

# HIGH LEVEL PANEL REPORT

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## Working Group (WG) 3 on Social Cohesion and Nation Building

### PUBLIC HEARINGS REPORT: GAUTENG

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#### 1. BACKGROUND

This is a report of Working Group 3 on Social Cohesion and Nation Building. It is a record of the challenges, concerns and opportunities on social cohesion and nation building, which touches on overlapping issues of the triple challenges of poverty, inequality and unemployment. Key in these public hearings is assessing the impact of key legislation and policies, or lack thereof, in advancing social cohesion and nation building. The public hearings sessions, a combination of a platform for invited stakeholders and general submissions from the public floor, were convened on 24 and 25 November 2016 in Johannesburg. Led by the Chairperson of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change, Mr Kgalema Motlanthe, panel members in attendance were:

- Mr. Kgalema **Motlanthe** (Chairperson of the High Level Panel)
- Judge Navi **Pillay** (Chairperson of Working Group 1)
- Dr. Aninka **Claassens** (Chairperson of Working Group 2)
- Dr. Olive **Shisana** (Chairperson of Working Group 1)
- Rev. Malcolm **Damon** (Panel member of Working Group 2)
- Dr. Yvonne **Muthien** (Panel member of Working Group 3)
- Prof. Alan **Hirsch** (Panel member of Working Group 1)
- Prof. Relebohile **Moletsane** (Panel member of Working Group 3)
- Ms. Ntombi Lentheng **Mekgwe** (Speaker of the Gauteng Provincial Legislature)
- Mr. Thulani **Tshefuta** (Master of Ceremonies and Panel member of Working Group 1)

#### **INTRODUCTORY REMARKS: Ms. Ntombi Lentheng Mekgwe, Speaker of the Gauteng Provincial Legislature**

The speaker of the Gauteng Provincial Legislature welcomed all the members of the High Level Panel, stakeholders and members of the public to the Gauteng Provincial Legislature. She pointed out that parliaments are tasked with law- making, and that this duty is discharged as a

responsibility of the legislatures. The South African Constitution protects the enshrined fundamental rights and the legislatures undertake their responsibility of law-making aligned to the letter and the spirit of the Constitution and the Bill of Rights. Consultations with the public, as undertaken in the provincial public hearings, will improve the legislative processes. People stand to benefit immensely from this process, and law-makers will equally stand to improve their work through these consultations.

### **INTRODUCTORY REMARKS: Mr. Kgalema Motlanthe, Chairperson of the High Level Panel**

The High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change was appointed by the Speakers' Forum, a forum comprised of speakers of the nine provincial legislatures of South Africa. It was set up on the mandate of the Legacy Report which emanated from the Fourth Democratic Parliament of the Republic of South Africa (2009 – 2014), and outlined the state of South Africa concerning the triple challenges of poverty, inequality and unemployment. The Speakers' Forum felt the need to assess the impact of key legislation and policies on four areas, viz. (i) Poverty and unemployment; (ii) Wealth creation and inequality; (iii) Land reform, redistribution, restitution and security of land tenure; and (iv) Social cohesion and nation building. Areas (ii) and (iii) were collapsed into one, spurred on by the thematic correlations. Eventually, as the work of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change was constituted, the three areas came to constitute the three working groups of the High Level Panel.

The methodology with which the High Level Panel seeks to assess the impact of laws, legislation and policies on these three areas are:

- Call for submissions from the public;
- Public hearings conducted throughout the nine provinces of South Africa;
- Round table / Stakeholders presentations and discussions;
- Commissioned research;
- Desktop research on primary and secondary materials;
- Government departmental presentations (form part of the roundtable / stakeholders' fora).

## 2. OVERVIEW OF ISSUES RAISED

- High unemployment rate, particularly among the youth.
- Sectoral wage inequalities (e.g. farm workers and domestic workers; and also based on gender and race).
- Over-dependence on social grants.
- Inadequate availability of South African doctors in public health facilities.
- Role of the National Economic Development and Labour Council (NEDLAC) should be revisited and revitalised.
- Challenges experienced by black Small, medium and micro-enterprises (SMMEs).
- Disability challenges.
- Rate of minimum wages decided on is inadequate.
- Domestic violence is high.
- Unionists receive bribes, rendering them unable to protect the interests of workers.
- Tender procurement marred by nepotism and patronage.
- *Companies Act 71 of 2008*: SMMEs continue to struggle in accessing finance despite its existence.
- Drafting of bills on land redistribution needs to involve communities and stakeholders.
- Need for skills development of post-matric youth.
- No clear advocacy campaign on land redistribution.
- Lack of arts centres in townships.
- Gender and equality concerns.
- Review of Hindu and Muslim marriage laws.
- Review and implementation of the National Sports and Recreation Act 110 of 1998, for the purpose of prioritising sports activities in communities (particularly in townships), considered a pillar of social cohesion and nation building.
- Twinning recognition of traditional leadership with moral regeneration, as traditional leadership institutions are usually the first posts of reporting and reference on community socio-economic and political concerns in rural and peri-urban communities.
- Recognition of the eleven official languages in public schools to promote social cohesion and nation building.
- Lack of oversight in implementing government programmes.
- Foreigners and challenges concerning competition for accessing scarce economic opportunities.

- Address needs and concerns of indigenous churches.
- Drug addiction amongst the youth in particular.
- Education challenges and concerns.
- Identification Documents (ID) theft is high in Ekurhuleni.
- Expanded Public Works Programmes (EPWP) challenges.
- Prioritisation and protection of the needs and concerns of the Lesbian, Gay, Bisexual, Trans-sexual and Intersexual (LGBTI) communities.
- Welfare and protection of sex workers.

### 3. THEMATIC AREAS

- **High unemployment:** causes behind the high rate of unemployment are associated with lack of skills acquisition, particularly among the youth. Lack of skills acquisition is associated with lack of inadequate career guidance provision at public school level for pupils exiting the high school system. It is also associated with the lack of coordination between the standards of TVETs and FETs, and public high schools. These are concerns expressed in all the provinces in which the public hearings have been convened. In other provinces, there is an emphasis placed on the insufficient availability of learnerships, and the recycling of the Extended Public Works Programmes (EPWPs) among the same groups of beneficiaries due to the alleged corrupt practices of municipal and ruling party officials.
- **Recommendations:** there should be a determined drive towards the implementation of the *Skills Development Act 9 of 1999*, making effective linkages between the educational needs and priorities of post-matric youth, career choices, the pool of expertise and educational resources available in TVETs and FETs, and the availability of employment opportunities.
- **Legislation associated:** *Skills Development Act 9 of 1999*
- **Wage Inequalities:** sectoral wage inequalities are acute, particularly those affecting farm labourers and domestic workers. It has been expressed that the recent decision on the minimum wage will worsen and concretise wage inequalities across labour sectors, based on race and gender.

- Other challenges likely to dampen oversight capabilities in reducing wages inequalities are the allegations pointing to the bribery of trade unions officials, and the ineffective work of labour inspectors which worsens the spread and prevalence of casual labourers. These concerns negatively affect the monitoring and evaluation of labour needs, concerns and standards, which are central in addressing wages inequalities.
- Recommendations: the role of the National Economic Development and Labour Council (NEDLAC) should be revisited and revitalised in coordinating deliberations on wage inequalities among the different stakeholders in the government, business, labour and civil society fora.
- There should be a concerted action to deepen cross-sectoral coordination in the implementation of government programmes concerning the reversal of wage inequalities.
- Legislation associated: review of the *National Economic Development and Labour Council Act No. 35 of 1994*.
- **Over-dependence on social grants**: conveyed in all the provincial public hearings which have been convened, this is a concern regarded as a symptom of poverty, mainly caused by unemployment, and whose perpetuation carries the potential of deepening poverty. Worsening this dependence is that the majority of people with disabilities who are largely unemployed and unskilled rely on social grants for their livelihoods.
- Recommendations: effective linkages between the disbursement of social grants and funding skills acquisition and skills development for beneficiaries, particularly the youth, should be strengthened. This is a recommendation that came out strongly in other provinces, albeit less in Gauteng.
- The disbursement of social grants should be linked with early childhood development, in that way effectively undercutting the misappropriation or abuse of social grants.
- Legislation associated: *Skills Development Act 9 of 1999*: targeting skills acquisition and skills development, particularly for post-matric youth.

- *Employment Services Act 4 of 2012*: for the provision of employment opportunities to young work-seekers.
- *Social Assistance Act 59 of 1992*: for instituting linkages between the disbursement of social grants, skills acquisition and skills development for the youth beneficiaries of social grants. There is also a recommendation for linking the disbursement of social grants with early childhood development of beneficiaries. However, there are no early childhood measurable indicators that were identified. These recommendations will address unemployment, skills development, while serving to potentially undercut the misappropriation or abuse of social grants funds.
- **Challenges Experienced by Black SMMEs**: black small, medium and micro-enterprises (SMMEs) experience challenges in accessing finances / loans for business development. To this effect, it has been conveyed that the *Companies Act No. 71 of 2008* has not made positive contributions in addressing the financial development needs of black SMMEs.
- Other challenges experienced by black SMMEs, which were not articulated in other provincial public hearings, relate to the formalisation of informal trade; the formalisation of 'loan sharks'; and the difficulties experienced by black businesses in making an entry into the financial services industry. Chambers within the Financial Services Board (FSB) deny black people entrance into the FSB industry. Initially, regulatory systems required businesses intending to enter the FSB industry to have 200 minimum people registered with them to enter the industry. However, now there are further regulations hindering the entry of black businesses in the FSB industry. The recommendation for the formalisation of loan shark business is made in this spirit.
- **Legislation associated**: *Companies Act No. 71 of 2008*
- *Competition Act 89 of 1998*: this Act is meant to address the country's challenges relating to discriminatory laws and practices of the past, laws on ownership and control in the South African economy. Furthermore, the Act makes provision for dealing with anti-competitive trade practices. A review of this legislation in relation to the formalisation of loan sharks and the entry of black businesses into the financial services industry will be helpful.

- *Broad-Based Black Economic Empowerment Act 53 of 2003*: this will supplement contributions emanating from the review of the *Competition Act No. 71 of 2008* in relation to the formalisation of the black informal trade and loan sharks.
- *National Credit Act No. 19 of 2014*: The purposes of this Act are to “promote and advance the social and economic welfare of South Africans, promote a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market and industry, and to protect consumers.”<sup>1</sup> This could be used as a vehicle of formalising the informal financial services trade, through assessing the benefits that both the informal financial services and consumers could accrue from formalising the services.
- **Disability Challenges**: challenges of people with disabilities have been expressed in all the provinces that public hearings have been convened. Challenges expressed in Gauteng are the following:
  - The majority of people with disabilities are unemployed;
  - The majority of people with disabilities do not have employable skills;
  - A significant portion of people with disabilities are dependent on social grants;
  - People with disabilities experience challenges in absorption into mainstream educational system;
  - Universities and institutions of higher learning are not user-friendly to the needs and priorities of people with disabilities;
  - RDP housing should be aligned with the physical needs of people with disabilities; and
  - Teachers and nurses should be sensitised to the needs and priorities of people with disabilities.

In other provinces, the plea of people with disabilities to be included into mainstream employment and inclusion into broad-based black economic empowerment opportunities were raised.

- **Legislation Associated**:
  - *Employment Services Act 4 of 2012*: the objective of the act is to provide for employment schemes for young work seekers and vulnerable groups (including people with disabilities).

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<sup>1</sup> National Credit Act 34 of 2005

- **High rate of domestic violence**: the perpetuation of domestic violence is partly caused by the misclassification of domestic violence, wittingly or unwittingly, by the South African Police Services (SAPS). This has come out in other provincial public hearings (e.g. particularly in the Northern Cape Province). .
  
- **Skills development of post-matric youth**: this is particularly associated with the high unemployment rate, and the need for youth skills acquisition and skills development at post-matric level.
  
- **Legislation associated**: *Skills Development Act No. 7 of 1998*.
  
- **No arts centres in townships**: many townships lack arts centres, as much as sports grounds, which are both regarded as central for youth and communities in fostering social cohesion.
  
- **Lack of sports grounds**: in a number of townships and other low-income earning communities, many sports grounds have allegedly been turned into church buildings owned or rented by foreigners who run evangelical churches. This is regarded as taking away from social cohesion, as sports is considered a key pillar in entrenching social cohesion. Some communities are calling for the relaunch of mid-week sports activities, which were active in the past, and are considered as strong recreational replacements to drug abuse and crime.
  
- **Legislation associated**: *National Sport and Recreation Act No. 110 of 1998*.
  
- **Gender and equality concerns**: the following are gender and equality concerns raised in the provincial public hearings:
  - There are concerns on gender equality vs. material restitution.
  - There are also concerns on constitutional principles vs. equality.
  - There are also concerns on equality between rural-based women and urban-based white women.
  - Parliament should undertake reviews on marriage registration. For instance, children under 16 years getting married.



- Parliament should also undertake reviews on Muslim and Hindu marriage. There is advice maintaining that laws on Muslim and Hindu marriage should not be reviewed because this is a private space. However, there continues to be a need to review these laws, through the *Civil Marriage Act*.
  - There are challenges on access to medical aid schemes. Some medical aids do not pay for certain women / gender-specific categories of surgeries (however, these were not specified).
  - Women do not have equal rights on access to land. At least, women should have one hectare of land for family and food security purposes, even after divorce.
  - There is a need for the review of the National Consumer Act, particularly concerning women accessing finance for their own business concerns.
  - There should be an amendment on taxation in favour of women.
  - There is a need for the review of the Traditional Acts Bill in relation to gender equality and the rights of rural-based women.
  - The National Gender Commission for Equality supports the Hate Crimes Bill, because it purports / intends to act against discriminatory practices affecting albinos and LGBTI communities.
- **Foreigners and associated challenges:** the entry and movements of foreigners should be monitored, particularly in relation to the purported illegal activities they engage in the country. This is a concern raised in all the provincial public hearings.
- Legislation associated:
    - *Immigration Act 13 of 2002.*
    - *Refugees Act 130 of 1998.*
- **Drug problems:** authorities should target drug dealers and not drug abusers in addressing the drug problem.

**Identification Documents (ID) theft:** the theft of identification documents (IDs) in the Ekurhuleni municipal area is rife as a result of South African women entering into fake

marriages with foreigners. A view was expressed at the alleged theft of identity documents by foreigners.

- **Expanded Public Works Programmes (EPWPs) challenges:** people employed in the EPWP should also receive stipends to cover school fees and other school-related costs.
- **Lesbians, Gay, Bisexual, Trans-sexual and Intersexual (LGBTI) communities:** teachers and nurses dispensing public services should be sensitised to the priorities and needs of the LGBTI community.
- **Welfare and protection of sex workers:** sex workers are allegedly abused by police officers who detain them, and request sexual favours in return for their release from detention. Sex workers also experience challenges in accessing police and court services.

#### 4. POLICY AND LEGISLATIVE IMPLICATIONS

- **Skills Development Act No. 7 of 1998:** in relation to the employment of post-matric youth.
- **National Economic Development and Labour Council Act No. 35 of 1994:** should be reviewed in relation to the coordination of business, government, labour and civil society, particularly in addressing the welfare of the working-class.
- **Social Assistance Act 59 of 1992:** to strengthen linkages between the disbursement of social grants, and the skills acquisition and skills development of beneficiaries. This will also curb the misappropriation and misuse of social grants.
- **Civil Marriages Act:** for the recognition of customary marriages, including Hindu and Muslim marriages.

- **Employment Services Act 4 of 2012:** for empowering people with disabilities in providing them with employment opportunities.
- **Companies Act No. 71 of 2008:** to protect the interests of black SMMEs.
- **Competition Act 89 of 1998:** to protect, develop and formalise informal trade and assist in the formalisation of the entry of black businesses into the financial services industry.
- **National Sport and Reconciliation Act No. 110 of 1998:** to reactivate the role of sports in fostering social cohesion in townships and other low-income bracket communities. The act should also assist in the development of mid-week sports activities in townships, which will replace vocational drug activities and crime-perpetuating behavioural patterns.
- **Broad-Based Black Economic Empowerment Act 53 of 2003:** to assist in the development of black SMMEs.
- **National Credit Act No. 19 of 2014:** to assist in the formalisation of black financial services businesses.
- **Immigration Act No. 13 of 2002:** to assess and curtail the alleged illegal activities carried out by foreigners.
- **Refugees Act No. 130 of 1998:** to assess and curtail the alleged illegal activities carried out by foreigners.

## 6. ISSUES TO REFER TO OTHER WORKING GROUPS

- Drafting of bills on land redistribution need to involve communities and stakeholders.
- Need for skills development of post-matric youth.
- No clear advocacy campaign on land redistribution.
- Twinning recognition of traditional leadership with moral regeneration.

- Recognition of eleven official languages in public schools to promote social cohesion and nation building.
- Welfare and protection of sex workers.