Data on racial inequality in South Africa after 2006 has been collated by the South African Institute of Race Relations. As the table below reveals the trends identified by Van der Berg *et al* remain firmly in place.

Table 4: Gini by race: 1996 – 2014 (selected years)

Year	African	Coloured	Indian/Asian	White	Total
1996	53	51	51	48	61
2001	60	58	55	50	66
2006	61	56	52	46	66
2011	57	53	47	43	63
2014	58	54	48	44	64

IRR 2016[11]

Spatial and Urban Inequality

Another important dimension of inequality is spatial inequality. The economies of South Africa's major cities consistently outperform those of its towns and rural areas. In recent years, urban economies have grown nearly twice as fast as those in secondary cities and the rest of the country, and created twice as many new jobs.[12]

Yet inequality in the urban metros remains stubbornly high. The South African Cities Network, in their latest State of the Cities Report (SOCR), published in 2016, reports Gini coefficients for metropolitan municipalities in South Africa. Based on data generated by IHS Global Insight, all South Africa's cities scored a Gini above 60, mirroring the Gini calculated by the World Bank for the country as a whole.

Table 5: Gini coefficients for major cities in South Africa: 2012 and 2013

Cities	2012	2013
Cape Town	62	61
Mangaung (Bloemfontein)	63	62
eThekwini (Durban)	64	63
Nelson Mandela Bay (Port Elizabeth)	66	63
Tshwane (Pretoria)	63	63
Buffalo City (East London)	63	64
Ekurhuleni (East Rand)	64	65
Johannesburg	61	65

Africa Check 2016[13]

All in all, the differences in income inequality between South Africa's cities are small – it is the overall level of urban inequality that is high. This is perhaps surprising: as we have already indicated between 1996 and 2011, employment in South Africa's metropolitan areas grew far faster than in the rest of the country. Nearly 60% of net jobs created between 1996 and 2011 were located in the cities. At the same time, though, at 2.6% a year, metro populations grew far more rapidly than the national average of 1.6%. This has resulted in high levels of urban unemployment and inequality even as significant numbers of new jobs have been created. The issue of urban unemployment is discussed further below.

Wealth Inequality

Published Gini coefficients, such as those produced by the World Bank, measure the distribution of income. Yet the distribution of wealth, and hence wealth inequality, is also important. Put another way, income and consumption tell us something of the current living standards of a population. However, because wealth provides not just income but provides a basis for income generation, small differences in assets have the potential to turn into large inequalities over time.

Household wealth is notoriously difficult to measure, however. Not only do the prices of assets fluctuate considerably, but the value of many assets cannot be determined precisely until they are sold. There is considerable disagreement over the true ownership of assets in South Africa, particularly the ownership profile of the JSE and private companies by race and gender as well as the ownership profile by race and gender of fixed property and land. According to Wave Four of the National Income Dynamics Study, which covers the period 2014/15, there were large differences between household income and household asset inequality, as measured by the Gini coefficient. According to the study, the Gini coefficient for household inequality on all assets was 0.87, compared to 0.61 for household income inequality. The top decile (as measured by net worth), controlled 65% of net worth.[14]

Ownership of financial assets

Regarding the ownership of financial assets, estimates of black ownership of the JSE range from 3% (the Presidency's estimate) to around 25%. The Presidency's estimate is based on the measure used by the National Empowerment Fund (NEF) to assess direct black ownership and control in the South African economy. There are some doubts about the accuracy of this figure, but even if it is accurate, it does not follow that the remaining 97% of the value of companies listed on the JSE is owned by white South Africans: the vast majority of shares are owned by institutional investors (such as pension funds) and foreigners.

In November 2016 a report was released by the JSE attempting to profile share-ownership, focusing on the top 100 companies which account for over 90% of the exchange's market capitalisation.[15]

It was unable to assess the race of owners of about 16% of the companies' market value, but of the remaining shares, about 10% was directly held by black South Africans.[16] A further 13% was held by black South Africans through mandated investment schemes (this includes pension funds, collective investment vehicles – such as unit trusts – and life insurance companies). This means that black

South Africans owned 23% of the JSE in 2013 (the latest year for which figures are provided). The study found that the proportion of the JSE held by white South Africans was 22% (through direct equity and indirectly through funds, trusts and other investment instruments). Foreign ownership accounted for 39%, and, as noted, 16% of the holdings of the exchange were not measured. If one had to exclude foreign ownership of the JSE, the total amount held by black South Africans was 39% in 2013.

It is important to note, however, that the 10% that was determined to be directly held by black South Africans was not necessarily held by individuals: 60% of these holdings are held by 'strategic BEE partners'; 20% held by participants in Broad-Based BEE schemes; and the remaining 20% by employees in employee share-ownership schemes.

The proportion of the JSE that is directly held by individuals is only about 7% of the total share capital. The primary South African owners of listed entities are pension funds (through contributions from employees and employers), life insurance companies (through their policyholders) and unit trusts (through their unit-holders) – not individuals.

It is worth noting that the JSE only reflects publicly listed companies. We have no available figures on the racial composition of the ownership of unlisted companies.

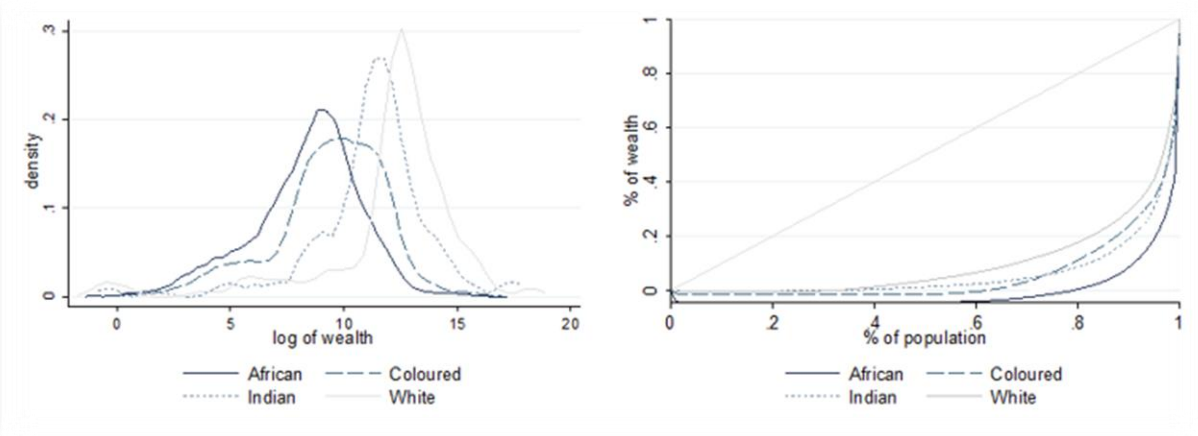
A recent paper by Ann Orthofer at Stellenbosch University attempts to estimate the distribution of wealth in South Africa indirectly using Personal Income Tax (PIT) data (by using taxable income from investment as a proxy for wealth) and National Income Dynamics Survey (NIDS) data.[17]

Orthofer finds that wealth in South Africa is much more unequally distributed than income:

- The wealthiest 10% of the population own at least 90-95% of all assets that generated taxable income, whereas the highest-earning 10% receive 55-60% of income.
- The next 40% of the population – the group that is often considered to be the middle class – earn about 30-35% of all income, but only own 5-10% of all wealth.
- The poorest 50% of the population, who earn about 10% of all income, own no assets that generated taxable income.

Using NIDS data only, Orthofer extends her analysis to the distribution of wealth between and within racial groups. Her findings mirror those for the distribution of income by race: white and Indian households are still much wealthier on average than African and coloured households. In addition, wealth inequality within the majority black population significantly exceeds nation-wide wealth inequality.

Figure 1: Wealth distribution by population group using NIDS data: 2010-2011



The left-hand diagram, above, plots density curves of wealth for each racial group. The right-hand diagram plots Lorenz curves for the same. What both sets of curves indicate is that the greatest wealth inequality in South Africa is found within the black population.

Tax and wealth redistribution

Although the Davis Tax Commission acknowledges that taxation is a good way to redistribute wealth (and points to the World Bank study which showed the success of South Africa's redistributive tax system) it notes the limitations of using tax to reduce inequality. The commission's second and final macro-analysis report on the South African tax system notes: 'Higher direct taxes are likely to reduce growth which will, in turn, reduce tax revenue and limit the ability of the fiscal system to redistribute in the future'.18 Despite this, some of the initial recommendations from the committee seek to garner extra tax for the fiscus through reforming estate duties and making it more difficult for South Africans to not pay taxes on assets kept abroad.19

Inequality and land ownership

Inequality in land ownership is a fraught topic. While there are no data on the precise racial breakdown of land ownership, after two decades of land reform, only a small proportion of privately held land is not owned by whites. The most recent commercial agriculture census, undertaken in 2007, only recorded farming units registered for Value Added Tax (VAT), which would have excluded smaller and recreational farmers. Of the 39 966 farming units identified, 33 249 were owned by individuals, with 2 167 belonging to companies, 2 259 to close corporations and 874 described as 'family-owned'.[20] While some commentators have equated 'individual' with white ownership, this is a false inference. The census did not, in fact, enquire into the race of farm owners.

Cherryl Walker and Alex Dubb from PLAAS made the following observations on the racial distribution of land in 2013[21]:

- The agricultural quality of the land owned by individuals varies, with only 13% classified as arable and over a third located in the arid Northern Cape where just 2% of the population resides.
- The former 'homelands' or communal areas cover some 17.2 million hectares, of which around 14.5 million hectares was classified as 'agricultural' in 1991 (the balance includes small towns and protected areas). Most of this land is state or trust-owned and densely settled by black households under various forms of customary tenure. Tenure reform is a contested but almost totally neglected area of state policy affecting millions of South Africans.
- As a result of regionally specific histories the extent of black communal areas varies considerably across the provinces, from over 36% in KwaZulu-Natal to under 0.05% in the Northern and Western Cape. Former 'coloured' reserves comprise a further 1.28 million hectares, mostly in the Northern and Western Cape.
- 7.95 million hectares have been acquired through land reform, and an unknown number of black people held out against apartheid by continuing to occupy land in so-called white South Africa, with varying levels of tenure security.
- Today, more than 60% of South Africa's population reside in urban areas. The eight metropolitan areas account for just 2% of the land area of the country but are home to 37% of the total population and are primary centres of private wealth.

It is, furthermore, certain that blacks with access to capital have acquired land through the market independently of land reform. There are no up-to-date data to indicate how extensive this trend is.[22] However the latest academic research, from 2007, found that this was considerable, and that the agricultural potential of land transferred through private sector processes was higher than the average for all land transferred.[23]

Most importantly, perhaps, it has become increasingly obvious that, unless accompanied by specific kinds of specialised knowledge and access to significant amounts of capital, land ownership by itself generates very little income. Equalising land ownership by placing poor black farmers on difficult-to-farm land may therefore lead to an increase in poverty and inequality

The extent and dimensions of poverty

Inequality receives an increasing number of headlines in the current political climate, and it is a challenge that has steadily worsened over time. However, in 1994 the ANC focussed less on inequality and more on eradicating poverty. The party campaigned on the promise of 'a better life for all.' The Redistribution and Development Programme (RDP), launched in 1994, focused on 'attacking poverty and deprivation', and allowing all South Africans 'to develop to their full potential'.[24] The state promised to provide improved access to social security, public education, and other services. In 1996, the country's new constitution guaranteed socioeconomic rights, subject to available resources.

Despite this focus, poverty remains much too high in South Africa. The table below shows that, in a country with an annual per capita income of over R50 000, 62.8% of the population lives on a monthly income of less than R1 042.

Table7: Poverty rate: 2011[25]

Poverty rate for upper poverty line (per capita monthly income of R1 042)	62.8%
Poverty rate for lower poverty line (per capita income of R534 per month)	38.7%

SALDRU, 2015[26]

Poverty Trends

Economists broadly agree that poverty rose in the 1990s and then declined in the 2000s. For example, in a 2007 publication, Van der Berg at al demonstrated a significant decline in poverty after 2001. His calculations reveal that poverty levels started out at 50% of the population in 1993. In 1995 they peaked at 52%. From 2001 to 2006 they fell from 51% to 44%.[27]

The latest figures released by StatsSA confirm largely positive trends in terms of the percentage of South Africans living below the latest World Bank poverty lines. Based on purchasing power parity in 2011 dollars, the percentage of South Africa's population living below the poverty line of $1.90 per day fell from 33.8% in 1996 to 16.6% in 2011.[28] However, the rate at which these poverty levels have fallen has slowed down drastically. From 2006 to 2008 the rate fell cumulatively by more than 2%, but from 2008 to 2011 the rate came down by a miniscule 0.05%. In 1996, 53% of the South African population fell below the $3.10 poverty line, compared to 34.7% in 2011. From 2008 to 2011 the rate went from 35.8% to 34.7%.[29]

It is clear that poverty fell fastest when South Africa experienced strong growth (in the years 2000-2008 when the average growth rate was 4.2%) and that since 2008 (when the average growth rate has been 1.6%) the rate at which poverty has fallen has been almost imperceptible.[30] As noted below, we cannot derive a strong causal relationship from the correlation, and it is also the case that during this period of strong growth the coverage of the Child Support grant and other social grants was rapidly extended, which certainly had their own impact on reducing the level of extreme poverty and hunger. In essence growth reduced poverty through three mechanisms: more employment, higher wages and the expansion of social grants that was financed through increased tax revenues. It is difficult to quantify the effect of each as there appears to be some countervailing forces – as grants expanded, inter-household remittances appear to have fallen. Nevertheless, it is clear that grants are an incredibly important vehicle for poverty reduction even during periods of high growth.

Another way to assess these trends, which can provide a more detailed picture and produce insights into the causes behind the trends, is analysing panel data which follows the fate of poor families over time. This literature is largely restricted by the paucity of available data and almost all the early work was confined to the province of KwaZulu-Natal. Carter and May drew on the first two waves

(1993 and 1998) of the KwaZulu-Natal Income Dynamics Study (KIDS) and found that approximately one fifth of the sample was poor in both 1993 and 1998, with a further 35% transitorily poor (that is, poor in at least one wave).[31] Woolard and Klasen used the same data and modelled the determinants of mobility and poverty transitions for just over 1 000 African households in KwaZulu-Natal. The most common way for households to fall into poverty was when the head of the household lost his/her job. Conversely, households most commonly moved out of poverty when a household member found employment.[32]

In a study that added a third wave of data from 2004, Aguero et al. found that access to basic household services improved significantly between 1998 and 2004, particularly the child support grant.[33] These grants played an important role in shifting households out of poverty and in reducing the poverty gap.

Finn and Leibbrandt have moved beyond these geographical limitations by drawing on the first four waves of the National Income Dynamics Study (NIDS) for the years 2008 to 2014/2015.[34] They track 17 200 respondents over this period, and, using a poverty line of R1 283 in January 2015 rands, they find that the poverty rate has been climbing since 2010. About 47% of the sample was below the poverty line in each of the four waves; 54% of the panel were poor in both wave 1 and wave 4, with more than half in 'severe' poverty – defined as having real household income per capita of less than half the poverty line.

Household composition changes were the main triggers for 56% of those who entered poverty and 59% of those who exited poverty between wave 1 and wave 4. For 23% of the panel members a grant income was the main trigger precipitating poverty exit. For Finn and Leibbrandt this raises a major concern. Due to the high and structural nature of unemployment, they argue, the labour market is now playing a 'muted role' in getting people out of poverty.

The regression analysis the authors undertake shows, nevertheless, that for both poverty entry and exit, one of the most important factors is whether there is at least one employed individual in the household.

The impact of government transfers and access to services

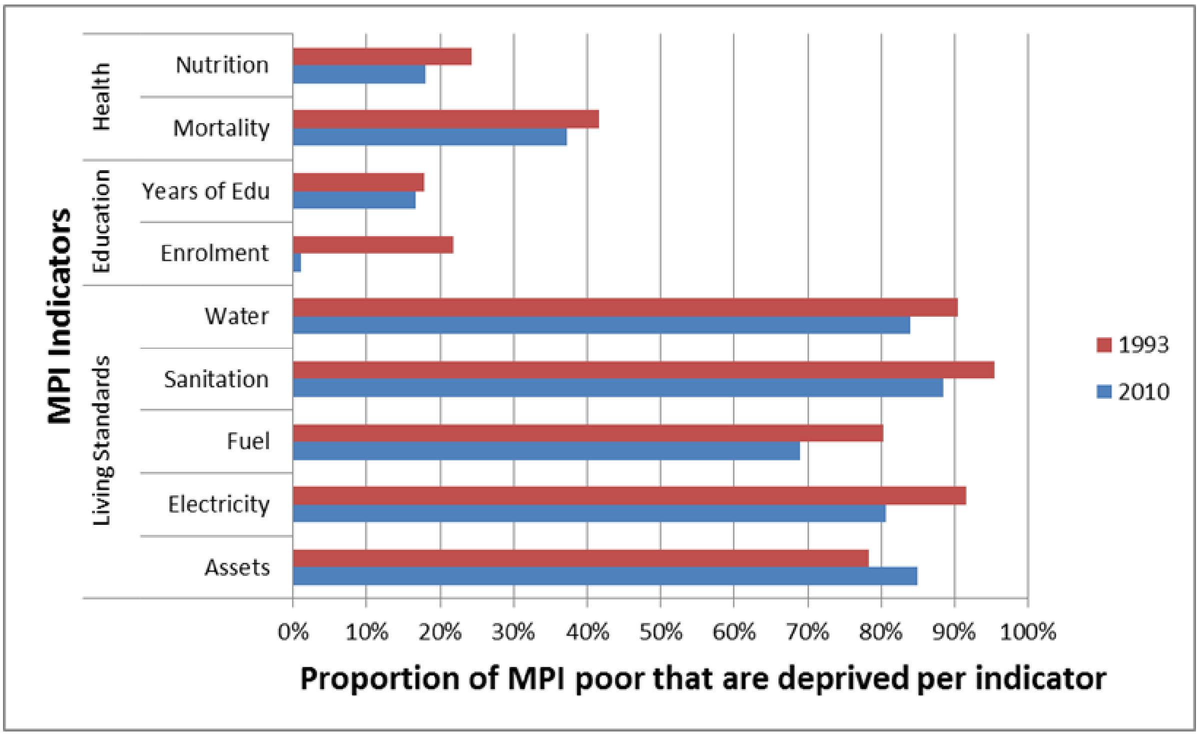
The value of cash transfers and public expenditure on services such as healthcare and housing almost doubled, in real terms, between 1995 and 2006. Public expenditure has also become better targeted at the poor.[35] By 2006, the poorest 40% of the population received 50% of all social spending, including both the estimated value of services as well as cash transfers. The poorest 40% of the population received the following percentages of government transfers:

- Almost one half (49%) of public spending on school education;
- 70% of old-age pensions;
- 62% of child support grants;
- 59% of disability grants;
- 57% of spending on public clinics;
- 43% of spending on public hospitals;

- 24% of public expenditure on housing; and
- 5% of public expenditure on universities.

One way to demonstrate the importance of transfers and subsidised services is to use a measure that Finn, Leibbrandt and Woolard call 'multi-dimensional poverty'. In terms of this approach, they classify a household as deprived in terms of schooling years if no household member has at least five years of education, and deprived in enrolment if one child of school-going age does not go to school; water deprivation is defined as not having piped water on site; deprivation in child mortality is indicated by a child having died before age 15 and in nutritional deprivation by one person in the household being seriously underweight.[36]

Figure 2: Trends in the Multidimensional Poverty Index (MPI)



SALDRU 2013

Clearly government transfers have benefitted the poor and households in general are significantly less deprived in 2010 than they were in 1993. Income poverty, as we know, remains higher though. Finn *et al* show that MPI poverty was lower than income poverty in all waves. However, being chronically MPI poor was closely matched by being chronically income poor over the four waves of NIDS.

The table below shows that poverty would be higher if there were no social grants, but that, for obvious reasons, their impact is smaller the higher one defines the poverty line.

Table 8: Poverty rate: 2013

	Without social grants	With social grants
Poverty rate for upper poverty line (income of R733 per month)	58%	52%
Poverty rate for lower poverty line (income of R497 per month)	50%	38%

The Presidency 2015[37]

Government policies have reached and benefitted many poor households but it is likely that the most important role played these grants is to make the very poor slightly less deprived. They have not helped families move into the middle class.

Between 2008 and 2014/15, the National Income Dynamics Survey estimated that some 23% of those who had previously been classified as poor who had become 'non-poor' was because of social grants.[38]

A further challenge is the extent to which public cash transfers have become substitutes for the private cash transfers (remittances) that poor households used to receive from their relatives who were working as miners or as urban migrants. Apart from some lump-sum transfers for important events such as funerals and weddings, regular private cash transfers appear to have diminished, mostly as a result of the job losses in low-income sectors such as agriculture, mining and textiles. Poor households now rarely contain income earners on whom they can depend. Instead, they now depend entirely on state transfers to survive. Almost one in every two South African households receives a means-tested grant.[39] This is caused by high rates of unemployment (which are discussed in the next section).

The extent and dimensions of unemployment

For the past five years more than a quarter of the labour force has been unable to find work despite actively searching for jobs.

Table 9: Unemployment trends: 2011 – 2016

Year	Strict unemployment rate	Expanded unemployment rate
2011	25.0%	35.5%
2012	25.2%	35.6%
2013	24.5%	34.9%
2014	25.4%	35.8%

2015	25.5%	34.4%
2016	27.1%	36.3%

CDE 2017 (based on StatsSA figures)[40]

2016 has the highest rate of strict and expanded unemployment of the past five years, with the trend broadly showing a growth in unemployment. Strict unemployment counts only those who are actively looking for work, while the expanded definition also counts those who would like to work but have stopped looking. It is clear that both forms of unemployment will continue to increase unless the economy turns around.

Race, region and age

The table that follows reveals that unemployment is worst, by far, for black South Africans.

Table 10: Unemployment by race

	Black	**Coloured**	**Indian**	**White**
Number of unemployed (strict)	5 156 000	488 000	79 000	150 000
Number of unemployed (expanded)	8 043 000	660 000	117 000	196 000
Unemployment rate (strict)	30.5%	22.9%	13.2%	7.3%
Unemployment rate (expanded)	40.6%	28.7%	18.3%	9.3%

CDE 2017[41]

The tables below demonstrate that the strict unemployment rate for the various regions of South Africa and the metro versus the non-metro regions are fairly similar. However, the expanded unemployment rate shows much bigger differences between the regions. Compared to strict unemployment, expanded unemployment is much higher in non-metro regions. This implies that there is a much higher proportion of discouraged work seekers in non-metro areas – unemployed people in non-metro areas are thus more likely to have lost hope of finding work than people living in South Africa’s cities.

Table 11: Unemployment by region

	Western Cape	Western Cape (non-metro)	Cape Town
Unemployment rate (strict)	21.7%	19.3%	23.0%
Unemployment rate (expanded)	24.8%	24.8%	24.8%

	Eastern Cape	Eastern Cape (non-metro)	Buffalo City	Nelson Mandela Bay
Unemployment rate (strict)	28.2%	26.7%	28.1%	31.8%
Unemployment rate (expanded)	41.3%	45.3%	35.7%	33.2%

	Northern Cape	North-West	Mpumalanga	Limpopo
Unemployment rate (strict)	29.6%	30.5%	30.4%	21.9%
Unemployment rate (expanded)	41.8%	44.6%	41.4%	36.3%

	Free State	Free State (non-metro)	Mangaung
Unemployment rate (strict)	34.2%	35.5%	30.9%
Unemployment rate (expanded)	40.4%	41.4%	38.0%

	KwaZulu-Natal	KwaZulu-Natal (non-metro)	eThekwini
Unemployment rate (strict)	23.5%	26.1%	20.2%
Unemployment rate (expanded)	40.4%	47.8%	28.4%

	Gauteng	Gauteng (non-metro)	Ekurhuleni	Johannesburg	Tshwane
Unemployment rate (strict)	29.1%	32.3%	31.7%	28.2%	26.2%
Unemployment rate (expanded)	32.8%	39.1%	35.5%	30.8%	29.6%

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The largest problem in South Africa is the youth unemployment rate. More than half of the workforce younger than 24 and actively looking for work cannot find a job. This has frequently been referred to as a 'ticking time bomb', including recently by Cosatu and by political commentator Moeletsi Mbeki.[42]

Table 12: Unemployment by age group

	15 – 24	25 – 34	35 – 44	45 – 54	55 – 64
Unemployment rate (strict)	54.2%	32.1%	21.5%	14.6%	9.0%
Unemployment rate (expanded)	65.5%	41.1%	28.3%	22.5%	17.0%

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In South Africa, 28% of the population is aged between 15 and 29.[43] The National Planning Commission notes that this demographic weighting can be a great asset if properly harnessed for development, but could become a source of potential destabilisation under conditions of rampant unemployment. Levels of youth unemployment have worsened since the beginning of the 2008 financial crisis. If we take a slightly broader definition of 'youth', one that is quite common in South Africa and defines young people as those from the ages of 15 to 34, then 3.5 million of the 9.9 million young people who are currently in the labour force were not working in 2016.[44]

Apart from the hardship this involves, there are long-term consequences for the delayed start of employment. Young people who cannot find work are losing out on opportunities to expand and strengthen their skills. They are also likely to become increasingly disconnected from a society that provides them with such restricted opportunities.

Much of this joblessness is the result of the dismal state of the education system. The unemployment rate for people who did not complete secondary school is more than three times higher than for those who completed matric, while young people who have some tertiary education have a 50% better chance of finding employment than those with only a matric.[45] In 2005 there were 1.2 million children in grade one in public schools.[46] Twelve years later, in 2016, some 442 000 passed the National Senior Certificate (NSC).[47] This constitutes a throughput rate of 37%. Of those who got the NSC only 26% passed well enough to be admitted to study at university.[48]

Despite these exceptionally high levels of unemployment, there is one area in which public perception of the extent of unemployment is exaggerated. The popular view that the possession of a university degree no longer guarantees success in the job market is simply not true. Van der Berg and Van Broekhuizen found that the number of degree holders in the labour market grew from 463,000 in 1995 to 1.1 million in 2011. Despite this rapid rise, few people with university degrees were unemployed—just under 5% in 2011.[49] The range was from 2% for whites to 7% for Africans. At 7%, unemployment is probably exclusively frictional, and that level could be defined as full employment, whereas 2% reflects a very tight labour market. South African employers (public and private) desperately need skilled and educated workers, a reality that is further reflected in the rapid rate at which unemployment increases as one goes down the educational scale. Any post-school qualification increases one's job prospects. Of course, since these numbers were compiled the country's growth rate has declined so numbers could be somewhat worse, but we still have massive skills shortages.

In a more recent paper, Van Broekhuizen concludes that 'graduate unemployment in the country is not a general problem and interventions aimed at improving the employment prospects of historically disadvantaged graduates should be targeted at improving the functionality of historically disadvantaged higher education institutions, rather than wide-scale reform of South Africa's higher education system as a whole'.[50]

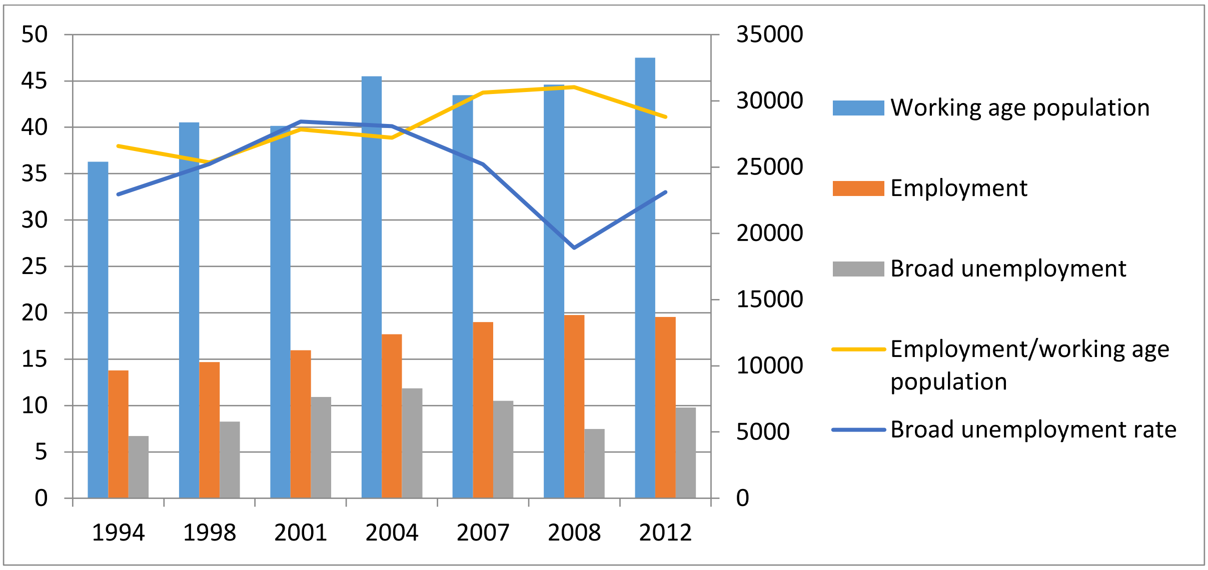
Job creation and participation rates

Between 1994 and 2014 the number of people in employment grew by over four million, yet over the same period the number of working aged adults increased by eight million. The ratio of employment to the working age population increased from 36% in 1994 to 44% in 2008. After the job losses experienced as a result of the global financial crisis (GFC), the ratio was still five percentage points higher in 2012 than in 1994. [51]

The increased labour force participation rate is partly a result of the feminisation of the labour force.[52] Burger, Van der Berg, and Von Fintel find that an additional impetus increasing the number of people in the labour force may be a change in education policy which forced over-aged learners to leave schools and look for jobs.[53]

Thus, despite some reduction in the participation rate during the financial crisis, the number of employed individuals in South Africa is now higher than it has ever been. Unfortunately, so is the number of people not working. At the same time, only two in five working aged adults are in jobs and in the past twenty years this ratio has never been more than half.[54] This means that there are approximately nine million South Africans who can be classified as broadly unemployed – they want to work but do not have a job.

Figure3: Employment and the South African working aged population: 1994-2012



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Jobs and growth

Job creation in South Africa is closely related to the growth rate of the economy as a whole. Table 13, drawn from Bhorat *et al,* points to the relationship between GDP growth and the expansion of total employment.[55] During the high growth period of 2001 – 2007, when GDP growth averaged 4.6%, employment growth was approximately two-thirds of this, i.e. if the economy increased by 1% then employment would increase by 0.64%. However, during the period of lower growth following the financial crisis the ratio was one to -0.16, implying that even positive economic growth was associated with job losses. This is obviously an anomaly associated with the economic disruption of the global financial crisis, however, and a negative elasticity of employment with respect to growth could not be sustained over time. What the numbers show, however, is that the GDP growth rate required to absorb growth in the labour force. Labour force growth (and more broadly working age population growth) is in the region of 2% per annum and a ratio of 1 to 0.64 means that GDP growth needs to be 3.125% per annum to absorb all new entrants, and even faster growth would be needed to make inroads into the backlog of those who are already unemployed. However, 0.64 was the ratio during a period of relatively rapid economic growth. A more modest employment elasticity of growth of 0.5 would require GDP growth of 4%. This suggests that, other things being equal, South Africa requires high growth rates relative to what it has experienced historically if we are to reduce unemployment.

Table 13: Simple GDP elasticity of total employment: 2001-2012[56]

	Average annual growth		**Simple elasticity**
	Employment	**GDP**	
Pre-crisis (2001–2007)	2.9%	4.6%	0.64
Post-crisis (2008–2012)	-0.3%	1.9%	-0.16

Labour Market Intelligence Partnership 2013

It is also the case that the economy generates far fewer opportunities for unskilled than for skilled workers. In the last quarter of 2016, more than 250,000 elementary and domestic workers lost their jobs, while the ranks of the professional classes swelled by almost 110,000 people. This underlying dynamic has existed for many years: employment rates are much higher for those with tertiary education than those without. The problem is huge: about 19-million adults do not have a matric.

Unemployment in comparative perspective

In addition to South Africa's requiring relatively high economic growth to reduce unemployment, it also performs relatively badly compared to other peer countries. Zhan illustrates two depressing aspects of this.[57] Firstly, South Africa, along with Argentina and Turkey, were the only emerging market countries with less than half of the working-age population in employment in 2009. Second, South Africa ranks in the bottom quarter of emerging countries in terms of the change in the ratio of employment to working age population and employment to output. What this means is that over time South Africa is using fewer and fewer people to produce its output and that this reduction is relatively large compared to its peers. Ultimately, this is a reflection of the increasingly skill- and capital-intensive character of the South African economy.

Table 14: Job Creation in Emerging Markets: 2000–09

	Job creation[1]		**Δ(L/P)**[2]		**Δ(L/Y)**[3]	
	Growth	Rank	Growth	Rank	Growth	Rank
India	3.0	1	2.4	10	-1.9	8
Peru	2.9	2	5.9	2	-2.3	10
Philippines	2.7	3	0.9	12	-1.6	6
Israel	2.7	4	3.7	7	-0.2	2
Argentina	2.5	5	4.1	5	-1.3	3
Chile	2.2	6	2.4	11	-1.3	5

Thailand	2.1	7	10.3	1	-1.8	7
Brazil	2.0	8	2.8	8	-1.3	4
Malaysia	1.9	9	-3.5	19	-2.3	11
Indonesia	1.7	10	0.3	13	-3.2	17
Colombia	1.6	11	-0.9	15	-2.8	16
Poland	1.2	12	4.1	4	-2.6	12
South Korea	1.2	13	4	6	-2.6	13
Mexico	1.1	14	-2.5	16	-0.1	1
China.	0.9	15	-2.6	17	-8.7	20
Russia	0.8	16	4.4	3	-3.9	18
South Africa	**0.7**	**17**	**-3.1**	**18**	**-2.8**	**15**
Turkey	0.5	18	-5.7	20	-2.8	14
Ukraine	0.0	19	2.5	9	-4.1	19
Hungary	-0.2	20	-0.8	14	-2.2	9
Average	1.6		1.4		-2.5	
Median	1.7		2.4		-2.3	
Correlation with job creation			0.4		0.6	

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Section Two: How to Tackle the Triple Challenge

This section examines different perspectives on both the nature of the triple challenge and how the challenge should be tackled. Policy related perspectives are usually linked to the ways in which South Africans with different ideological starting points and different interests make sense of what inequality, poverty and unemployment are, and how they relate to one another. The section starts by outlining two broad perspectives on the nature and relative importance of inequality, followed by two interpretations of the causes of poverty, especially how poverty relates to unemployment. We also assess perspectives on the role of business in helping to generate the kind of development that will rapidly reduce current levels of poverty, unemployment and inequality. Finally, the section sets out the positions on which type of policy response to poverty and inequality should be prioritised: redistribution or economic growth. We then set out our perspective on the extent and nature of the triple challenge, what aspects of the challenge we feel should be prioritised and how, broadly, the challenge should be tackled.

The nature and relative importance of inequality

People are rising up globally to question the legitimacy, transparency and effectiveness of our economy and its governance. They are fighting for achievable and just solutions, such as decent work, fair wages, fair tax, and better public services. … I'm joining millions to loudly challenge the concentration of power in the hands of an elite few, and to demand a better future where governments fight inequality. …. We cannot betray the next generation by allowing the scourge of inequality to continue. No lasting peace, freedom or justice can exist while it persists. – Jay Naidoo, 17 January 2017.[58]

South Africa, and the world, should fix their education, open up and deregulate markets to create employment opportunities, and privatise government-owned enterprises. People will need skills, jobs, and experience to climb the income ladder, regardless of their race. Those who argue we should take a portion of A's income and give it to B are totally wrong. That is not the solution – that approach will violate human rights and people's liberties. Even though poverty has declined significantly over the past twenty years, millions around the world remain jobless and live in poverty. We need to focus more on fighting poverty, and stop the obsession over income inequality - Phumlani Majozi, 20 July 2016.[59]

Unsurprisingly, there are different perspectives on the nature and causes of all three elements of the triple challenge. This is especially true of inequality. Generally speaking, those on the left of the political divide would argue that there are two key drivers of inequality today: (i) the unequal distribution of assets associated with apartheid and its legacies, and (ii) the rent-seeking behaviour of (mostly monopoly) capital and the failure of the neoliberal economic policies in the latter half of the 1990s and early 2000s, which relied far too much on market forces. In South Africa, the left argues, an over-reliance on markets delivered only modest increases in income for the poorest 10% while delivering much larger increases in the incomes of the richest 10%, leading to a widening gap in the distribution of income and wealth. At the same time only those higher up the income curve have experienced the benefits of the end of apartheid. For those in the top 20% of the income distribution, there has been a 'de-racialisation of employment, of asset ownership and of business opportunity', which has led to a 'first generation' of skilled, politically liberated, and influential black South Africans'. However, for those in the next 40% of the income distribution, post-apartheid gains have not been as positive: only the 'upper tiers of workers have been successful in leveraging political democracy, and influence within the ruling ANC alliance, into sustained economic gains.' The gains for those in the bottom 40%, have been even fewer. Although there is enhanced access to public services, temporary public employment, and social grants, poverty remains widespread.[60]

Many analysts stress the ways in which incomes continue to be derived from wealth generated in the Apartheid era and the impact of asset price trends on rising inequality in South Africa. For many of these analysts, the answer lies in a fundamental transformation in the way wealth is distributed in South Africa. The policy implications of this would include the redistribution of ownership in productive assets, steeply progressive taxation, above-inflation pay increases for the lowest paid workers, the implementation of a minimum wage across all sectors of the economy, and a basic income grant for the very poor.

While most agree that apartheid skewed the ownership of assets, economic liberals tend to see *rising* inequality in South Africa as an unfortunate yet unavoidable feature of technological innovation and globalization that have together pushed up the demand for highly skilled knowledge workers, especially in service industries. Fundamentally, the growth in the demand for skilled labour has far exceeded the growth in the number of skilled workers so that the relative price of skilled labour has risen. The outcome is rising relative incomes for highly skilled workers, as employers hike wages for people who have the skills they need. The income gap is thus primarily a skills gap, which is exacerbated by policies that fail to improve education and training and seek to limit the flow of foreign skilled migrants. For the economic liberals, solutions to the inequality problem tend to lie on the supply side, specifically in policies that encourage or enable the acquisition of skills or encourage the immigration of highly skilled individuals against the backdrop of a fundamentally open economy characterised by minimal restrictions to international trade and competition from abroad.

Of course, these stylised perspectives presented above are not mutually exclusive. One might agree, for example, with the desirability of some kind of redistribution along with the need for major improvements in the quality of basic education. Moreover, both sides would probably agree that inequality in South Africa since 1994 continues to be heavily influenced by 'initial endowments' as a result of apartheid-era policies designed to prevent black South Africans from participating in the economy and the schooling system as equals. This ensures that white households with higher initial endowments have continued to benefit more on average from the growth of the post-Apartheid economy than non-white households. The disagreements are mostly about where to focus energies and what kinds of reforms are needed. Liberals prioritise fixing the education system, doing everything we can to get faster economic growth and expanding opportunities so that black South Africans can participate on an equal footing with anyone else, whereas radicals focus on regulating and taxing the beneficiaries of previous forms of discrimination and making sure that black South Africans are more immediately compensated for the injustices of the past.

The causes of poverty: unemployment versus low wages

This global trend towards appropriation of the social surplus by a tiny elite has been even more extreme in South Africa, where the economic oligarchy have consolidated their power to extract and appropriate an ever growing share of the national wealth. The largest contributor to income inequality in South Africa is inequality in the labour market i.e. between high-paid and low-paid earners. This stagnation of wages for low-paid workers has exacerbated the phenomenon of a huge population of working poor. – Neil Coleman, 6 October 2015[61]

Arguing for a high national minimum wage floor, even if phased in, seems to us to entail what might be called 'unemployment denialism', i.e. the denial that poverty in South Africa is primarily the result of massive unemployment and the assertion instead that the poverty is due primarily to low wages (as is the case in Brazil and the USA). To calculate a proposed minimum wage from a 'median wage' *based on the wages of the low percentage of people that do have jobs is to ignore blithely the zero wages of the millions who are unemployed.* – Jeremy Seekings and Nicoli Nattrass, 20 January 2015[62]

As is the case for all of stylised arguments we set out in this section, not all protagonists will choose only one side of the argument or the other. There are many who try to find a middle path, and those who argue for raising the wages of the working poor do not necessarily think of themselves as ignoring the plight of the unemployed. Most would probably believe that it is possible to support a wide range of employment promotion initiatives as well as a minimum wage. However, there are certainly trade-offs and those who oppose the national minimum wage are concerned that what might be considered the most obvious strategy for expanding employment – i.e., letting wages fall closer to market clearing levels – will become much more difficult to attempt once a national minimum wage is put into effect. It is also not the case that those who worry about the ways in which minimum wage setting will increase unemployment are necessarily opposed to minimum wages per se.

With the above in mind, trade unionists and those who are opposed to low-wage jobs and 'neo-liberal' policies tend to emphasise 'the working poor' and will argue that the best way to fight poverty is to raise the wages of those whose incomes keep them and their families below the poverty line.

For example, Wits researcher Gilad Isaacs recently declared that the findings by an economist from the University of Cape Town (UCT), Arden Finn, that there are 5.5 million working poor in South Africa 'highlights the desperate straits in which many South African workers find themselves. [It] also raises questions over the nature of work in South Africa – should we be satisfied with a status quo in which 41% of workers, working at least 35 hours a week, cannot lift themselves and their dependents out of poverty?'[63] This line of thinking has influenced the decision to implement a National Minimum Wage (NMW) of R20 per hour. Supporters of a NMW argue that a higher minimum wage would not only reduce the exploitation of lower-paid workers, but would also generate job creation through consumption-fuelled growth: the higher wages would stimulate higher consumption by workers, thereby boosting employment and growth. They also maintain that the examples from the USA and Brazil prove that increases in minimum wages do not result in significant job destruction. Supporters of this argument also point to research by Haroon Bhorat and others on the effects of sectoral minimum wages set in South Africa in the early 2000s,[64] which found no significant negative employment effects in non-agricultural sectors, except in terms of working hours in some cases. From this they conclude that higher minimum wages will not result in significant job losses in South Africa.

Another reason for a strong policy focus on raising the wages of the working poor is that creating low wage jobs won't have much impact on inequality levels in the short to medium term. Work by Van der Berg confirms that while creating jobs for the millions of unemployed South Africans would reduce poverty, the impact of mass job creation on income inequality would be quite modest.[65] This is because of the high degree of income inequality within the workplace. Thus, even if all those currently unemployed earn the current incomes of low-skilled workers, overall income inequality in

South Africa will fall only modestly and will still be very high by global standards. The unemployed need to move into higher wage jobs for the impact on reducing inequality to be substantial.

As indicated in the quote above, these types of arguments are opposed by UCT Professors Jeremy Seekings and Nicoli Nattrass, amongst others. They maintain that the sectors Bhorat *et al* analysed were ones where, in the period under scrutiny, the employers or customers were enjoying rising real earnings and the demand for labour was buoyant.[66] In most of these sectors higher minimum wages reduced employment in terms of reduced working hours, but did not destroy jobs. Further, many of the sectors in which minimum wages were set are 'non-tradables', i.e. sectors (such as private security, domestic work, retail and restaurants) which do not face competition from imports. In tradeable sectors like agriculture, Seekings and Nattrass maintain, the evidence shows that higher minimum wages lead to job destruction. When the 2002 sectoral determination in agriculture raised wages modestly and improved compliance with non-wage regulations, it also resulted in a significant reduction in total employment and/or hours worked. Following the introduction of a minimum wage in the agricultural sector in 2003, the number of people employed in that sector dropped by 20%[67].

In the (tradable) forestry sector sectoral determination did not lead to any observed improvement in total earnings, because higher wages were offset by a reduction in working hours. Most importantly, in the tradable clothing sector, where the minimum wage was set through the extension mechanism provided by the Labour Relations Act, higher wage levels imposed on employers led to significant job destruction, notably in non-urban areas. Seekings and Nattrass also point to 2012 work by Pauw and Leibbrandt, which found that minimum wages are likely to lead to significant job losses among unskilled workers. Finally, they doubt the validity of the argument that paying workers more money will fuel consumption and thus stimulate economic growth and job creation. They point out that consumption-led growth typically has not led to significant employment growth in South Africa. In any event, SA's large current account deficit suggests that aggregate demand is too high, not too low.

Comparative perspectives can provide important insights, but they can also be misleading. Countries such as the US and Brazil, which recently raised their minimum wage levels, had tight labour markets at the time. This is obviously not the case in South Africa where raising minimum wages could have much more negative impacts on employment levels than was the case in the other countries mentioned. In addition, one of the risks of relying unduly on foreign experience is that implementing a minimum wage or raising one that is already in place is often preceded by extensive debate about the impact of these changes on employment. Indeed, many systems require this of policy-makers. This limits the degree to which it is legitimate to extrapolate from the finding that a particular change in the minimum wage had only a modest employment effects to the conclusion that minimum wages generally do not have negative employment effects. After all, concerns about the impact on employment shaped the changes before they were implemented.

Another way to oppose the idea that it is crucial to raise the wages of employed workers in order to combat poverty is to point out that Finn's research argues that a wage of R4 125 per month is necessary to raise South African *households* out of poverty.[68] It is not necessary, therefore, that the entire amount must be earned by one household member. If, for example, two members of one household each earned R2 500, then that too would raise the household out of poverty. Finn, in fact, points out that while, on average, earners living in poor households support themselves and close to three others, 10% of wage earners in poor households support themselves and four other people, 6% support five others, 4% support six others and some poor wage earners support up to 10 dependents. Reducing the number of unemployed members in poor households, assuming that many dependents are in fact eligible for work, could therefore make a significant contribution to raising those households out of poverty.

The most important point, however, is that 'working poor' households are significantly better off than those households with no one in any kind of employment at all. Of people in the lowest income decile, 85% live in a household where nobody is working. Of people in the top three income deciles, over 90% in each decile live in a household where at least one person works.[69] According to Leibbrandt *et al*, in 2008, there were about 7.5 million households in South Africa where nobody was working.[70]

The role of business in development

The whole capitalist system is immoral and corrupt. Reports appear regularly of systematic tax evasion, money laundering and price fixing by big business. Millions of rand are leaving the country as investors put their cash where they will make the quickest and biggest profits, with no regard for the welfare of the people, the environment and least of all the conditions of their workers who produce the wealth in the first place. Big business is immorally sitting on more than R1.5-trillion in the banks and refusing to invest it in the economy. – Irvin Jim, NUMSA General Secretary, 15 September 2016[71]

We need to cut the red tape and educate youngsters to have the self-confidence and desire to start up things on their own - Richard Maponya, 10 December 2012

When it comes to the role of business in development, there are four distinct perspectives in South Africa. The two extreme positions are, on one side, that government must get out of the way of business, and that the fewer government rules and regulations there are, the better. This is the kind of perspective put forward by the Free Market Foundation, especially in the submissions it made to this High Level Panel (see appendix). At the other extreme is the view that the private sector cannot be trusted to do anything except exploit workers and serve its own selfish interests, and should therefore be tightly regulated; from this perspective the development trajectory of the country should be controlled and directed exclusively by the state.

In between these two poles are two perspectives that see a role for both business and government. The first sees negotiation and deal making between different business sectors and the state as a crucial way in which the country's development path can be negotiated. This sees differences between small and big business, mining and manufacturing and even white and black business as self-evident and sees a major role for the state to both mediate these differences and seek to accommodate the complex demands of the various sectors. A different view argues, as in the second quote above, that the state has a crucial role to play, but should primarily focus on creating a business friendly environment in which all forms of business, big and small and across all sectors, can prosper. From this starting point it is crucial for businesses to find common voice and vision and promote the pro-business reforms South Africa requires. The state, meanwhile, needs to adopt a role of supporting a growth path driven by private entrepreneurs. Government must still regulate business to stop anti-competitive behaviour and any violation of people's rights, including workers, but there should be no need to devise detailed and complex dispensations for specific firms or business interests.

Redistribution versus growth

Many successful development experiences in Europe and also in Asia did at some point in their trajectory use land reform and other forms of direct redistribution of property much more than South Africa did. You never had this kind of big phase of redistribution of property and probably that explains why the legacy of apartheid is still very much there in terms of inequality. – Thomas Piketty, 1 October 2015[72]

The continuation of our existing growth model with low growth and inherent structural inequality will increase spending pressures on welfare, social security and debt servicing. This is a scenario we cannot entertain. Although it may seem logical to increase spending on social services during periods of low economic growth, it doesn't solve the problems of rising unemployment and social unrest. We need redistribution with inclusive growth as opposed to redistribution with welfare. – Mcebisi Jonas, 8 November 2016[73]

There appear to be a growing number of calls for more radical forms of redistribution, arguing that, as a priority and matter of urgency, South Africa needs to bring down existing levels of inequality. For example, in December last year, Deputy President Cyril Ramaphosa, said that, 'there is an urgent need – if we are to be a united nation – to redistribute the wealth of our country. A united South Africa requires the restoration of the land to those who work it.'[74] Sidumo Dlamini, COSATU President, has said that, 'one thing is certain - in our land [justice] cannot be effectively tackled unless the basic wealth and the basic resources are at the disposal of the people as a whole and are not manipulated by sections or individuals, be they white or black. As COSATU we will be working with the ANC leadership and all structures to take up campaigns focusing on the redistribution of wealth to the people as a whole.'[75]

This view is opposed by those who want to prioritise growth as a way to expand the incomes of all South Africans and ensure that government has sufficient resources to initiate the kinds of redistributive policies that are already taking place and becoming increasingly costly. From this perspective, the radical redistribution of wealth through expropriation will undermine security and property rights, undercutting the certainty and security needed to justify investment, which is the only motor of economic growth.

The counter argument is that inequality is itself a brake on growth, and that we can't expect to grow very quickly unless and until there is a more equal distribution of assets and incomes. There is a growing body of evidence that suggests that inequality harms growth. In unequal societies, a significant fraction of the population can't afford to invest in education and skills development, which results in a workforce without the skills to support the right kind of economic activity. Unequal societies also tend to be more unstable politically and have a greater risk of adopting bad/populist macroeconomic policies that risk slowing growth – an issue that affects not just the developing world.

But even if it is true that inequality lowers growth, policies aimed at changing distributional outcomes directly can be very disruptive and costly, and can also reduce growth further because of the uncertainty they bring. Much has been made about land reform at the start of the Asian boom that directly redistributed land from the rich to millions of small farmers (in Japan and South Korea, for example). This may very well be an important part of these countries' subsequent success. But if it is, it is not just because the assets were redistributed more equally, but because that redistribution was done in a way that was credibly once-off, and everyone knew it was never going to happen again. When that happens, redistribution does not lead to persistent uncertainty, which is a key way in which policies of this sort translate into weaker growth.

While inequality can act as a brake on growth (or more accurately a brake on the sustainability of high-growth periods), it does not follow that inequality should take precedence over the need for higher, labour-intensive growth in South Africa. Between 1999 and 2013 the average South African income increased by 27% compared to an increase of 248% in the average Chinese income where millions of people got out of poverty through working in low wage low skill manufacturing factories (a process that has happened all over the world and is being repeated again in Vietnam, Laos and Ethiopia). Over a similar time period, South Africa's Gini index has worsened from 58 to 65, while China's went from 30 to close to 50. But the effect of those changes in within-country inequality on relative incomes of the poor across the two countries was dwarfed by changes in relative average incomes between the two countries. In short, inequality matters but job rich growth matters more. Another issue, as flagged by the World Bank is that 'unequal power leads to the formation of institutions that perpetuate inequalities in power, status, and wealth—and that typically are also bad for the investment, innovation, and risk-taking that underpin long-term growth'. The World Bank argues that good economic institutions which are 'equitable in a fundamental way'. However, these types of institutions only emerge when 'the distribution of power is not highly unequal and in situations in which there are constraints on the exercise of power by officeholders'.76

CDE's position

Our argument in relation to these different perspectives and the facts as we understand them can be summed up as follows:

- Continue to redistribute income through progressive taxes, fiscal transfers and service delivery by the state
- Focus on getting people out of poverty, on the basis of a recognition that jobs are the best route out of poverty

- Doing this requires rapid, more inclusive growth and a heightened focus on improving education and training so that people can get better jobs and firms can move up the value chain.

Clearly, policy interventions that redistribute income have to be a vital component of South Africa's broad policy framework. We have to have a progressive tax system and we have to continue redistributing incomes and subsidising services to the poor.

While some redistribution is necessary, our view is that placing too much emphasis on overcoming inequality as a priority will have adverse effects if it leads to a focus on those who have succeeded, rather than helping those who have been left behind. Rredistributive policies should not be the dominant response to poverty: they should be effective and affordable but without undermining the key focus on growing the economy and expanding opportunities for the poor. To the extent that redistribution can increase the quality of the labour force (e.g. through good education and skills systems) or by increasing labour supply (e.g. through effective transport subsidies), redistribution can actually help accelerate growth. But the only if it is affordably, effectively and efficiently provided. For example, the very high levels of inequality amongst black South Africans, surely should not lead us to the conclusion that too many blacks have done too well, but that too few have. Thus, we believe the focus should be on the very large numbers of people stuck in poverty, and our policy priorities should be to find ways to help them escape from poverty. The immediate impact of such policies on inequality should, furthermore, be less of a concern than creating a society that quite quickly is able to create opportunities for everyone. This seems like the fundamental issue in South Africa, given both current poverty levels and the efforts under apartheid to deny opportunities to the majority of the population.

Redistributive policies can reduce poverty and inequality, but it is not always clear that they do so in ways that empower and include their beneficiaries. Many redistribution policies benefit the elite within disadvantaged groups rather than the vast majority of the poor. Further many participants in discussions about development make the mistake of assuming the helplessness of the poor, and to believe that poor people can achieve little without assistance. They are wrong. Research across the developing world has shown that poverty is a *condition*, not a *characteristic* of people who are poor. In fact, people living in poverty are as hard-working and enterprising as anyone else. What the poor lack, principally, are opportunities. Given the opportunity to succeed, most will. This is why policies that seek to expand the set of available routes out of poverty is the approach most likely to facilitate rapid improvement in poor people's prospects, and eventually reduce inequality.

Policies to overcome the triple challenge should focus on growth and on increasing the number of people in employment. The high levels of poverty and inequality in South Africa are mostly because so many people are unemployed, and this will not change unless South Africa achieves high and sustainable rates of job-rich economic growth.

Without faster, more labour-intensive growth, we will fail to employ the millions of people who need work, condemning them – and their children – to lives of grinding poverty. Slow growth will also mean that state revenue will not keep pace with legitimate demands for access to all levels of quality education and training, essential infrastructure and improved social welfare. South Africa's poor will be left behind, society will stagnate, race relations will worsen and instability will increase. South Africa's prospects of avoiding this depend on whether the private sector can expand, become more dynamic, and employ many more people; the state can become much more efficient while maximising the potential of markets; and our largest cities can accommodate more people and simultaneously drive faster innovation, as well as economic and employment growth.

Success in all these areas requires that we:

- Rebalance the approach to transformation away from elite enrichment to growth-driven inclusion;
- Create an attractive environment for new investment and a competitive environment in which to do business for all firms, large and small, which is the only way to open up the economy for new entrants, especially new black-owned firms;
- Encourage the emergence of labour-intensive industries that use lots of unskilled workers;
- Expand dramatically the country's skills pool;
- Put cities at the heart of our national growth strategy; and
- Put state-business relations on a new and more constructive footing.

Sustained, rapid and inclusive economic growth is the sole basis on which the quality of life of millions of people can be permanently raised: it is economic growth that raises wages and income; that makes it possible for farm workers to risk leaving poorly-paid, back-breaking toil in the countryside for a higher paying job with better prospects in the city; and that makes possible a rise out of poverty and the attainment of a greater measure of dignity and empowerment.

If growth is to reduce the exceptionally high levels of poverty and inequality that shape our politics, it must be inclusive. Given our very high levels of unemployment, this means that future growth must be much more labour intensive than the high-skill and capital-intensive profile of most of our existing economic activity. To be inclusive South Africa's quest for faster economic growth must place faster employment growth at its centre. To achieve this, we need to attract investment into labour intensive economic sectors and we need to reduce labour costs to make South Africa a more competitive destination for companies wanting to hire a lot of unskilled workers. We also need to create a regulatory environment and provide the infrastructure that will allow all kinds of firms, large and small, to prosper and expand, including the country's large, established firms, which, measured on a per worker basis, are more productive than in most of the developing world.[77]

Section Three: Priorities and Reforms for Overcoming the Triple Challenge

After years of work in this area it is our considered view that the significant impact on the triple challenge will only be achieved through much higher levels of economic growth. Without faster, more labour-intensive growth, we will fail to employ the millions of people who need work, condemning them – and their children – to lives of grinding poverty. Slow growth will also mean that state revenue will not keep pace with legitimate demands for access to all levels of education and training, essential infrastructure and improved social welfare. South Africa's poor will be left behind, society will stagnate, race relations will worsen and instability will increase.

The connection between slow growth, poor education and limited employment opportunities for low-skilled workers is the key to understanding South Africa's triple challenge of poverty, unemployment, and inequality. Faster, job-rich, growth not only brings increased income, but more tax revenue to fund improved public services. Because more people would be in employment, less of those taxes would have to be devoted to poverty alleviation and more could be used to secure further growth by investing in human capital, infrastructure, institutional development and fostering innovation. Rapid growth also brings social mobility, much greater individual opportunity and wider options for enterprise, careers and lifestyles as well as a self-renewing momentum for further growth.

In light of the above, and in the context of the HLP's work, CDE strongly believes that catalytic actions are required for legislative reform to have the largest impact on growth and the triple challenge. As such, we have identified the following key areas for reform:

1. **Reform laws and regulation to promote competition in the economy and reduce barriers to entry for business** – These reforms are vital for transforming the structure of our economy, making it more competitive, inclusive, job-rich, and better able to generate higher growth rates than is currently the case.
2. **Change labour laws to encourage employment** (especially low-skilled, low-wage employment) –We do not see this as a panacea, but, in our opinion, this issue cannot be avoided if we want to generate much higher rates of job-rich (and therefore more inclusive) growth.
3. **Re-visit Black Economic Empowerment (BEE) legislation** – Evidence suggests that BEE legislation is only working for the few. Economic growth in South Africa is not possible without transformation but the structures and obligations put in place by BEE also create costs. Policymakers need to find a better way of expanding the economy as a whole and opening opportunities to all South African.
4. **Modify immigration laws** (especially their implementation) – While it is vital that basic education reform is pursued with much greater determination and impact, making it easier for skilled immigrants to enter the country is a way to stimulate growth quickly and effectively. Allowing for much higher levels of skilled immigration will also provide maths/science teachers and other desperately needed expertise, including entrepreneurs, all of which will encourage employment generating activities and the expansion of economic opportunities over the short and medium term.

In the sections that follow we explore each reform priority in turn.

Reform Priority 1: Promote competition and reduce barriers to entry for business (both big & small)

The South African economy will only grow more rapidly if new businesses are able to start up quickly and existing businesses are able to expand. This will only happen in an enabling environment, the creation of which should be a core goal of government policy. This would require government to take seriously the needs of business, and to undo the many existing policies that hamper their activities and prevent them from expanding. This does not mean that the state should simply get out of the way. SA needs an effective state that is professional, efficient, and understands how markets work to help growth and poverty. What is needed is a concerted effort to make it easier to do business in South Africa across the board and to strengthen competitive forces in the economy, thus unlocking innovation and productivity.

International evidence is overwhelming. Adverse regulatory environments, especially when combined with high levels of industrial concentration, reduce competitive pressures. In South Africa, this is evident in relatively large profit margins in many sectors which should have been moderated by competition, but which have persisted for long periods. Addressing this requires the reform of labour and product markets, including the removal of barriers that protect existing companies and make more difficult the entry of new firms. This should be coupled with an invigorated, as well as more accessible and affordable system of enforcing competition policies, especially for smaller firms or new entrants. And this should apply throughout the economy, including those sectors in which State-Owned Enterprises (SOEs) dominate.

There have been increased calls from several quarters for a comprehensive and differentiated response to small business. On the surface, the reasons for this are not hard to see. Micro, small and medium-sized businesses account for at least a quarter of the country's gross domestic product (GDP),78 while making up 56% of employment (77% when the informal sector is included).[79] According to the National Development Plan, 90% of new jobs are likely to be created by small and medium-sized firms over the coming years.[80]

However, it is also true that South Africa has one of the highest business failure rates in the world[81] (about 70% of firms fail in their first year[82]) which may be rooted in the country's low education levels and poor business experience (particularly as during apartheid it was extremely difficult for black Africans to run their own business).[83]

In addition, the country's spatial distortions lock too many people into poverty in townships and former bantustans and makes it prohibitively expensive to integrate with the main economy. This may also account for why the informal sector in South Africa is small relative to similar emerging economies.[84]

Compounding these, red tape (mostly comprising BEE regulations and onerous labour laws – discussed in the next two sub sections below), business costs (such as banking, communication, rental agreements), late payments from government, and crime all tend to weigh disproportionately against small businesses compared to large businesses.

Free up business – all business

Given these realities, great care should be taken not to disadvantage small businesses in any further way. However, recent research in advanced economies has shown that small firms do not have any particular advantage in creating jobs. Rather, so-called high growth firms (HGFs) are the major generators of employment, innovation and productivity growth.[85] These firms, it turns out, can be found in traditional industries, such as construction and manufacturing, as well as business and personal services; they can be in high tech or in labour intensive sectors, and they exist in all shapes and sizes.[86] Promoting and targeting such firms is an extremely complex and problematic challenge for policy makers in all countries. It seems sensible therefore to focus on simplifying the legislative frameworks towards new firm formation and small businesses, while also ensuring that the general framework conditions for doing business are correct across the board.

We need, in other words, to ensure a policy framework is in place that promotes competition and reduces barriers to entry for all businesses, both big and small, and which does not disadvantage small firms in any significant way. Similarly, a policy framework that places unnecessary restrictions and burdens on large firms will have adverse knock-on effects for smaller firms in their orbit.

Enhance Competition

SA has a well-developed, well-regarded competition authority yet its concentrated economy continues to leave many businesses struggling to grow and expand their operations. In recent years the Competition Commission has uncovered the existence of cartels in various sectors of the economy, including the chemicals, steel and wire, bread, and construction industries. While it has been effective in blocking some anti-competitive mergers and uncovering cartel behaviour, competition legislation has been relatively ineffective in addressing entrenched market power[87]. While more research is needed in this area and more thought given to practical policy proposals, one way to improve the situation could be to cover the legal costs of small business owners who want to make a case against larger businesses that abuse their dominance.

The best way to discipline a firm is to allow its competitors to trade freely. This is absolutely vital for newcomers in all sectors of the economy many of which, in the South African context, will be largely black-owned. Thus, the instinct that sometimes emerges to use competition policy and its enforcement mechanisms to achieve policy goals far removed from maximising consumers' welfare, must be rejected. Competition tribunals are not the right forums for seeking to manage the supply-chain decisions of large retailers or the protection of township retailers from large chains.

It is also important to recognise that not all market power has its origins in factors that are easily remedied by a focus on competition. A lack of skills, including 'know how' and entrepreneurial skills, increases the power of the incumbency in circumstances where getting projects started takes considerable energy and resources. Addressing these challenges, all of which likely manifest themselves in higher mark-ups, requires different kinds of interventions. South Africa needs many more smaller, innovative firms operating in a much more competitive environment but it also requires global champions who can more easily weather tough economic downturns.

Fundamentally, competition legislation needs to provide the space for all newcomers, both black and white, upon whom the dynamism of the South Africa economy will depend. Within that context, the empowerment of black-owned businesses need to be much broader based than is currently the case see the section on reforming BEE below).

State-owned enterprises and market access

Many SOEs suffer from managerial disarray and find themselves in financially precarious positions as a result. Their futures should be fundamentally rethought. In particular, government should look more actively for opportunities for the private sector to invest in SOEs, and for privatisation where appropriate, while ensuring that the markets in which newly privatised firms operate are liberalised as well. Particular attention should be paid to restructuring those SOEs – South African Airways for example – that operate in industries and markets in which private firms could (and do) very easily provide the same goods and services.

All sectors of the economy should be subjected to the pressures of competition and provide access to those who want to enter the market. SOEs should be forced to compete with private businesses on an equal footing to ensure wider market access and to promote the efficiency benefits of competition. Furthermore, as this quote from Bonang Mohale testifies, SOEs will more effectively operate as the training grounds for more black managerial talent they were intended to be if they are well run and competitive.

"[SOEs]…have become the burial ground of the reputations and careers of black executives. Given that these entities are 100% owned by our own democratic government, I would have expected them to become… skills-honing grounds for our executives, yet they have become arenas of their destruction. As a result of unclear policy guidelines and continuous violations of the tenets of good governance by principally the shareholder, many a towering reputation (of black executives) has emerged in tatters at the end of the day. By way of example at Eskom we recently saw a highly qualified black executive with an impeccable track record in the public sector being strangely replaced within 6 months of taking office… this in our view at the BMF has almost made us conclude that our government is doing similar (if not worse) damage to the standing of black executives as the apartheid government sought to do."

Reduce red tape and more

The latest World Bank Doing Business survey ranks South Africa 74th out 190 countries in terms of ease of doing business. This is two places worse than the previous year's survey. In only one of the ten categories assessed by the World Bank (resolving insolvency) did South Africa improve its current rank compared to the previous survey.

In terms of starting a business, South Africa ranked 131st out of 190 countries. In South Africa, it takes on average 53 days (and 6 procedures) to start a business. This is roughly twice the amount of time it takes to start a business in sub-Saharan Africa and over six times longer than OECD high-income countries. The poor performance by South Africa in starting a business is confirmed by the WEF Global Competitiveness Report: here, South Africa ranks 125th out of 138 countries.

In terms of trading across borders, which looks at the time and cost involved in importing and exporting, South Africa ranks 139th out of 190 countries. According to in-house research conducted by Shoprite, South Africa's most successful retailer, 30 documents totalling 535 pages are required to be completed to send one container out of South Africa (reference). While we don't know the international experience in this regard, the requirement does seem onerous and will particularly affect firms with growth potential that have a strong export orientation. It should be noted, however, that this example is based on the experience of exporting food which is much more regulated than most other products so this may not be representative of the typical exporter's experience.

Red tape and small business

By definition, red tape affects smaller businesses more than it does larger ones (small firms spend proportionately more of their turnover on red tape than do large ones). Yet red tape for both large and small firms uses up resources that could be put to more productive uses within the firm and the economy as a whole. That said, beyond BEE legislation and labour regulations, the extent to which other forms of red tape inhibit business growth in general and small business formation in particular is unclear (how many more businesses would start up and grow, for example, if the time it took to register a business fell from 53 days to 27 days, the average for sub-Saharan Africa?).

In 2013 the International Labour Organisation (ILO) surveyed 414 small and medium-sized enterprises in Mangaung and Matjhabeng municipalities in the Free State province. The survey revealed that compliance costs for Mangaung amounted to R3.314 billion; for the smaller Matjhabeng Municipality the cost was R505 million. Regulations that were deemed burdensome by firms included: municipal bylaws; zoning and rezoning activities; restrictions on putting up signage; the Municipal Systems Act; health regulations; various municipal clearance certificates; the Liquor Act; town ordinances; the Consumer Protection Act; Value Added Tax (VAT) requirements; the National Credit Regulation; SMME regulations; companies registration legislation; industry specific licenses and approvals; and the Occupational Health and Safety Act. All of this red tape makes it more expensive and difficult to set up and run a small business, thereby ensuring that there are fewer businesses. The survey also found that business owners experienced difficulties with filling out complex forms, standing in long queues, and waiting for permits to be issued.[88]

There is, furthermore, evidence to suggest that the administrative burden of some government tax incentives (such as the skills development levy, the R&D tax incentive, and the employment tax incentive) affect smaller firms disproportionately, and some policies such as the Business Licensing Bill are plain and simply a threat to small businesses.

Introduced in 2001 to pay for training programmes run by the Skills Education Training and Authorities (Setas), the levy is effectively a tax equivalent of one percent of a business's payroll. Though businesses with an annual payroll of less than R500 000 have been exempted from paying the levy since 2005, it still proves a huge cost to other small firms, which exceed the threshold but are too small to have a human resource department to deal with such things.

Both the R&D tax incentive and the employment tax incentive have attracted only big companies. In the R&D incentive there is no application process necessary for those that wish to qualify for the incentive, but the risk is that SARS can, after accessing a firm's tax return, deem that they don't qualify, meaning the firm will then have to pay back the entire amount spent on R&D, with the possibility that the Receiver may also opt to add interest and penalties. This can be a costly exercise, making a R&D assessment necessary. Assessments themselves can be expensive – making it more accessible to larger, better financed firms. Added to this, because the incentive essentially translates to a cash pay-out which halves one's tax burden, recipients have to spend quite a few million rand on R&D to make a claim under the incentive worthwhile[89].

In the case of the Employment Tax Incentive, between the launch of the incentive on 1 January, 2014 and the middle of 2014 only larger companies[90] had made use of the incentive which is essentially allows for employers to receive a rebate on the employee tax they pay. The 2014 Davis Tax Committee's SME report[91] says the proposed incentive system is driven by the deduction of the incentive from the employees' tax liability and points out that this immediately creates the problem that many small businesses have an insufficient employees' tax liability to absorb the incentive. Section 10 of the act which oversees the incentive creates the concept of a refund of the incentive. But the committee notes in the report that the procedures for such refunds have yet to be published in the gazette. 'Until such regulations are published the value of the (Employment tax) incentive to the SMME sector is highly questionable,' notes the Davis committee's report[92].

The Business Licensing Bill in its first version, introduced in 2013, requires every business in South Africa, irrespective of size, to apply for a license to operate from the local municipality in which they are situated. It is the small business that is starting out that will be most affected as the bill intends to give authorities broad powers over the granting and removal of licenses. The penalty for operating a business without a valid license could be up to 10 years in prison.

There are also some issues related to intellectual property legislation. Under the Intellectual Property Laws Amendment Act 2013 (Act No. 28 of 2013), any inventor who intends to sell their intellectual property offshore has to go through a time-consuming process, involving the Reserve Bank, SARS, and the National Intellectual Property Management Office (NIPMO) set up under the act. Large firms often have an entire department dedicated to research, but for small businesses research is often carried out by the owner and a handful of other people.

Growth, development and environmental legislation

In 2006, the South African president, Thabo Mbeki, complained that the country's 'green laws' were causing development delays and slowing down economic activity (Engineering News 2006). The Minister of Housing told the construction industry that efforts to meet the country's shortage of more than two and a half million homes would no longer be 'held hostage by butterfly eggs' (quoted in MacLeod 2006). South Africa demonstrates the danger of overzealous environmental regulation that cannot be properly implemented and enforced, and does not mesh with the country's development priorities.

The Chamber of Mines (representing South Africa's largest mining companies) has repeatedly argued that the extra red tape involved in complying with the Mineral and Petroleum Resources Development Act, water licences, and environmental legislation all substantially inhibited the development of new mines (Brown 2007). One of NEMA's (National Environment Management Act, 1998) central requirements is that 'any activity' that could be regarded as 'having a significant impact on the environment' must undergo an Environmental Impact Assessment (EIA). This places heavy demands on farmers, small business owners, or new black enterprises seeking to launch initiatives that may have some kind of environmental consequence. (It also places a massive administrative burden on government bureaucracies struggling to cope with their most basic functions and is especially onerous with respect to the development and/or upgrading of informal settlements.)

Overzealous environmental legislation and the burden it places on firms of all sizes is another form of red tape that not only increases the costs of doing business but represent an obstacle to growth and development. Environmental legislation should be reviewed and the most onerous obligations stifling development and enterprise should be removed.

General recommendations

True economic empowerment and transformation requires a faster growing, more competitive economy with fewer regulations inhibiting private sector activity and a policy framework in place that facilitates ease of access for new entrants as well as allowing established enterprises to flourish.

What all businesses need to flourish is relatively simple: a sound environment for doing business; reliable economic infrastructure; predictable government policy; a reduction in red tape; effective competition policy; a manageable labour market regime; and, above all, economic growth.

This translates into the following specific recommendations for legislative reform:

- Changes to competition legislation that address entrenched market power and opens up the economy to greater access;
- Changes to competition legislation that allow many smaller business owners a chance to take up their cases against other larger businesses that abuse their dominance;
- Changes to and a massive simplification of legislation governing the registration and licencing of businesses and cross border trade;
- Changes to legislation dealing with limits of private sector investment in SOEs; and
- Changes to legislation limiting private sector involvement in infrastructure investment in South Africa (i.e., much greater public private collaboration in the provision of backbone infrastructure).

We also agree with a number of submissions[93] to the panel that oppose the Expropriation Bill and Property Valuation Bill, as these result in higher levels of (domestic and international) investor uncertainty and will serve to undermine rather than improve the business environment in South Africa. (See Appendix 2).

Small business exemptions

Getting the environment right for all businesses corresponds very closely to getting the environment right for smaller businesses. There may however be specific instances where small businesses should be specifically exempt from both red tape and labour legislation. In such cases two considerations need to be stressed:

- First, to better target exemptions, policymakers should develop a more simplified definition for small businesses. The current definition of small businesses in the Small Business Amendment Act is far too complex and is not used by all in government or the private sector. (A different definition is also used in different pieces of legislation.) A far simpler definition, like those in use in other emerging economies, would be better; and
- Second, the danger with exemptions is that they provide a disincentive for growth. If a firm can only qualify for certain benefits by staying small, then owners and managers may see it as beneficial to avoid growing beyond the threshold where the benefits no longer apply. Such an effect will be particularly egregious given the finding that growing firms are the ones that generate the largest employment and productivity increases.

Laws that need to be reviewed

(This is an indicative list only and more detail will be provided on the legislation that is especially problematic based on our analysis, as well as particular sections in need of reform.)

- The Competition Act 89 of 1998;
- Eskom Conversion Act 13 of 2001;
- Harmful Business Practices Act 1999 and amendments;
- National Small Business Act 29 of 2004 and amendments; Business Act 71 of 1991 and amendments;
- Companies Act No 71 of 2008 and amendments; Infrastructure Development Act 23 of 2014;
- Electricity Regulation Act 4 of 2006; Municipal Systems Act 32 of 2000; Liquor Act 59 of 2003;
- Consumer Protection Act 68 of 2008;
- Occupational Health and Safety Act 85 of 1993 and amendments.

Reform priority 2: Change labour laws

The effects of South Africa's labour legislation on growth and employment creation have been heated topics of intractable debate for a very long time. The left and trade union members are adamant that regulations protecting workers are necessary to prevent 'exploitation' and provide them with a fair share of income. In relation to poverty and unemployment, pro-union advocates have frequently argued that employed workers need higher incomes to support unemployed dependants. Lowering wages, will therefore increase poverty without leading to additional job opportunities. Pro-market advocates and business interests, by contrast, have consistently maintained that tight regulation increases the risks and costs of employing people, and, for this reason, inhibits growth and the generation of employment; a less rigid labour market would lead to faster growth and many new job opportunities. Attempts to assess the impact of labour regulation empirically, in particular by Professor Haroon Bhorat, have generated a variety of outcomes in relation to the effect of labour market laws on current employment and its growth trajectory.[94]

Labour market rigidity

Businesses generally perceive South Africa's labour market regulations as burdensome. Professor Neil Rankin finds that labour market regulations are the most frequently mentioned regulation deemed to be a constraint on business, having been identified as such as frequently during the late 1990s and early 2000s, as were the scarcity of skilled workers, crime, and macroeconomic issues. Furthermore, he finds that the cost of these regulations falls most heavily on smaller firms and the unskilled, and that these regulations constrain firm growth, particularly among smaller firms.

The data used in this study are, in some cases more than ten years old, and relate to a period during and immediately after which South Africa's new labour regime was being introduced. These results thus may be responses to the newness and uncertainty surrounding these regulations. Subsequent firm-level surveys do not interrogate firms' perceptions of, and responses to, labour regulations in as much detail, if at all. However, those that do, like those of the Small Business Partnership, find that, at least for small manufacturing firms (10-49 employees), inflexible labour regulations remain a critical barrier to employment creation.

Other measures which draw on the perceptions of business managers and owners (such as the surveys run for the World Economic Forum's (WEF) Global Competitiveness Report) characterise South Africa's labour market as particularly uncompetitive in the global context. By these measures, South Africa is ranked last (out of 144 countries) in cooperation in labour-employer relations, second last in hiring and firing practices, 139th in flexibility of wage determination, and 136th in the link between pay and productivity ('Global Competitiveness' 2014).[95] However, SA's labour market regime performs relatively well on redundancy costs (33rd), with these costing firms approximately 9.3 weeks of pay on average.

Studies based on subjective views can be misleading. Indeed, the OECD, in the organisation's 2010 report on South Africa found that there was little evidence that South Africa's employment legislation was restrictive, and the country had one of the lowest scores on the OECD's Employment Protection Legislation Indicator.[96]

One attempt to provide an objective comparison of South Africa's labour regulations is Bhorat and Cheadle.[97] Like other studies on labour regulation, Bhorat and Cheadle show that certain aspects of South African labour market regulation are more onerous than others, and on some aspects South Africa ranks worse and some better in comparison to other similar countries.

Bhorat and Cheadle argue that 'it is clear that in the case of legislative provisions for firing workers and … less so for hiring provisions, South Africa possesses a particularly high level of regulation.' By comparing the two cross-sections of data which are separated by a decade they conclude that '… it remains true that the South African labour market, in an international context, appears to have become more regulated over the last decade.'

Bhorat and Cheadle's is not the only research to show that South Africa's labour market is becoming more rigid. Gwartney, et al. show a tightening in certain key indicators of regulation and very little change in an index of overall labour market regulation since 1995.[98] The index of hiring and firing regulations fell dramatically (i.e., becomes more onerous) with the introduction of the suite of labour market regulations in the late 1990s, but there has been little change in this measure since 2000. This may change with the new amendments to the Labour Regulations Act which are likely to make the labour market more restrictive. The centralised collective bargaining index has also recorded a steady fall over the past 15 years and thus become more onerous.

At a more anecdotal level, Thami Mazwai, advisor to the minister of small business development, stated in 2016 that he agrees that 'labour legislation is problematic, but only as far as it relates to small business'. He also came out in support of actions that seek to ensure that small businesses are not bound by decisions of national bargaining councils dominated by big business and big labour. 'This system is patently unfair', he argued, 'and the provision that small business can apply for exemption does not provide relief. It entails more work and costs for the small company to ultimately get exempted'.[99]

Wage setting

The failure of the South African labour market to clear, especially amongst the unskilled, suggests that there are mechanisms which prevent wages from falling. One of these may be the process of wage setting. Institutionalised wage setting in South Africa mostly happens in two ways. The first is sectoral determination. This covers a group of sectors where it is difficult for workers to organise such as farm workers, domestic servants, wholesale and retail, forestry, private security, the expanded public works programme, and the taxi industry and small business. In these sectors the Minister of Labour sets minimum wages.

The second are Bargaining Councils. Bargaining Councils cover collective bargaining at a sectoral, rather than firm, or plant, level and are formed by representatives of businesses and workers in a specific sector. If a Bargaining Council represents the majority of workers and employers within a sector, then agreements reached by that council can be extended to all participants in the sector, irrespective of whether they were party to such agreements, although a formal exemption can be applied for and granted by the Minister of Labour.

A number of recent studies have examined the impact of the introduction of minimum wages, through sectoral determination, on employment, wages and other labour market outcomes.

Bhorat, Kanbur, and Mayet consider the impact of minimum wages in five sectors: Retail, Domestic Workers, Forestry, Taxi workers, and Private Security which, in September 2007, accounted for 17.2 per cent of non-agricultural employment.[100] They use the LFS to identify affected workers through the four digit SASCO occupation codes and the three digit ISIC industry codes which individuals report. In order to create a counterfactual against which to compare the changes in the affected sectors, they identify workers with similar characteristics to those in the specific sectoral determination sector who are unlikely to have been affected by the changes. This is the counterfactual group which would help identify changes amongst those who remain or become employed. This is done separately for each sector and is limited to only lower income individuals (those earning less than R10 000 per month) and to individuals with 12 or fewer years of education. They also place restrictions on the race group and skill level for the control groups which vary by sector (for example only African and Coloured workers can form part of the control group for domestic workers and only semi-skilled occupations are eligible for the control group in the retail sector). A broader control group consisting of individuals of working age who were either employed or seeking work (the narrow labour force) and who had completed no more than 12 years of schooling was used to investigate the impact of the minimum wage on employment. Individuals in each round of the LFS used were mapped to the minimum wages in the relevant sector and area. They use a difference-in-differences (DiD) approach where they compare outcomes for the minimum wage group against their matched group over the period before and after the introduction of the minimum wage. Their data spans the period 2000-2007. In addition to a ‘standard’ DiD approach which uses dummy variables they also estimate a specification which captures the gap between the actual minimum wage in a specific sector and region when introduced and the initial average wages in the sector and region in the year prior to the introduction of the minimum wage.

Across all five sectors, they find no difference in the probability of employment as the result of the minimum wage (based on their ‘gap’ specification). In terms of real wages (measured as real hourly earnings) they find that these increased after the introduction of the minimum wages in four of the five sectors. The sector in which the minimum wage did not lead to an increase relative to the control group was forestry, the only sector they consider which is tradable and not a service. Finally, they consider the impact on hours worked and find that in certain sectors employers may have responded by reducing the hours they employ people for. They conclude that in three sectors – Retail, Domestic and Security – the increases in real wages outweigh adjustments in hours worked and thus workers in these sectors were better off due to the minimum wages. In the other two sectors – Taxi and Forestry – they find that workers may not be any better off due to the implementation of the minimum wage.

This study shows that the impact of minimum wages can differ across sectors, and that the characteristics of the sector will likely have an influence on their effect. Ultimately the imposition of binding minimum wages results in a transfer from employers to employees (or from customers to employees). For this transfer to work, employers must be able to absorb these extra costs or pass them on. This is likely to be easier in service sectors which are non-tradeable and where workers cannot be easily be replaced by capital in the short term. This seems to be the case here: real wages increased in the nontraded sectors but did not in the only tradable sector. A second consideration in this research is that for some of these sectors the time horizon considered is relatively short (for the taxi and forestry sectors the post-minimum wage period is only one year, whereas for the other three sectors this is four to five years), and the impact presented is an average over the post-minimum wage period. These impacts may change with time and this may be disguised by this averaging. This time dimension may be important if adjustment, such as replacing workers with machines, takes time. If this is the case then these estimates will underestimate the impact compared to the period when capital is more flexible. More generally, the assumption that there is no impact of rising wages on employment in the control group may not hold: if employers in industries outside of bargaining councils believe that wage trends in the bargaining councils may impact on their sectors at some point, then the control and treatment groups may not be fully independent. In effect, rising wages in bargaining councils may have reduced employment growth outside of bargaining councils, weakening the reliability of any comparison between the two trends. The impact of bargaining council agreements on employment may be greater, in other words, than these studies estimate. This is a concern will other DiD studies, too.

Other recent empirical work on minimum wages in South Africa has been sector-specific. Dinkelman and Ranchhod examine the impact of minimum wages on domestic workers.[101] Like Bhorat et al (2013) they use a DiD approach but instead of comparing with a matched group from outside the sector, their comparison group is within the sector. They find an increase in wages and no impact on employment levels. Furthermore, they do not find any significant change in the amount worked. They also find that when sectoral determination is implemented, the probability of having a formal contract and of an employer paying Unemployment Insurance or pension benefits increases across the board. They argue that the introduction of the minimum wage may have spurred formalisation within this sector.

Bhorat, Kanbur, and Stanwix examine the introduction of minimum wages in agriculture in March 2003 using a similar DiD approach to the other papers discussed above and Labour Force Survey (LFS) data.[102] Like with most of the other studies they find that the minimum wages did increase real earnings (by 17%), but unlike the other studies they find that it decreased the probability of employment in agriculture (by 13%) without any significant change in the hours worked. This is despite approximately 60% of farmworkers being paid below the minimum wage in 2007 (although this does not include in-kind payments which are relevant insofar as employers might reduce these in response to having to pay higher cash wages). They also find a substantial increase in contract coverage for farmworkers.

Garbers updates the Bhorat et al analysis by exploiting the fact that minimum wages differed between municipalities classed as Group A and those classed as Group B and that the magnitude of this difference changed with time. In 2003, when minimum wages were introduced, Group B minimum wages were approximately 80% of Group A wages. Over time these wages converged until in 2007 Group B minimum wages were 95% of Group A wages. He estimates outcomes at a District Council level, rather than the individual level as previous studies have done, and finds a robust negative relationship between the level of minimum wages and employment. The magnitude of his estimate is similar to Bhorat et al – a decline of approximately 16.5% in unskilled farm labour resulting from sectoral wage determinations. However, his estimates of long-run elasticities (the impact over a three year period) are -1.77, i.e. relative decreases in employment are greater than relative increases in wages, so that a10 per cent rise in wages results in a decrease in employment of 17% over three years. These larger long-term effects suggest that the other research which does not investigate longer term impacts may be underestimating the effect of minimum wages on employment.

Edwards, Rankin and Stijns use firm-level data to investigate the impact of Bargaining Council coverage on firm survival when faced with increased imports in the sector. Between 2005 and 2008 official data show that lower (wage) paying small firms (those with less than 20 employees) are vanishing. They find that small firms in sectors covered by Bargaining Councils, and which face increasing imports, are more likely to exit than similar firms in non-BC sectors or larger firms in the same sectors. It seems likely that minimum wages set in Bargaining Councils are a bigger constraint for smaller, more labour-intensive firms, particularly if they were not party to these agreements. It is also likely that these are the types of firms which would compete directly with imports from countries like China. Thus, a possible mechanism which may explain these observed results is that these firms cannot adjust wages, or tie wages to productivity, due to the constraints imposed by the BC agreements, and if they cannot become more capital intensive, have to exit. Of course, this argument only applies to tradeable sectors of the economy. The damage (or otherwise) of extending BC agreements to small firms in non-tradeable sectors depends on whether these firms can pass on the increased cost of higher wages to their customers. Since these firms are small and likely have to accept the market-determined price, we can assume that a similar process occurs.

Magruder is the only empirical study on Bargaining Councils in South Africa which currently can show a causal relationship between these and employment levels.[103] Using data from the 2003 LFS he exploits differences in geographical coverage of Bargaining Councils and across sectors and a spatial discontinuity design to identify the impact of BCs on wages, employment levels and the distribution of employment across firms of different sizes. He finds that industries that have an agreement in a particular magisterial district in a given year have about 8–13% lower employment and 10–21% higher wages than the same industry in uncovered neighbouring magisterial districts. Firm sizes are also impacted, with 7–16% fewer employees in small firms and 7–15% fewer entrepreneurs, while there are smaller and insignificant effects on large firms and single employee firms. As with the minimum wage research, it is likely that these estimates underestimate the true effect of BCs since they do not take into account the longer-term impacts or contamination between treatment and control groups. The Magruder and the Edwards et al results both fit with the concerns raised by Moll in 1996 and Black and Rankin in 1998.

Nattrass and Seekings describe how bargaining councils can play a role in limiting job creation and creating unemployment by forcing existing labour-intensive producers to close, through a case study of the South African clothing and textile industry in Newcastle, KwaZulu-Natal.[104] They show that wages paid by firms who did not pay bargaining council determined rates varied tremendously but in some cases workers were earning almost double the minimum wage if they met production targets. Nattrass and Seekings argue that the council's collective agreements 'criminalise the preferred wage model of many factories in places like Newcastle both because they set a minimum wage that leaves labour-intensive factories unable to compete with imports and because they effectively rule out any significant productivity-linked pay.'

Quantifying the size of the impact of the wage bargaining process is difficult since it involves constructing a counter-factual where the changes in the wage setting outcomes did not have an impact. In the causal research this is done by constructing an external control group of similar workers (such as the two Bhorat et al papers), by exploiting the intensity of changes in the 'treatment' (such as Dinkelman and Ranchod, or Garbers), or by exploiting regional variation in the policy (such as Magruder). In all cases, these are partial equilibrium analyses, they assume that changes affect only the sector where the policy is implemented, and are short-term in nature, due to the availability of data or because over time the counterfactual may no longer be valid.

The National Minimum Wage

In October 2016, a panel of experts appointed by Deputy President Cyril Ramaphosa to provide advice and assistance in the formulation of policy on the introduction of a national minimum wage (NMW), made its report and recommendations public. This report is to be discussed in Nedlac where a final decision on the NMW will be made before the relevant legislation passes through parliament. The Panel:

- proposes that an NMW be implemented in 2017 and that it be set at R20 per hour, the equivalent of R3,500 per month for full-time employees; and
- estimates that this has the potential to raise the incomes of some 6.2 million people who are employed but who currently earn less than R3,500 a month.

Commentary on the proposal and the debate that preceded its presentation, reflected two familiar responses. Some commentators celebrated what they saw to be a victory over business (albeit a partial one), forcing employers to raise wages, though not, perhaps, by as much as proponents of an NMW would have hoped. Others argued that by raising minimum wages, jobs would be lost and future job creation would slow. Studies by UCT's Development Policy Research Unit (DPRU) and the National Treasury both projected that a high NMW such as R3,500 pm would lead to significant loss of jobs.

Intriguingly, the Panel presents no argument or evidence about an issue that one might have expected to appear in a report proposing a big wage increase to a large proportion of all workers: whether or not this will simply result in higher inflation. This is a striking omission given the concerns that are often expressed by economists and policy-makers about the lack of competition in the economy and the resulting pricing power that many firms and industries enjoy.

2015 minimum wages as per sectoral determination	Monthly	Hourly	How big an increase is needed to get to R20 p.h.?
Agriculture	R2 607	R14,90	34%
Forestry	R2 607	R14,90	34%
Domestic Work	R1 813	R10,36	93%
Private security	R2 067	R11,81	69%
Retail	R2 514	R14,37	39%
Taxi industry	R2 113	R12,07	66%
Hospitality	R2 716	R15,52	29%

Is it more likely that retailers, hairdressers and taxi bosses, for example, will absorb the full effect of an increase in wage costs, or that they will pass at least some of these on to consumers? Producers of tradeable goods might be less able to do this unless they can secure increased protection from foreign competition, but even without this, there will be many firms and industries with some capacity to pass on higher wage costs. Many services, for example, face no meaningful international competition.

To the extent that a broad increase in wages generates inflation, it will have even more ambiguous effects on poverty. For workers whose wages rise as a result of the NMW, it is likely that the increase in prices will not offset the full benefit of increased income. But for those who are not members of the working poor – whether this is because they are not poor or because they have no work – the resulting inflation will reduce purchasing power and lower living standards.

Despite the impossibility of offering precise estimates, it seems clear that the balance of risk is that a high NMW would increase rather than diminish SA's already exceptionally high levels of poverty and inequality. This will be the result of a number of developments: job destruction in the short term and reduced labour absorption over the medium and long terms; likely reductions in GDP growth leading to lower per capita GDP; less redistribution through the fiscus; and higher inflation.

Labour disputes

Despite the prominence of coverage of industrial disputes in the media there is very little analysis of how these influence employment and firm-level outcomes. This probably happens for two reasons: (1) strike data is not readily available in the standard LFS/QLFS datasets; and (2) industrial disputes are likely to be endogenous, in that the relationship between employment and industrial action may run in both directions, so researchers need to use an instrumental variable or other identification strategy.

Evidence as to whether SA is an outlier in the realm of the size and length of industrial action is not unambiguous. Bhorat and Tseng in a blog post report data from the International Labour Organization's (ILO) Laborsta database to determine whether South Africa really is an economy with many strikes.[105] They find that in terms of days not worked per 1 000 general workers that South Africa ranks fifth (in the period 1999-2008) with 206 days lost on average. However, they argue that this measure is not very good since it covers only a small group of countries and these countries differ in their definition of formal employment and the age range they include. Instead, they look at two alternate measures: the *depth of strikes,* measured as working days lost per strikers' working days per annum; and *Strikers' intensity,* the number of strikers per 1,000 employed workers. These measures are also available for a larger group of countries. Bhorat and Tseng find that, on average, South Africa does not differ much from other countries. However, they do caution that this data may mask differences across sectors. From this data, South Africa does not seem atypical in terms of strikes.

A second paper (by Bhorat, Jacobs and van der Westhuizen) uses a different dataset, a record of disputes with the CCMA over the period 2000/01 to 2007/8 which captures cases brought to the

CCMA.[106] This is then matched with LFS and provincial accounts data to create a dataset which links industrial disputes and employment at a regional level. It is likely that industrial disputes are endogenous to employment and thus they use an instrumental variable approach in order for their estimates to be unbiased. They argue that the efficiency of a regional CCMA office, measured as the costs associated with the caseload, is an appropriate instrument. Their results indicate that a rise in the number of industrial dispute cases is associated with lower employment levels. Importantly as well, they argue that the efficiency of the dispute resolution body, the CCMA, is imperative for job creation and destruction – further evidence that poorly functioning labour market institutions can have detrimental consequences for employment.

A specific example of how strikes can influence outcomes other than employment is by Wills. In this paper she considers the relationship between the strike action of teachers and learning outcomes in South Africa. In this paper she finds that teacher strike participation negatively affects learning for students in the poorest three quarters of schools in South Africa. The magnitude of this effect is large – roughly equivalent to a quarter of a years' lost learning despite the average strike's duration in these schools representing only 7 per cent of official school days that year.

Recommendations

A country's labour relations system is part of its social contract, so radical reform of South Africa's labour relations system would be socially disruptive. Nevertheless, it could be reformed significantly in ways that would make a major difference to labour market outcomes without too deep a change to the terms of the social compact. These reforms should include:

- Making it less onerous for employers to dismiss unsuitable workers by:
  a) penalising those who bring frivolous cases against their employers and former employers to the CCMA; and
  b) reviewing and clarifying the procedures to be followed before a dismissal can be declared unfair, to bring greater certainty to the process;
- Creating a separate regime for young workers that would extend the existing exemptions in labour laws governing probation. A potential deal might create unfettered rights to dismiss young employees in the first six months of their employment while compensating for increased job insecurity by providing them with more generous access to unemployment insurance;
- Allowing small businesses to adopt a six-month probationary period (as the NDP suggests and as is the practice in some other countries) during which employees have no claim for unfair dismissal;
- Sectoral determinations (and other statutory minimum wage levels) should be kept to a minimum.[107] Critically, they should be determined only after careful consideration of their adverse effects on employment. This should also apply to a national minimum wage;
- The practice of extending bargaining council agreements to non-parties should end. If this is not politically feasible then the granting of exemptions from agreements should be widened and should include the automatic exemption of firms that employ fewer than 50 people or are less than two years old; and presumptions in favour of exempting firms that have 50 to 100 employees or are less than five years old;

- Relevant labour laws should be reformed to reduce the length of strike action, and make strikes less violent. These measures should include:
  a) developing mechanisms for divesting violent strikes of their protected status;
  b) increasing the space available to unions which represent a minority of workers to negotiate with employers, instead of granting majority unions monopoly status through agency shop provisions;
  c) ensuring that the police act more swiftly and effectively against acts of violence and intimidation during strike action, and that unions are made to pay for damage to public and private property caused by their members;
  d) ensuring that negotiated agreements cannot provide that employers agree to withdraw charges against striking workers who have broken the law, or reinstate those who have been dismissed for this reason; and
  e) ensuring that strike ballots are held before every strike, that they are secret, and that they are repeated at appropriate moments during strikes;
- The youth employment tax incentive currently subsidises employers' costs when they take on young workers. This is an important intervention and one that should be assessed carefully to determine its impact. If it proves to be effective, consideration should be given to expanding it in sensible ways.

Laws that need to be reviewed

(This is an indicative list only and more detail will be provided on the legislation that is especially problematic based on our analysis, as well as particular sections in need of reform.)

- Basic Conditions of Employment Act 75 of 1997;
- Labour Relations Act 66 of 1995;
- National Economic Development and Labour Council Act 35 of 1994;
- Employment Tax Incentive Act 26 of 2013;
- Employment Equity Act 55 of 1998;
- Unemployment Insurance Act 63 of 2001;
- Employment Services Act 4 of 2012;
- Special Economic Zones Act 16 of 2014;
- Companies Act No 71 of 2008 and amendments.

Reform priority 3: Review Black Economic Empowerment

There is no doubt that black economic empowerment (BEE) and related policies, such as employment equity (EE) are imperative and morally right in South Africa, given our history. However, it is clear that the way in which some of these policies are being implemented are holding back growth, and not contributing to the inclusive economy we need to overcome the pressing challenges of poverty and unemployment.

A vast amount of scarce capital has now been spent on BEE deals. The value of these transactions is hard to quantify, because those involving private companies are not made public. However, figures in the public domain put the value of such deals between R550-billion and R600-billion in the decade from 1998 to 2008 alone.

It is clear that the current model has helped create a black economic elite, but the impact has been highly concentrated. Mathews Phosa, for example, noted recently that 'the present BEE policy …is with respect not a cure-all to real broad-based empowerment. Millions of black people feel left out and are very sceptical since they cannot enter the formal economy. They only see a few that largely benefited from tenderpreneurship and not from hard work'.[108] Similarly, Mandla Malinga, prominent Soweto social entrepreneur, has said:

> For me good education and training are ultimately the vehicles which work towards empowering people in a permanent and sustainable way – not just enabling a few to buy shares in some established big white companies or some filling top positions in these companies or serving on their boards. To me, that is NOT BEE. That is simply the success of a few and we celebrate their success, so good luck to them. But what about the rest of the populace? Surely the struggle was not about allowing a few to just squeak through into the lap of luxury. It was about ensuring that the ordinary Sipho or Tshepo or Tumi has a better chance of life than was the case during apartheid.[109]

These perspectives suggest that BEE, on its own, cannot bring about the economic empowerment of black South Africans. To achieve that, it would need to be accompanied by broader economic transformation along the lines suggested in this report. In other words, we need to build an economic system that generates more opportunities to start and grow businesses and creates many more jobs for which relatively unskilled people would be suitable. BEE can operate alongside such transformations, but we need then to find ways to reduce the negative impact that BEE currently has on the cost of doing business.

A core goal of BEE is the transformation of existing businesses, which has been pursued with increasing intensity since the mid-1990s. The various rules adopted in pursuit of this objective now affect every key decision a firm must make: whom it can employ; with whom investors should partner; how ownership should be distributed; which suppliers should be contracted; whether a firm can do business with the state (and even do business with firms that do business with the state); who should be trained; and more.

Consider, in this regard, the demands on the time of senior managers who wish to pursue the goals set out in our 'transformation' legislation. They have to fulfil many requirements: prepare BEE and transformation strategies, and monitor and evaluate their progress; establish workplace transformation forums, and ensure their proper functioning; and appoint an accreditation agency and submit relevant documentation to it. They must also identify and recruit black staff from what is often a small pool of suitable candidates, a process that is time-consuming and expensive, particularly when head-hunters are involved. One estimate puts the annual cost in staff time at a large organisation (defined as an organisation with a turnover of more than R50-million per annum) to adhere to the various regulations and ensure that the company is up to date with BEE requirements, and paying fees to verification agencies, at over R800 000 per annum.

A survey conducted by KPMG in 2012 found that 35% of respondents estimated the costs of complying with BEE regulations at 0.5% of turnover, while 30% estimated the costs at between 0.5% and 2%. An estimate in the Financial Mail from 2013 found that black economic empowerment (BEE) deals for South Africa's four large banks cost a potential 2%-3% of their market capitalisation for every 10% shareholding.[110] Although these are estimates, it is nevertheless worrying that if BBBEE investors acquired 10% of Standard Bank in 2004, and Standard Bank's shares were worth about R57bn, then that adds up to more than R1bn in costs.

A case might be made that these costs are low relative to the pressing need for transformation in the workplace. However, the vital point to recognise is that they demand time, energy and resources from firms and their managements, with consequences for the cost of doing business. Some of these costs are passed on to customers; others are paid for in smaller profits, reducing the ability of firms to expand and create employment, and discouraging new firms from entering the economy. The consequences of these negative impacts are most directly borne by the poor, who end up with fewer opportunities to find a job or to start a small business servicing the needs of others in employment. By contrast the beneficiaries of these deals – both those who become owners and those who provide the costly services that generate the transaction costs – are generally non-poor.

As BEE regulations have become more onerous it is likely that the costs of compliance are constantly rising. In 2013 new BEE regulations were gazetted and came into effect in 2015. These regulations have a number of far reaching implications, and could lead to much higher costs for white-owned businesses, especially smaller ones.

The BEE codes as they were constituted before 2013 would allow a white-owned company to achieve a higher BEE rating than a black-owned company, if they complied with other BEE pillars, such as employment equity, skills development, preferential procurement, socioeconomic development or enterprise development. However, the new codes have reduced the categories from seven to five, three of which are priority elements and must be complied with.[111] One of the priority elements is ownership. It accounts for 40%, and for a company to earn the maximum amount of points it must have a black shareholding of at least 10%, which must be fully paid up.[112]

Smaller companies – known as exempt micro enterprises (EMEs) – will automatically be considered as BEE-compliant, if they have an annual turnover of less than R10-million a year (up from R5-million under the previous codes). EMEs and qualifying small enterprises[113] (QSEs) with a black shareholding of 51% will automatically be considered level 2 BEE compliant (level 1 companies are the most BEE compliant, while level 8 companies are non-compliant).

Important changes are that EMEs and QSEs that are 100% black-owned will be deemed to have a Level 1 BBBEE status and EMEs and QSEs that are 51% black-owned will be deemed to have a Level 2 BBBEE status. This is a significant advantage over other EMEs and QSEs especially given the increase in the number of BBBEE points required to achieve a particular BBBEE level (see the table below). QSEs that are not 51% or more black owned will be subject to a more onerous regime than under the current Codes. EMEs and QSEs will no longer need a certificate from a BBBEE verification agent to confirm their BBBEE status. All that is required is an affidavit certifying its total annual income and level of black ownership. This will save costs for all EMEs and QSEs.[114]

The table below shows the differences between the old and new BEE codes.

BBBEE Level	Amended codes	Current codes
1	More than 100 points	More than 100 points
2	95 – 100 points	85 – 100 points
3	90 – 95 points	75 – 85 points
4	80 – 90 points	65 – 75 points
5	75 – 80 points	55 – 65 points
6	70 – 75 points	45 – 55 points
7	55 – 70 points	40 – 45 points
8	40 – 55 points	30 – 40 points
Non-compliant	40 points or fewer	30 points or fewer

Werksmans 2015[115]

The only systematic analysis that we could find of the impact of new BEE codes on existing businesses was conducted by Anthea Jeffrey. She focuses particularly on the implication for small white-owned businesses by looking at the repercussions of the new BEE codes on a hypothetical qualifying white-owned small enterprise operating in the catering and accommodation sector. She assumed that it had assets worth R10m, turnover in that year of R20m (making it also a designated employer under the Employment Equity Act, 2014), pre-tax expenses of R18m, a tax bill of R0.56m, and net after-tax profit of R1.44m. The table below sets out the costs that, according to Jeffries, this hypothetical business would have to meet in its first year.

Ownership	25.1% of assets of R10m is R2.51m, of which 40%, or R1 004 000, must immediately be discounted for the benefit of BEE investors to give them 40% net value, free from debt.
Management control	The costs of meeting the target of 60% black senior management are not easily quantifiable. If this target is not met, the potential fine under the EE Bill for a first offence is R1.5m or 2% of annual turnover, whichever is the greater. Up to R1.5m would thus be payable, and a fine of R450 000, for example, might be imposed.
Skills development	6% of an annual payroll of R14m, amounting to R840 000.[116]

Supplier and enterprise development	3% of R1.44m, or R43 200. The compliance and opportunity costs of increasing preferential procurement to 80%, mainly from exempt micro enterprises, qualifying small enterprises, and 51% black-owned firms, are difficult to quantify.
Socio-economic development	1% of R1.44m or R14 400.
Potential total for non-compliance in one year	R2 351 600 (including the discounted net value of the BEE ownership stake and assuming a R450 000 fine under the EE Bill

It is clear that these costs are heavy for any business and could well result in the closure of companies along with resulting job losses.

The new BEE codes also require a skills levy, which is another cost to business likely to dis-incentivise companies from employing people. Firms are required to pay the levy as a proportion of their payroll. The levy is equivalent to 6% of their payroll, and only applies to black employees. Although tax breaks bring this figure down to 5.3% it is still fairly high (the average spend on skills development in the US is 3.5% of payroll). This results in employers being reluctant to take on additional employees as these costs increase.

BEE and EE requirements have a disproportionate impact on smaller firms, which have fewer financial and managerial resources. In this regard, there is considerable evidence that, over the past two decades, more and more business activity has been concentrated in larger firms which are better able to absorb the costs and managerial requirements of complying with regulations.

This is often because (non-specialist) owners of smaller firms must also manage their human resources, procurement and compliance policies, the complexity of which may be too demanding for them. For example, StatsSA data show that between 2001 and 2008, 72- 75% of all people in work were employed by businesses with fewer than 50 workers. By 2013, that figure had fallen to 66%.

The new amended BEE codes will require firms to develop black suppliers or require their current suppliers to transfer at least 51% shareholding. According to Tony Balshaw, of advisory firm, Mazars: 'The impact of these amendments to the codes will be disastrous for business, civil society and our economy as a whole. We can now expect to see phantom share schemes and opportunistic so-called "tenderpreneurs" being the conduit for delivery of goods and services, something we have been trying to rid the system of.'[117] This is a key point: the system is rife for abuse.

However, a contrary view is provided by Jenny Cargill. She finds that, between 2003 and 2010, more than half the BEE deals were broad-based, while 25% were entirely broad-based. The market cap of these deals was R100 billion. The Centre for International Development at Harvard University analysed BEE deals of 20 top JSE companies up to 2006 and showed that not only were beneficiaries of the deals broad-based, but close on 75% (out of a total of 46) were unique, largely because more than half of the deals had staff ownership schemes. Further evidence that BEE has had broad benefits comes from a 2015 research report on the total value created for beneficiaries through BEE deals conducted by the 100 largest companies on the JSE. The report shows that deals done by the JSE's 100 largest companies have collectively generated R317-billion of value for beneficiaries. This, the report's authors maintain, indicates that many poor and working class black South Africans now have access to significant resources because of BEE deals. The value that staff and communities have derived from these deals is, it is argued, roughly 1.8 times the total corporate income tax take in 2014 and is enough to purchase the entire stock of planted agricultural land and machinery in the country.[118]

Analysis of the size of the South African middle class, however, shows that while the black middle class has grown, its share of the population has shrunk. Economist Justin Visagie has shown that between 1993 and 2008 the number of households that could be defined as middle class shrunk from 31% to 29% of the total population. However, over the same period, the proportion of households classified as upper class doubled (although off a low base), and now accounts for about 3% of South Africa's population. Between 1993 and 2008 the share of income that went to the upper class increased from 17% to 32%. The proportion of individuals that could be counted as upper class in 2008 was 4%. Over the same period the middle class (21% of the population) share of income decreased from 56% to 46%, and the slice of income for the poor (76% of the population) dropped from 27% to 21%. The share of the middle class that is black has grown, but according to Visagie this is because of a proportionate decrease in the size of the White population as a result of declining fertility rates and emigration, and movement of White people from the middle to the upper class. The share of national income that poor South Africans receive is shrinking, implying that BBBEE benefits are not accruing to poorer South Africans, but rather to the elite (those with post-secondary education or existing political or business contacts).

It may also be that BEE and EE requirements are not particularly popular, even among those who will benefit from them. A study conducted among 500 firms in 2011 and published in the Southern African Business Review found that a majority of respondents at these firms disagreed with the notion that the adoption of BEE practices would improve the performance of their company on ten dimensions of business performance (such as productivity, customer satisfaction, production performance, sales, and financial performance). Of the respondents, 70% considered themselves as 'previously disadvantaged individuals' who would stand to benefit from BEE and EE practices.[119]

The point to recognise is that BEE and transformation in their present form impose real costs on South African firms, which detract from their ability to maximise their business operations. Ultimately, this reduces economic and employment growth. Among other things, it detracts from firms' ability to compete against firms in other countries that do not have to meet these kinds of obligations.

Recommendations

Transforming the racial composition of South African business is essential, but how this is being pursued and the effects of BEE on growth and employment, are key questions that need to be carefully reconsidered.

CDE is not in a position to point to detailed ways in which the BEE legislation should be amended, but we do call for further research into this important and sensitive area of policy making. What we want is a truly broad based empowerment and transformation approach that will help to accelerate inclusive growth and that is less harmful to the competitiveness of South African firms. Some of the ways to achieve that could be to ensure that firms who have undertaken empowerment deals are deemed always empowered. The rule should be that if a business sells a stake to a BEE partner who subsequently sells his stake to someone else, the business is still considered empowered even if the new buyer of the shares is white. This would prevent a situation where a business is constantly having to re-do its empowerment deals and/or unfairly lock black shareholders into their shareholding. In addition, there needs to be a shift in emphasis away from the strong concern with ownership and towards a stronger focus on employment equity, job creation for the unemployed (i.e. the most disadvantaged) and supplier development.

Small businesses should generally be exempt and it might also be necessary to exempt any business formed after a yet to be specified but relatively recent date.

Businesses could also more broadly receive points for economic contributions to investment, employment, innovation and tax revenues.[120]

We also believe that organised business has erred in not attending closely enough to the very different ways in which corporations have approached Black Economic Empowerment (BEE). Some companies have created significant wealth for large numbers of ordinary South Africans. Others have opted to further enrich the already rich black elite, especially those that are politically well-connected. Leadership is required on this issue; 'best practice' should be lauded and communicated, and undesirable approaches criticised.

Laws that need to be reviewed

(This is an indicative list only and more detail will be provided on the legislation that is especially problematic based on our analysis, as well as particular sections in need of reform.)

- Broad-based Black Economic Empowerment Act 53 of 2003 and amendments;
- Employment Equity Act 55 of 1998 and amendments;
- Preferential Procurement Framework Act 5 of 2000

Priority reform 4: Change immigration laws

South Africa faces a large skills shortage. Much of this is due to the legacy of the past, with large numbers of people prevented from acquiring skills or working in skilled professions. This is changing rapidly, with the numbers of people with degrees, for example, more than doubling between 1995 and 2011, but there are still serious shortages. For example, while 11.4% of South Africans of working age had a tertiary qualification, this is far below the average of the Organisation for Economic Co-operation and Development (OECD). The average proportion of adults (those aged between 25 and 64) with tertiary education in OECD countries is 35%, far above South Africa's equivalent figure of 11.4%.[121]

In the face of these shortages, numbers of skilled immigrants have also increased, though off a very low base. Statistics show that annual permits granted to skilled immigrants nearly doubled from 11 781 in 2003/4 to 21 848 in 2007/8. However, between 1994 and 2003, South Africa lost more than 9 000 skilled people a year, and in 2008 the Department of Labour's National Scarce Skills List estimated South Africa's overall skills deficit at more than half a million people (502 335), including a deficit of 51 390 educators at both school and post-school levels. It seemed clear that, at best, we were breaking even on skills, and making inadequate progress on deepening the skills pool.

Most of the improvement in skilled immigration numbers was achieved in the mid-2000s. There has been less certain progress since. Between 2011 and 2013 an average of 26 000 temporary work visas and an average of 1 600 temporary business visas were granted. In 2014 (the latest year for which figures are available) the number of temporary residence visas that were issued for work was 18 184. The number of temporary residence permits granted for business was far lower, at 2 003.[122] Permanent residence permits granted on work or business grounds were also low, with the latter numbering only in the hundreds annually, an indication of only tiny numbers who would be making a long-term investment to South Africa's growth. Numbers of both temporary and permanent visas fluctuated greatly from year to year, and the trend is not uniformly upwards. In 2014, Chinese nationals accounted for 22.6% of work permits granted, followed by Zimbabweans (20.6%) and Indians (16.3%). Nigerians led in terms of business permits granted, receiving 22.3% of these visas in 2014. They were followed by Pakistanis (17.7%) and Bangladeshis (15.5%).[123] In 2014 only 4 136 permanent residence visas were granted. Most of these were Zimbabweans (36.2% of all permits), followed by Indians (9.6%), Chinese (8.1%), Congolese (6.7%), Nigerians (4.2%), and Britons (3.9%).

According to an immigration lawyer, Gary Eisenberg, it is difficult for foreigners to obtain work and business permits. In 2015 more than half (51%) of temporary and permanent residence applications were denied, mainly for reasons which Eisenberg describes as 'nonsensical'.[124] Those applying for general work visas have to gain the support of the Department of Labour, while those applying to invest in South Africa have to do the same with the Department of Trade and Industry. These bureaucratic hurdles often dissuade investors and skilled workers from investing or coming to South Africa.[125]

Although last year's Green Paper on migration proposes a more open migration regime for the country, it remains to be seen whether this will result in a bureaucracy that is welcoming to foreigners with skills or who wish to invest.

Some progress has therefore been made in meeting government promises to respond to the calls by business, economists and other experts to increase the supply of skills to the South African economy. However much more could be done to compensate for the present state of South Africa's education and training and in dealing with the backlog of skills that is such a drag on growth.

Migration is primarily an economic issue, with enormous potential to contribute to South Africa's economic growth, and the reduction of poverty. In its formulation, it should therefore take into account the views of economic policy-makers in the National Treasury, National Planning Commission, Department of Economic Development and Department of Trade and Industry. To date, however, there has been excessive concern with enumerating shortages in fine detail, in order to limit the numbers of skilled people allowed to enter South Africa. The latest of many iterations is the List of Occupations in High Demand, 2015, released by the Department of Higher Education and Training in January 2016. This policy is based on the fallacy that the economy is a fixed size with a finite number of skilled jobs.

Instead of worrying about whether we might end up with too many engineers, we need to aggressively recruit skilled people in order to dramatically increase the size of the economy, remembering that skilled and entrepreneurial people, whether immigrant or local, create jobs for unskilled people too. This is vital for economic development, and must be based on a far better understanding of the domestic and global labour markets, in particular that the more skills we have the bigger and more dynamic our economy will be, and people will find ways to use their skills productively.

Something missing from policy development and public debate on skilled immigration is recognition that people might need to be persuaded to bring their skills and/or their entrepreneurial drive here. A useful example of incentives in this field is a scheme of the Chilean government called 'Start up Chile'. The programme offers temporary visas to individuals with special skills and selects promising entrepreneurs who receive $40,000 in start-up capital and a one-year visa to develop the idea in Chile. To date, the program has incubated over 800 companies. With suitable adjustments to South African conditions, including strengthening and extending the links between immigrant and local entrepreneurs, a version of this plan could boost entrepreneurship, both South African and immigrant, to the benefit of the growth prospects in the whole economy.

Ultimately, South Africa needs to welcome anyone with skills who wishes to migrate to this country, with a minimum of conditions. This should include anyone with formal tertiary qualifications from a recognised institution, as well as people with entrepreneurial abilities. Moreover, our need for entrepreneurs is not confined to large investors; we should also welcome smaller entrepreneurs who want to start new businesses in this country, and have the drive and expertise to do so.

Our policies should also aim to do more than just fill existing skills gaps in the corporate sector; we urgently need immigrants to revitalise our faltering public health, education and skills production systems, and boost innovation and entrepreneurship. There is a widespread belief in South Africa, doubtless a hangover from a history of colonially-owned extractive industries, that anyone who comes here to do business is intent only on taking resources out of the country and excluding South Africans from the fruits of enterprise. There has to be a wider understanding of what Zimbabwean and Indian doctors, nurses and teachers, traders from across the African continent and Asia, factory managers from China, and investors from West Africa can do for our skills pool and for our levels of economic activity.

Moreover, we should not underestimate the link between a rigid immigration regime and high inequality of labour market income. Tight or rigid immigration policy and its effective implementation limits the supply of skills and inflates wages of the highly skilled, leading to relatively high market income and net market income Gini coefficients. High executive pay may be an international trend but it is also linked to the availability of skills within an economy. Instead of draconian rules limiting the pay of top earners, policymakers would do well to design a more open immigration regime.

Fortunately, the new migration Green Paper released in 2016 does seem to indicate that South Africa will move to a more open immigration regime, but there are still some areas which will hamper efforts to see migration boost economic growth and reduce poverty.

Recommendations

Of the proposals in the Green Paper CDE agrees strongly with two. The first is that 'migrants with the needed skills investment and business interests must be allowed access to a long-term visa that will allow easy access to permanent residence.' The proposal envisages a 'fast track visa', which allows the applicant and immediate family to apply as a unit and allows family members to work and study under its terms without the need to apply for other visas as currently required. CDE strongly supports this proposal, especially in its acknowledgment of the importance of spouses and partners of principal applicants to contribute additional skills. It is worth noting in this context the importance of spouse/partner qualifications as a resource in Australia's skilled immigration programme. Forty per cent of skilled immigrants and 30% of their partners have bachelor degrees: the corresponding figures for master's degrees are 23% of applicants and 13% of partners.

The second regards the strategic use of visas to retain skilled foreign students in South Africa after they graduate. The Green Paper takes as its starting point for this proposal a National Development Plan recommendation that all foreign students graduating from South African universities should be granted 7-year work permits. The Green Paper proposes two variations on this: permanent residence to all 'qualifying' international students that graduate from South African universities; and granting a post graduate visa for one or two years to seek work, similarly to qualifying students.[126]

This proposal for realising the potential of international graduates of South African universities represents the most fully worked out of the of the Green Paper's recommendations. Given that there are over 20 000 international students at post-graduate level in South Africa and nearly 36 000 at undergraduate level, this is potentially a rich source of skilled recruits. Because graduate unemployment is so low and skills needs are so great, CDE supports the permanent residence and inclusive qualification options. The risks would appear to be low, especially since 90% of graduates are employed.[127]

Other proposals from the Green Paper, such as the implementation of a points-based immigration system for South Africa, requiring skills transfer to be linked to the granting of visas to skilled immigrants, and the establishment of 'an institutional arrangement that ensures that information is analysed and used to make strategic decisions on the recruitment and retention of skills within an agreed and responsive framework' are less well thought out.[128]

South Africa's most urgent priority is growth, which requires a much larger pool of skilled people immediately. Attracting large numbers of foreign skills will benefit all South Africans and the government needs to place this issue at the heart of a new national growth strategy and take the necessary steps to build the political coalition to really change the country's approach on this vital issue.

Laws that need to be reviewed
(This is an indicative list only and more detail will be provided on the legislation that is especially problematic based on our analysis, as well as particular sections in need of reform.)

- Immigration Act of 13 of 2002 and amendments;
- South African Citizenship Act 88 of 1995 and amendments;
- Refugees Act 130 of 1998 and amendments.

Section Four: Implementing Legislative Reforms Incrementally: The Case for EPZs & Exemptions

CDE would ideally like to see wholesale reform of the red tape, labour laws and other restrictions that hold back economic growth and job creation. However, given the hostility towards and strong vested interests opposed to this kind of reform, it may be more realistic to approach reform in a restricted and incremental fashion. This is, it may be feasible to create areas or special zones in which firms are exempted from some of the more onerous business regulations. This can be done as a way to stimulate economic activity in areas of particular deprivation and need. It should, at the same time, be seen as a way to assess how effective reforms of this kind could be in stimulating business activity and job creation. Once the effectiveness has been demonstrated in a particular area, it may then be easier to make the case for an expansion of such exemption to other regions, and eventually to the country as a whole.

In a submission to the HLP, Nafcoc calls for the reinstatement (or replacement with similar legislation) of the Temporary Removal of Restrictions on Economic Activities Act (1986; expired in 1998). The Act provided for the State President to suspend measures that prevent rapid economic advancement and transformation. Under the original Act the suspensions were considered "temporary" in that they had to be tabled in parliament subsequently for ratification. The act had the effect that the normal delays involved in lobbying for and advancing entirely new legislation can be avoided without compromising parliamentary oversight.

How to target these exemptions and who will be exempt for how long will be complex questions to address. As a first step, CDE proposes an export processing zone in the Nelson Mandela Bay area. The objective of the export processing zone (EPZ) would be to provide a competitive location for labour-intensive manufacturing activities. Firms locating in the EPZ would enjoy the following benefits:

- Duty-free imports, rapid customs and export clearance formalities;
- Subject to certain basic safeguards on employment practices such as working conditions, plant safety etc., firms would be free to negotiate wages and working hours in-house with their employees; and
- Subject to certain safeguards, firms would be able to expand and contract their workforces as market and demand conditions change and/or rely on piece-work contracts for the remuneration of their staff.

Firms locating in an EPZ would have the added advantages of easy access to the harbour and provision would be made to ensure that workers could have easy access to the EPZ. No other incentives or subsidies would be granted to firms locating in the EPZ.

CDE suggests that there be two restrictions on firms locating in the EPZ:

- Production would be solely for export. Firms located in the EPZ would be required to export 100 per cent of their output; and

- Only new firms and/or new activities would be permitted. Firms with operations in South Africa would not be permitted to move any existing operations to the EPZ.

Firms in the EPZ should be free to set their wages. What wages would firms need to 'offer' to attract workers? The Expanded Public Works Programme (EPWP) currently offers a wage of R78 per day and attracts more workers than it can accommodate. Factory work would presumably be far more attractive than these jobs for a range of reasons: there is the prospect of long-term employment; wages may increase over time; employment there invariably entails some training and skilling; working conditions are likely to be more attractive, etc. This would suggest that firms in an EPZ would be able to attract labour at wages in the vicinity of R78 per day.

At this wage, which at present exchange rates is about $105 a month, firms engaged in clothing-related activities in the EPZ would be very competitive with those based in other locations. At that rate, wages in the EPZ would be reasonably similar – in dollar terms – to the minimum wages of workers in garment factories in Cambodia and the Philippines in 2014. While there would be a number of countries in which minimum wages would be lower than this, most of those have business environments and infrastructural deficiencies that are considerably more challenging than South Africa's.

What about the productivity of workers? Firms relocating from China to Vietnam or Laos and other countries in Asia for the most part employ workers who are recent arrivals to the city. Education levels are very low and workers have no training or experience of factory work. By contrast, firms in the EPZ in Port Elizabeth could draw on a very large pool of people who are long urbanised, who have higher levels of education and who, most critically, have training in and experience of factory work. In the Eastern Cape, over 60 000 jobs in manufacturing (or 35% of the total) have been lost since the peak of the sector in 2008. Many of these were in labour-intensive industries such as clothing and footwear.

Firms locating in the EPZ would have low labour costs and, relative to other international locations, they would also have access to workers with better training and more experience. There are locations in other countries where labour costs would be cheaper. However, there are few locations, if any, that could offer a large pool of workers already trained and experienced in industrial work, as well as the relatively good logistics infrastructure possessed by South Africa. Moreover, the EPZ would be especially attractive to firms who wanted to enter the export market rapidly and who therefore set a premium on employing experienced and trained workers.

Because the export market for many labour-intensive products is subject to fluctuations, it is essential to the competitiveness of firms in these industries that they are able to expand and contract employment as market demand changes. This provision would be subject to safeguards against unfair dismissal.

A South African EPZ would have a good chance of success. Unlike most other countries, a South African EPZ is not solely reliant on attracting foreign firms. South Africa has a very well-developed business community who would be attracted to invest. What is most likely to happen is that the EPZ will attract a few firms – probably initially local firms. If these firms are successful, the very strong likelihood is that many other firms would then follow. A few successes will encourage many followers. Given the very large number of jobs relocating globally, the upside is potentially very large indeed. By contrast, the downside, the costs of failure, are very limited. In essence, the EPZ provides government with the opportunity to try something new to enhance growth and exports. An EPZ would be especially well suited for a city with relatively high numbers of educated people as well as high levels of unemployment such as Nelson Mandela Bay.

Is an EPZ consistent with government policies?

In May 2014, the Special Economic Zones Act was passed to facilitate the establishment of SEZs. The Act envisages a number of different categories of SEZs, including a free port and a free trade port, both of which have very similar characteristics to an EPZ. So an EPZ would be compatible with government policy.

EPZs are a constituent part of industrial policy in many countries. The EPZ does not appear to conflict with the aims of any of the programmes and supports offered by the Industrial Policy Action Plan (IPAP). It offers the potential for additional growth in industrial output and employment. The National Development Plan (NDP) requires that new sources of employment should not undermine the higher wages paid elsewhere – '…expanding access to new entrants should not be undertaken in a manner that lowers the working and remuneration conditions of existing employees…'.[129] An EPZ would meet this requirement.

Laws that need to be reviewed

(This is an indicative list only and more detail will be provided on the legislation that is especially problematic based on our analysis, as well as particular sections in need of reform.)

- Temporary Removal of Restrictions on Economic Activities Act (expired in 1998);
- Special Economic Zones Act 16 of 2014.

Conclusion

To be included in the final draft.

Appendix 1: Scope of Work and Indicative Work Plan

As agreed with Working Group 1 of the HLP in December 2016, CDE undertakes to produce a carefully argued document that:

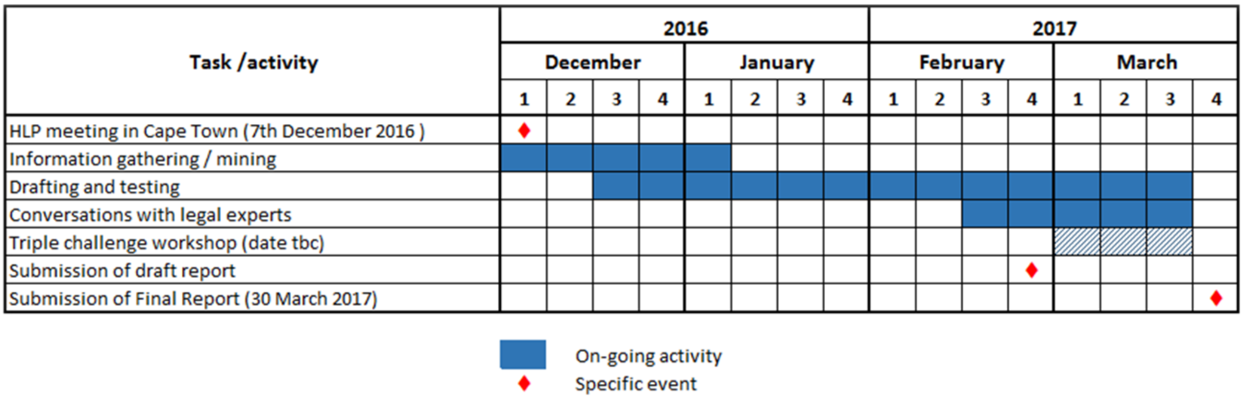
- Reviews the extent and the scale of the triple challenge – setting out the facts on poverty, unemployment and inequality in all its dimensions (including wage inequality and also reflecting different points of view on both the dimensions and the causes of the challenge).
- Provides an argument for identifying three areas that should be prioritised to rapidly overcome these challenges. We will provide reasons for why we think these areas should be prioritised and reflect points of view that would disagree with these priorities.
- Explores what legislation, regulation and forms of implementation should be changed in these three priority areas in order to bring about a rapid alleviation of poverty, unemployment and inequality.

It was further agreed that CDE would:

- Submit a draft report by the end of the February
- Submit a final draft by the end of the March

The Working Group is responsible for the organisation of a “gap analysis” workshop in March in which the draft report would be discussed. CDE would then reflect on the discussion and incorporate comments and suggestions into the final report.

Below is a work plan for the study as agreed between the Working Group 1 and CDE following the HLP meeting in Cape Town in December last year. The date of the workshop to be organised by the working group is to be confirmed but will need to take place in the first three weeks of March 2017 if it is to feed into the development of the final report.



Appendix 2: Summary of Submissions Received

Note: This appendix consists of summaries of a selection of the submissions we received. Most of the nearly 700 submissions were from individuals, often consisting of scribbled notes and/or impossible to make sense of. Furthermore, very few submissions related directly to the “triple challenge” and included explicit reference to legislation. We have summarised the most relevant and coherent submissions, especially those from established organisations.

Organisation	Summary
Afriforum	The contribution from Afriforum recommended that the Public Protector Act be amended, to provide for the establishment of Ombudsman System for Local Government. The organisation quoted the former public protector, Thuli Madonsela, who praised the City of Johannesburg for establishing a Local Ombudsman for the municipality. Afriforum was of the opinion that providing an Ombudsman at municipal level would go some way to reducing legal and tax costs related to wasteful expenditure, as well as reducing the amount of service delivery protests.
Centre for Environmental Rights	More a statement of intent than a submission per se, focusing on the rights of communities affected by mining activities. The Mineral & Petroleum Resources Development Act (28 of 2002) they argue appears to limit the rights of communities directly impacted by mining activities. As a result, a broad coalition of mining communities and sympathetic organisations is calling for a number of revisions to the MPRDA, including provisions that direct at least 50% of royalties and taxes derived from mining activities to the development of communities directly affected by mining activities as well as independent grievance / redress mechanisms to address community concerns.
Congress of South African Trade Unions	The submission by the Congress of South African Trade Unions (Cosatu) was primarily a list of policy proposals for various sectors. Among its proposals was a call to strengthen workers’ and related rights. The federation calls for, among others, the banning of labour broking, prevent outsourcing, ban the use of ‘scab labour’ during strikes, provide for a national minimum wage, and to employ more labour inspectors to enforce labour legislation. It also recommends establishing a ‘pro-poor’ national health insurance scheme, provide free higher education to poor and middle-income students, through a variety of taxes. There were recommendations for a wide range of other sectors, including the police, water, and sanitation, international relations, and finance. No laws were identified as hindering the issues that Cosatu identified, and as noted, this was more akin to a list of policy proposals.
EU Chamber of Commerce	The EU Chamber of Commerce’s submission focuses on the issue of property rights and the importance of these rights in securing investment in South Africa. The Chamber argues that in considering laws four principles should be taken into account. The first is that foreign investment contributes to South Africa’s inclusive growth strategy. The Chamber also states that ‘Robust

	Regulatory Impact Assessments' play an important role in stimulating new investment. Thirdly the Chamber agrees that the concept of the 'public interest' is an important one and is common in recent legislation but it needs to be ring-fenced. The Chamber's fourth recommendation is that administrative costs and bureaucratic processes need to be curbed. The Chamber provides summaries and analysis of six pieces of legislation or policy that will affect property rights. These are the Expropriation Bill, the Regulation of Land Holdings Bill, Draft Policy and Bill on the Preservation and Development of Agricultural Land Framework Bill, the Copyright Amendment Bill, Private Security Industry Regulation Bill, and the Revised Guidelines on the assessment of public interest provisions in merger regulation under the Competition Act. It is critical of all the pieces of legislation, with the exception of the Copyright Amendment Bill. It notes that problems with the bill but does note that it is a step in the right direction, but could do with further refinement. With regard to the other pieces of legislation, it is fairly critical, and sees very few redeeming features in any of the proposed pieces of legislation and policy.
Free Market Foundation	**FMF on FAIS** – The Free Market Foundation's submission on the Financial Advisory and Intermediary Services Act (37 of 2002) notes several concerns with the Act related to increased costs and requirements of the Act and its consequences (mainly) for unemployment. The submission claims that FIAS has forced many fledgling financial services providers in lower and middle income communities out of business (it cites the example of a burgeoning black insurance broker fraternity which existed before the Act). The central argument of the submission is that the law as it existed prior to FIAS was perfectly adequate to deal with concerns that the Act was supposed to address. Alleged failings of the industry were simply a result of ineffective law enforcement rather than insufficient or inappropriate law. The FMF recommends repealing the Act in its entirety or at least the repeal or amendment of various sections in the Act.
	FMF on tax – The FMF's general argument against tax is that it reduces disposable income which could be saved, resulting in lower levels of capital formation, lower labour productivity, and lower real wages. The submission recommends five key reforms: (1) a proportional or flat tax, which it claims will broaden the tax base, improve incentives to invest, raise local investment by encouraging capital formation, and create new jobs by increasing real wages; (2) zero-rate VAT on all pharmaceutical products and devices (to lower the cost of medicines and healthcare); (3) simplify the tax system for small businesses; (4) reject calls for further international harmonisation of the corporate tax base; and (5) scrap estate duty (described in the submission as one of the most pernicious and immoral forms of double taxation).
	FMF on electricity – The FMF recommends that Eskom sell the country's electricity transmission grid and that an independent agency be established to manage the national electricity grid. The FMF argues that this would result in

	much-needed capital which could be used to finance new power stations. It also recommends that private power producers be licenced if they meet objective standards, and not linked to the whim of officials. The FMF also does not think that restrictions should be placed on the number of private power producers, and that any costs they incur entering the market should not be subsidised by taxpayers.
	FMF on exchange controls – The FMF argues that exchange controls are harmful to investment, and they are a barrier to greater foreign investment. In addition, exchange controls are also a barrier to local investment. The FMF argues that a confident government would not have exchange controls, as they would not have to put up barriers to prevent people from taking money out of the country. Furthermore, the FMF argues that exchange controls are unconstitutional, as it limits South Africans' economic freedom. The FMF recommends that all exchange controls be abolished.
	FMF on expropriation – The FMF states that the Expropriation Bill is flawed, as it attacks the property rights of South Africans, had a flawed public participation process, and violates the Constitution. The FMF argues that secure property rights are the foundation of any prosperous society, but that the expropriation bill is an attack on these rights. The bill gives the government the right to expropriate property by 'mere notice'. This is a major barrier to investment in South Africa but is also an 'obvious injustice to innocent people'. The FMF also notes that there are major problems with the section dealing with compensation in the bill. The FMF recommends three amendments. The FMF argues that The definitions of 'expropriation' and 'disputing party' must be amended; the provisions relating to compensation must be reformulated to bring it in line with the 'just and equitable' requirement of section 25 of the Constitution, and the bill must, when reformulated, be passed through Parliament using the legally correct procedure
National African Federated Chamber of Commerce	The submission by the National African Federated Chamber of Commerce (NAFCOC) recommends the reinstatement (or replacement with similar legislation) of the Temporary Removal of Restrictions on Economic Activities Act (1986; expired in 1998). The Act provided for the State President to suspend measures that prevent rapid economic advancement and transformation. The suspensions were considered "temporary" in that they had to be tabled in parliament subsequently for ratification. The act had the effect that the normal delays involved in lobbying for and advancing entirely new legislation can be avoided without compromising parliamentary oversight.
National Black Contractors and Allied Traders Forum	The submission by the National Black Contractors and Allied Traders Forum (NABCAT) had a number of suggestions of laws which needed to be amended. The pieces of legislation identified by NABCAT included the Labour Relations Act of 1995; the Banks Act of 1990; the National Empowerment Fund Act of 1998; the Co-operatives Act of 2005; the Preferential Procurement

	Framework Act of 2000; the Public Investment Corporation Act of 2004; the National Small Business Act of 1996; the Spatial Planning and Land Use Management Act of 2013; the Further Education and Training Act of 2000; the National Youth Development Act of 2008; and the Mineral and Petroleum Development Act of 2002. NABCAT calls for these pieces of legislation to be reformed in various ways, primarily to see development occur at a local level. NABCAT also suggested that the black industrialists policy be an act, rather than just a policy.
Reverend Nosey Pieterse	The panel also received a submission from Nosey Pieterse, the head of the Black Association of the Wine and Spirit Industry, and known for being an advocate for the rights of farmworkers. Pieterse's submission focused on the rights of farmworkers, especially with regard to labour law. He argued that labour law protected employers, to the detriment of farm workers, and that the dismissal provisions in the Labour Relations Act (LRA) needed to be amended. Pieterse also said the LRA should be amended to take into account seasonal workers, and that workers should be paid their full salary, if they were unable to work after being injured on the job. Pieterse also argued that BEE regulations should be imposed on all businesses, irrespective of size.
SA Institute for Race Relations	The SAIRR's submission focuses on the legislative threats to property rights. Included in its submission are two pieces of analysis which identify problems facing South Africa, in terms of growth and inequality, and how to combat these twin scourges. The legislative threats it identifies to property rights include: the National Water Act of 1998; the Mineral and Petroleum Resources Development Act (MPRDA) of 2002; the Codes of Good Practice for the South African Mining Industry, 2009; the MPRDA Amendment Bill of 2013; the Protection of Investment Act of 2015; the Private Security Industry Regulation Amendment (PSIRA) Bill of 2012; the Expropriation Bill of 2015; the Property Valuation Act of 2015; the Restitution of Land Rights Amendment Act of 2014; the Preservation and Development of Agricultural Land Framework Bill of 2014; and the Regulation of Land Holdings Bill. The SAIRR calls variously, for these pieces of legislation to be scrapped or reformed. The SAIRR also notes that the PSIRA Bill and the Protection of Investment Act are both at odds with existing binding international agreements.
Security Industry Alliance	The SIA's submission focuses on Section 20 of the Private Security Industry Regulation Amendment Act. (The National Assembly passed the PSIRA Bill on Tuesday 25 February 2014 and the NCOP adopted the Bill on 5 March 2014. As at 17 August 216, PSIRA was with the President for his signature.) Section 20 requires at least 51% local (SA) ownership of foreign-owned private security companies like ADT, Securitas, G4S, and Chubb. Commissioned studies have shown Section 20 will have a negative impact on GDP, tax revenues and jobs as well as local and foreign investment. (A DNA study concluded private security companies would be unlikely to forego control of the local operating unit and would be more likely to disinvest.) More importantly, PSIRA is part of a body of proposed legislation (e.g., Promotion

	and Protection of Investment Act, the intellectual property policy paper, and the Expropriation Act) that seems to be cumulatively affecting investor sentiment. It's not just investment in the private security industry that is at risk but investment in the wider economy if PSIRA is signed into law (along with the other pieces of proposed legislation).
Simodisa Venture Capital	The submission by Simodisa Venture Capital focuses on how to boost entrepreneurship and the venture capital sector in South Africa. They argue that venture capital is a key driver of innovation and entrepreneurship, which leads to the creation of jobs and contributes to economic growth. They state that a strong venture capital sector needs well-designed and rational economic policies and propose the creation of a Matched Venture Capital Fund, which will be funded with seed money from the government. The fund would be managed by an outside party and could result in funding for over 150 firms per year. In order to grow the venture capital industry Simodisa recommends making amendments to exchange controls, the Income Tax Act, and South Africa's intellectual property rights framework.
South African Tourism Services Association	The submission of the SATSA focuses on the impact of the requirement that foreign travellers to South Africa need unabridged birth certificates (UBCs) for minor children coming to the country. SATSA provides an overview of the economic contribution of tourism to the South African economy, and how the requirement for UBCs has impacted the sector and the South African economy. They estimate that between June 2015 and July 2016, nearly 15 000 passengers were denied boarding to come to South Africa, because they did not have UBCs for minor children. In addition, this results in negative publicity for South Africa. They also note that despite the depreciation of the rand over the period foreign arrivals have declined, something they attribute directly to the UBC requirement. SATSA notes that in 2015 the number of overseas arrivals declined by five percent, while it grew by right percent in Australia over the same period. SATSA recommends scrapping the UBC requirement, which is not required by any other country in the world, and can be done at no cost to the state.
The Unlimited Group (Pty) Limited	The submission by Unlimited (a direct marketer and authorised financial services provider) looks at a number of laws and regulations: • Draft Demarcation Regulations – beyond our scope of work as they relate to unequal access to quality healthcare. • Protection of Personal Information Act (POPI) – The Act seeks to ensure the responsible processing of personal information. However, Section 69 of the Act will make it very difficult for smaller companies who rely on direct marketing to make use of cost-effective electronic marketing tools. (According to the submission, POPI will outlaw electronic marketing unless consumers have "opted-in" i.e., given their consent to be marketed in this fashion. • Retail Distribution Review – The draft RDR regulations, published by the Financial Services Board, propose the fee caps and other limitations on

	financial service providers. This, the submission claims, will have the effect of curtailing the ability of smaller financial services firms in particular to operate sustainable businesses. (This is despite existing legislation that protects customers from over-charging and requires financial service providers to be transparent in the fees they earn.) • Labour Relations Act and Basic Conditions of Employment Act – The submission focuses on the deeming provisions (Sections 200A of the LRA and 38A of the BCEA) – i.e., the definition of an employee (and therefore who is entitled to protection under the Act). • Financial Advisory and Intermediary Services Act (FIAS) – The submission focuses on the requirement in FIAS that all persons rendering financial services are required to pass the same regulatory exam irrespective of the complexity of the financial products they advise on. This disincentivises direct marketing companies in particular from recruiting and training school leavers and creates unnecessary entry barriers into the industry.
Transvaal Agricultural Union	The Transvaal Agricultural Union (TAU) argued that impossible promises were being made with regard to land reform in South Africa. They suggested that some sort of land reform 'Codesa' be held, where the government could show how it could promote and enhance land reform. TAU also suggested that the Restitution Act be amended, which would adjust the legal processes around land claims. According to TAU in the current system there are too many claims that are not valid.

Appendix 3: Summary of Recommendations and Relevant Laws

Theme	Recommendations	Selected relevant laws and regulations
Promoting competition and reducing barriers to entry for business	• Changes to competition legislation should be made that address entrenched market power and open up the economy to greater access; • Changes to competition legislation that allow many smaller business owners a chance to take up their cases against other larger businesses that regularly abuse their dominance; • Changes to and a massive simplification of legislation governing the registration and licencing of businesses and cross border trade; • Changes to legislation dealing with limits of private sector investment in SOEs; • Changes to legislation dealing with the limits of private sector involvement in infrastructure investment in South Africa (i.e., much greater public private collaboration in the provision of backbone infrastructure); • Establishment of an export processing zone (special economic zone) in the Nelson Mandela Bay municipality; • Reduction of red tape for small businesses, particularly zoning issues, compliance costs, and other municipal by-laws which affect small, medium, and micro enterprises disproportionately; and • Legislation should provide a clearer definition of what a small business is, so as to better target exemptions.	• Competition Act 89 of 1998 • Eskom Conversion Act 13 of 2001 • Harmful Business Practices Act 1999 and amendments • National Small Business Act 29 of 2004 and amendments • Business Act 71 of 1991 and amendments • Companies Act No 71 of 2008 and amendments • Infrastructure Development Act 23 of 2014 • Electricity Regulation Act 4 of 2006 • Municipal Systems Act 32 of 2000 • Liquor Act 59 of 2003 • Consumer Protection Act 68 of 2008 • Occupational Health and Safety Act 85 of 1993 and amendments ***Other regulations flagged as impediments to business (especially SMMEs)*** • Municipal bylaws • Zoning and rezoning activities • Restrictions on putting up signage • Health regulations • Various municipal clearance certificates • Town ordinances • Value Added Tax (VAT) requirements • National Credit Regulations • SMME regulations • Industry specific licenses and approvals

Reforming Black Economic Empowerment	• CDE is not in a position to point to specific ways in which the BEE legislation should be amended, but further research into this important and sensitive area of policy making is essential, which will point the way to genuine broad-based empowerment and transformation; but • The debate around transformation should be rebalanced away from elite enrichment to growth-driven inclusion	• Broad-based Black Economic Empowerment Act 53 of 2003 and amendments • Employment Equity Act 55 of 1998 and amendments • Preferential Procurement Framework Act 5 of 2000
Changing labour laws	• Make it less onerous for employers to dismiss unsuitable workers; • Create a separate regime for young workers that would extend the existing exemptions in labour laws governing probation; • Allow small businesses to adopt a six-month probationary period during which employees have no claim for unfair dismissal; • Sectoral determinations (and other statutory minimum wage levels) should be kept to a minimum; • The practice of extending bargaining council agreements to non-parties should end. If this is politically unfeasible smaller and younger firms should be exempt; and • Relevant labour laws should be reformed to reduce the length of strike action, and make strikes less violent.	• Basic Conditions of Employment Act 75 of 1997 • Labour Relations Act 66 of 1995 • National Economic Development and Labour Council Act 35 of 1994 • Employment Tax Incentive Act 26 of 2013 • Employment Equity Act 55 of 1998 • Unemployment Insurance Act 63 of 2001 • Employment Services Act 4 of 2012 • Special Economic Zones Act 16 of 2014 • Companies Act No 71 of 2008 and amendments • Value-Added Tax Act 89 of 1991
Changing immigration laws	• Anyone with a tertiary qualification or entrepreneurial ability should be granted a visa to work and live in South Africa; • Entrepreneurs should be encouraged to come to South Africa through a 'start-up' programme which provides start-up capital and visas to qualifying entrepreneurs so as to incubate business ideas. • The spouses and children of migrants with valid visas should be considered a unit, and spouses and children should be granted work and study rights.	• Immigration Act of 13 of 2002 and amendments • South African Citizenship Act 88 of 1995 and amendments • Refugees Act 130 of 1998 and amendments

	• South Africa should use visas strategically to retain skilled foreign students in South Africa after they graduate. All qualifying students who meet certain criteria (a degree in a rare discipline or to MA or PHD level) should be granted permanent residency at graduation.	

Appendix 4: CDE Education Publications

1. CDE, *How important is it for South Africa to produce internationally competitive graduates?* November 1996
2. CDE, *Schooling in South Africa: Are we making any progress?* April 1997
3. CDE, *The future of South African Universities: What role for business? Part 1*, July 1998
4. CDE*, The future of South African Universities: What role for business? Part 2*, September 2000
5. CDE, *THE JAGGED TEAR: Human capital, education and AIDS in SA, 2002-2010*, March 2002
6. CDE, *Restructuring higher education: For what? And how will we measure success?* May 2002
7. CDE, *PROFITABLE AND AFFORDABLE: Private education in the developing world*, September 2003
8. CDE, *NO CHILD LEFT BEHIND: Lessons from American school voucher programs*, September 2003
9. CDE, *FROM LAGGARD TO WORLD CLASS: Reforming maths and science education in South Africa's schools*, November 2004
10. CDE, *PRIVATE SCHOOLING FOR THE POOR? International research raises new questions for South Africa*, November 2005
11. CDE, *DOUBLING FOR GROWTH: Addressing the maths and science challenge in South Africa's schools*, October 2007
12. CDE, *BUSINESS AND SCHOOLING REFORM: What can we learn from experience in the United States?* October 2009
13. CDE, *INTERNATIONAL BEST PRACTICE IN SCHOOLING REFORM: What can South Africa learn from other countries?* November 2009
14. CDE, *HIDDEN ASSETS: South Africa's low-fee private schools*, August 2010
15. CDE, *THE MATHS AND SCIENCE PERFORMANCE OF SOUTH AFRICA'S PUBLIC SCHOOLS: Some lessons from past decade*, September 2010
16. CDE, *Options for talented learners from disadvantaged backgrounds*, October 2010
17. CDE, *SCHOOLING REFORM IS POSSIBLE: Lessons for South Africa from international experts*, September 2011
18. CDE, *VALUE IN THE CLASSROOM: The quantity and quality of South Africa's teachers*, September 2011
19. CDE, *VOCATIONAL EDUCATION IN SOUTH AFRICA: Strategies for improvement*, April 2012
20. CDE, PROMOTING SCHOOL CHOICE FOR THE POOR: Practical ideas from international experience, June 2012
21. CDE, *PUBLIC REFORM AND PRIVATE EXPANSION: The Development of Higher Education in Brazil,* October 2012
22. CDE, *TEACHER PAY FOR PERFORMANCE: Lessons from Abroad*, October 2012
23. CDE, *Extra Maths Tuition in South Africa: A short summary of an exploratory investigation*, June 2013
24. CDE, *Affordable Private Schools in South Africa*, August 2013
25. CDE, *THE MISSING SECTOR-Contract Schools: International experience and South African prospects*, August 2013
26. CDE, *MATHEMATICS OUTCOMES IN SOUTH AFRICAN SCHOOLS: What are the facts? What should be done?* October 2013

27. CDE, *What does research tell us about teachers, teaching and learner performance in mathematics?* October 2014
28. CDE, *TEACHERS IN SOUTH AFRICA: SUPPLY AND DEMAND 2013–2025*, March 2015
29. CDE, *LOW-FEE PRIVATE SCHOOLS: International experience and South African realities*, May 2015
30. CDE, *The Financial Viability of Low-Fee Private Schools in South Africa: Investing in potential*, July 2015
31. CDE*, Teacher Evaluation in South African Schools*, September 2015
32. CDE, *Teacher Evaluation: Lessons from other countries,* September 2015
33. CDE, *THE REAL COST OF COMPLIANCE: The Impact of South African Regulatory Requirements on Independent Schools*, January 2016
34. CDE, *A BALANCING ACT Assessing the quality and financial viability of low-fee independent schools,* August 2016

NOTES

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[1] In 2016, CDE released a series of reports in South Africa entitled the ***Growth Agenda: Priorities for mass employment and inclusion*****.** The Growth Agenda focuses on how SA can deal with the challenges of poverty, unemployment and inequality and puts up five priority areas for the country. The reports can be accessed via this link: http://www.cde.org.za/cde-growth-agenda-series/. The seven reports are: Insights & Key Recommendations; Jobs; Accelerating Inclusive Growth; Cities; Skills; Business & Government; An EPZ for the Nelson Mandela Bay Metro. Since then we have released CDE comments on the Green Paper on International Migration; and A dozen questions about the National Minimum Wage. We are shortly to release a new report, funded by the Gates Foundation, entitled Opportunities First: A New Lens to Shape Priorities for Action in Middle Income Countries.

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[77] The following CDE Op Eds, written by Ann Bernstein, set out in more detail the arguments summarised in this section: A level playing field is vital, City Press 2016; Cities are vehicles of growth but policy makers take foot off the accelerator, Business Day, 2016; Colleges must bolster 'missing middle' of SA's technical and vocational skills, Business Day, 2016, Kudos for green paper on building skills pool, but red tape strangles proposals, Business Day, 2016; Cities, not agriculture, will drive growth and job creation, Business Day, 2016; Setting a minimum wage will lead to more unemployment, Business Day, 2017; Cities have work to do to root out apartheid spatial designs, Business Day, 2016; To grow, SA must put cities at the heart of the economy, Business Day, 2016; Country's first goal should be fast, Labour-intensive growth, Business Day, 2016.

[78] Small, medium and micro enterprises (SMMEs) comprised between 27 and 34% of GDP in 2006, according to the Department of Trade and Industry's Annual review of small business in South Africa 2005-2007, DTI, 2008 and 57% according to the Minister of Small Business Development Lindiwe Zulu in her 2014 budget vote speech.

[79] The Minister of Small Business Development Lindiwe Zulu in her 2014 budget vote speech.

[80] The National Development Plan aims to reduce unemployment from the present over 25% to six percent and increase employment from 13 million in 2010 to 24 million in 2030 (National Development Plan, 2012, The Presidency, p118). This assumes, among other things, a 5% p.a. growth rate.

[81] In Brazil 2009 figures from the country's small business support agency Sebrae show that just 24% of businesses closed after two years, while Organisation for Economic Co-operation and Development (OECD) 2009 data for example show that 50% of Dutch firms close after two years and 44% New Zealand firms (S.Timm, Mail and Guardian, 29 November 2013). A good indication of failure rates is an analysis by Timm of the Global Entrepreneurship Monitor (Gem) data from 2013: http://www.smallbusinessinsight.org/blog/sa-has-one-of-lowest-business-survival-rates

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[83] K. Phillip in S.Mahanjan (ed), 2014, Economics of South African Townships: Special Focus on Diepsloot, World Bank, p45

[84] K.Phillip, 2012, How the structure of the economy impacts on opportunities on the margins, TIPS, p7-9

[85] In the UK research has found HGFs generate over half of all net new jobs despite representing a mere 6% of the business base (Anyadike-Danes et al. 2009). Similar studies in the US (Decker et al. 2015) and several

European economies have replicated these findings (Brüderl and Preisendörfer 2000; Deschryvere 2008). Such 'job creation' studies have helped to foster a burgeoning body of empirical research on HGFs (Henrekson and Johansson 2010), thus generating continued debate on their economic impact and the capability of policy makers to generate and support them (Shane 2009; Lee 2014; Nightingale and Coad 2014).

[86] In the UK, for example, research shows that only around 15% of HGFs are operating in high tech sectors; this figure is slightly higher for the South East of England at just over 20%, but for most other regions the prevalence of high tech HGFs is between 12-16% (Brown and Mason 2014). Similar work in Belgium found that 80% of HGFs were represented in industries generally considered "low-tech" (Vanacker and Manigart 2010).

[87] Gertrude Makhaya and Simon Roberts argue that competition policy in South Africa has not undermined the market power of dominant firms because legal proceedings by well-resourced incumbents drag on and because competition law alone cannot address market dominance but needs to be linked with other policies, including addressing obstacles to entry such as access to finance. They argue that BEE has also compounded market dominance as the policy encourages the sale of substantial minority stakes. The new shareholders therefore have a stake in maintaining the status quo to protect the rents, while the incumbent firms have an interest in seeking politically connected investors to protect their existing position. (Expectations and outcomes: considering competition and corporate power in South Africa under democracy in: Review of African Political Economy, 2013 Vol. 40, No. 138, 556–571, Gertrude Makhaya and Simon Roberts. p556-7; 566-568)

[88] t http://www.ilo.org/wcmsp5/groups/public/---africa/---ro-addis_ababa/---ilo-pretoria/documents/publication/wcms_500968.pdf

[89] An audit on R&D can cost R50 000 or R60 000 for a small firm, according to Anton Kriel, a tax consultant for BDO Spencer Steward (S.Timm, Business Report, 20 October 2009).

[90] The Medium Term Budget Policy Statement says As at August 2014, about 23 500 employers had claimed the incentive for at least 209 000 employees (The Medium Term Budget Policy Statement, 2014, p16).

[91] The Davis Tax Committee in its SME report believes that the Receiver's chief purpose is revenue collection and not the growth of the sector. The committee also points out that small businesses do not account for much job creation – mostly because so many fail. It's this rationale that appears to be the motivation behind its suggestion to replace Small Business Corporation (SBC) tax with an annual refundable tax compliance rebate, set to come into effect on January 1 2016. The refund makes little sense as it is not an incentive in any way (as one might argue the present SBC's lower tax rates are). It in effect amounts to a free handout to all small businesses – a kind of basic income grant if you will. Targeting tax cuts at small firms with higher turnovers – which are often cited as being responsible for a sizeable amount of employment creation – is therefore not very beneficial, it suggests. But what the committee fails to investigate is too what extent jobs were created by those firms that received the tax incentive versus those that didn't. If realised, an SBC that makes a loss of R 20 000, which at present would not incur any tax liability, would receive a refund of R15 000, while a SBC with a taxable income of R30 000 which at present has no tax liability, would under the new proposed regime receive a R6 600 tax refund. But those with higher taxable incomes would lose out. For example a SBC with a taxable income of R750 000, which under the current SBC regime has a tax liability of R 115 702, would see its tax liability increase to R195 000 (R750 000 X 28% - R 15 000) (Davis Tax Committee: Small and Medium enterprises considerations, 2014, Interim report)

[92] Davis Tax Committee report, 2014, p37 to 41.

[93] See, for example, submissions received from the EU Chamber of Commerce, the Free Market Foundation, and the South African Institute for Race Relations.

[94] Need a list of Haroon's most recent work on this.

[95] World Economic Forum, 2014, *The Global Competitiveness Report 2014-15*. Available at: http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2014-15.pdf

[96] Organisation for Economic Co-operation and Development, 2010, *OECD Economic Surveys: South Africa, July 2010*, available online at: http://www.treasury.gov.za/publications/other/Overview%20OECD%20Economic%20Survey%20South%20Africa%202010.pdf

[97] Of the 10 indicators reported in the labour market section of the Global Competitiveness Report, eight rely on the perceptions of business executives.

[98] Gwartney, J, R Lawson, and J Hall, 2011, *Economic Freedom of the World Annual Report*, Fraser Institute.

[99] http://www.gilesfiles.co.za/employment-relations/mashabas-mission-to-create-jobs-supported/

[100] Bhorat, H, R Kanbur, and N Mayet, 2013, *The impact of sectoral minimum wage laws on employment, wages, and hours of work in South Africa*, IZA Journal of Development, 2:1. Available at:

http://download.springer.com/static/pdf/670/art%253A10.1186%252F2193-9020-2-1.pdf?originUrl=http%3A%2F%2Fizajold.springeropen.com%2Farticle%2F10.1186%2F2193-9020-2-1&token2=exp=1486472232~acl=%2Fstatic%2Fpdf%2F670%2Fart%25253A10.1186%25252F2193-9020-2-1.pdf*~hmac=c8ac206bc18bca2a576ba5d3706ff1b6dbc96e25dcc0c9b5958b644aae43773f

[101] Dinkelman, T and V Ranchhod, 2012, *Evidence on the impact of minimum wage laws in an informal sector: Domestic workers in South Africa*. Journal of Development Economics 99: 27-45.

[102] Bhorat, H, S Goga, and B Stanwix, 2013, *Occupational Shifts and Shortages: Skills Challenges Facing the South African Economy*, Labour Market Intelligence Partnership. Available at: http://www.lmip.org.za/sites/default/files/events/LMIP%20Report%201%20Occupational%20Shifts.pdf

[103] Magruder, J, 2012. *High Unemployment Yet Few Small Firms: The Role of Centralized Bargaining in South Africa*, American Economic Journal: Applied Economics 4 (3): 138–66

[104] Nattrass, N and J Seekings, 2012, *Differentiation within the South African Clothing Industry: Implications for Wage Setting and Employment*, Centre for Social Sciences Research, CSSR Working Paper 307. Available at: http://carnegie3.org.za/docs/papers/195_Nattrass_differentiation%20within%20SA%20clothing%20industry%20-%20implications%20for%20wage%20setting%20and%20employment.pdf

[105] Bhorat, H and D Tseng, 2014, *South Africa's Strike Data Revisited*, Brookings, 2 April. Available at: https://www.brookings.edu/blog/africa-in-focus/2014/04/02/south-africas-strike-data-revisited/

[106] Bhorat, H, E Jacobs, and C van der Westhuizen, 2013, *Do Industrial Disputes Reduce Employment? Evidence from South Africa*, Development Policy Research Unit, DPRU Working Paper 13/161. Available at: http://www.dpru.uct.ac.za/sites/default/files/image_tool/images/36/DPRU%20WP13-161.pdf

[107] See CDE: Job Destruction in The South African Clothing Industry: How An Alliance Of Organised Labour, The State And Some Firms Is Undermining Labour-Intensive Growth, Jan 2013

[108] https://businesstech.co.za/.../bee-isnt-doing-what-its-supposed-to-former-anc-treasure

[109] Phinda Mzwakhe Madi, Black Economic Empowerment: 20 Years Later - The Baby and the Bathwater, KR Publishing, 2016, p. 137

[110] Ndzamela, P., and G Jones, 2013, *BEE deals hard to replicate.* Financial Mail. Available at http://www.financialmail.co.za/coverstory/2013/12/05/bee-deals-hard-to-replicate)

[111] Steyn, L, 2015, *Small firms hit by new BEE codes*, Mail & Guardian, 20 March. Available at: http://mg.co.za/article/2015-03-19-small-firms-hit-by-new-bee-codes

[112] Ibid

[113] Small enterprises are defined as those with turnovers of between R10-million and R50-million per year.

[114] Werksmans, *Amendments to the BBBEE Act and the Codes Explained*. Available at: http://www.werksmans.com/wp-content/uploads/2015/04/042870-WERKSMANS-bbbee-booklet-sp.pdf

[115] Werksmans, *Amendments to the BBBEE Act and the Codes Explained*. Available at: http://www.werksmans.com/wp-content/uploads/2015/04/042870-WERKSMANS-bbbee-booklet-sp.pdf

[116] This might be a high estimate and it is probably the case that in many small firms payroll makes up a smaller percentage of total costs.

[117] Odendaal, N, 2013, *Amended BEE Codes of Good Practice gazetted*, Engineering News, 14 October. Available at: http://www.engineeringnews.co.za/print-version/amended-bee-codes-of-good-practice-gazetted-2013-10-14

[118] Stuart Theobald, Orin Tambo, Phibion Makuwerere, Colin Anthony, The Value of BEE Deals: *A Study of the Total Value Created for Beneficiaries through BEE Deals Conducted by the 100 Largest Companies on the JSE*, Intellidex Research Report, June 2015

[119] Kruger, LP, 2011, *The impact of black economic empowerment (BEE) on South African businesses: Focusing on ten dimensions of business performance*, Southern African Business Review, 15:3. Available at: www.ajol.info/index.php/sabr/article/download/76415/66874

[120] R Henderson, 2017, *BEE has failed, introduce voucher-based EED*, Business Day, 4 April. Available at: https://www.businesslive.co.za/bd/business-and-economy/2017-04-04-bee-has-failed-introduce-voucher-based-eed/

[121] OECD Data, *Adult Education Level*. Available at: https://data.oecd.org/eduatt/adult-education-level.htm#indicator-chart

[122] Statistics South Africa, 2015, *Documented immigrants in South Africa, 2014*, Statistical release P0351.4. Available at: http://www.statssa.gov.za/publications/P03514/P035142014.pdf

[123] Ibid

[124] Eisenberg, G, 2016, *Gigaba appears to favour an isolationist policy*, Business Day, 8 June. Available at: http://www.businesslive.co.za/bd/opinion/2016-06-08-gigaba-appears-to-favour-an-isolationist-policy/

[125] Ibid

[126] CDE, 2016, *CDE comments on the Green Paper on International Migration: Main Paper*, 29 September. Available at: http://www.cde.org.za/unemployment/wp-content/uploads/2015/12/CDE-Green-paper-submission-full-document.pdf

[127] Ibid

[128] Ibid

[129] National Planning Commission, *National Development Plan 2030: Our future –make it work*. Available at: http://www.poa.gov.za/news/Documents/NPC%20National%20Development%20Plan%20Vision%202030%20-lo-res.pdf