

# Forging a “New Deal” for South Africa?

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The contribution of Parliament's  
High Level Panel Report



CENTRE FOR  
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## About CDE

The Centre for Development and Enterprise (CDE), an independent policy research and advocacy organisation, is South Africa's leading development think tank. Since its establishment in 1995, CDE has been consulting widely, gathering evidence and generating innovative policy recommendations on issues critical to economic growth and democratic consolidation. By examining South African and international experience, CDE formulates practical policy proposals outlining ways in which South Africa can tackle major social and economic challenges. CDE has a special focus on the role of business and markets in development.

CDE disseminates its research and proposals to a national audience of policy-makers, opinion formers and the wider public through printed and digital publications, which receive wide media coverage. Our track record of successful engagement enables CDE to bring together experts and stakeholders to debate the policy implications of research findings.

Series Editor: Ann Bernstein

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## Introduction

South Africa urgently needs a new approach to deal with dangerously high poverty, unemployment and inequality levels. Policy and regulatory changes must be implemented to unleash faster levels of growth and much greater inclusion. The President of the country, Cyril Ramaphosa, has called for a "new deal through which we can build an economy that benefits all".<sup>i</sup>

Key elements of such a deal may already be available in the recommendations put forward in Parliament's High Level Panel (HLP) Report on the Assessment of Key Legislation and the Acceleration of Fundamental Change. The Panel, led by former President Kgalema Motlanthe, released its report in November 2017, and, apart from isolated responses to very specific proposals, has received little attention in the policy debates of 2018.<sup>ii</sup>

## The High Level Panel

After an extensive process of multiparty consultation, both Houses of Parliament adopted the Parliamentary Strategic Plan (2014 – 2019), which identified a review of the impact of legislation as being of paramount importance to improve the governance practices of Parliament. Subsequently parliament appointed a High Level Panel in 2015 to investigate the impact of legislation in the following areas:

- The triple challenges of poverty, unemployment and inequality;
- The creation of, and equitable distribution of wealth;
- Land reform, restitution, redistribution and security of tenure;
- Nation building and social cohesion.

The Panel was chaired by Mr Kgalema Motlanthe, former President of the Republic of South Africa.

The other members were:

- Dr Olive Shisana, President and CEO, Evidence Based Solutions
- Prof Haroon Borat, Professor of Economics and Director of the Development Policy Research Unit, University of Cape Town
- Prof Alan Hirsch, Director, Graduate School of Development Policy and Practice, University of Cape Town
- Mr Paul Harris, FirstRand founder
- Mr Thulani Tshefuta, President, South African Youth Council
- Dr Aninka Claassens, Land Reform Specialist, University of Cape Town
- Rev Malcolm Damon, CEO, Southern African Network on Inequality and founder member of the Economic Justice Network (EJN)
- Dr Terence Nombembe, Former Auditor-General
- Judge Navi Pillay, Former United Nations Human Rights Commissioner
- Ms Brigitte Mabandla, Former Cabinet Minister

In the interest of increasing the public's engagement with the report, we present a short outline of its core recommendations, focussing on those made in the areas CDE feels are central for tackling poverty, unemployment and inequality. These cover recommendations relating to making the economy more labour intensive; opening access to small and medium sized firms; combatting youth unemployment and exclusion; promoting immigration reform; reforming basic education; strengthening vocational education; implementing land reform more effectively; and building more inclusive cities.

These are all areas where CDE has considerable expertise and has published numerous reports. On the strength of our work on these issues, CDE was commissioned by the HLP to write a report on the triple challenge.<sup>iii</sup> For the interested reader we provide a list of CDE's reports on the specific topics covered here in the appendix at the end of this report.

## The HLP approach

At the heart of many of the recommendations set out in the HLP report is the important recognition that: *'the most efficient way to take a large number of people out of poverty is to create jobs that can absorb most of the unemployed.'*<sup>iv</sup>

This focus on the unemployed, the people who can be thought of as outside the current socio-economic system, is welcome. It contrasts with too many policy discussions that focus on the relatively privileged – the insiders who are in employment and, in many cases, part of the middle class. By focusing on the unemployed and the need to create jobs for them, the HLP report aligns with the President's call to place job creation "at the centre of every policy, programme and action".

From this starting point, the HLP report makes the following recommendations:

## Recommendations to experiment with EPZs and SEZs to promote labour intensive growth

Parliament should review the implementation of the Special Economic Zones Act 16 of 2014 to see how it could be optimised to create special zones for manufacturing production destined for export, with appropriate incentives and exemptions. Special Economic Zones (SEZs) may be considered to house manufacturing export processing zones (EPZs). Firms that operate in these areas should be restricted, in as much as they should manufacture products that are for export, and be new firms that do not sell any of their products in South Africa.

The state should deny existing South African firms permission to relocate to these SEZs, while allowing new investors to set their own wages similar to those currently applicable in the Expanded Public Works Programme (EPWP), which attracts more workers than it can hire. By introducing SEZs for manufacturing products for export, many jobs could be created that are accessible for those who are unskilled and currently unemployed.

## Recommendations for more competition and market access

A lack of competition can undermine growth and thwart attempts to make the economy more dynamic and labour intensive if market dominance acts as a barrier to entry for other firms and raises the price of goods and services. Parliament should enact amendments to competition legislation that strengthen the powers of economic regulators to promote competition based on fair and fact-based investigations. In addition, it is vital to discourage government policy and action that stifles competition.<sup>v</sup> The more open and accessible markets become, the more small and medium firms can enter those markets and boost both entrepreneurship and employment in ways that will greatly benefit the country.

Government must stop getting in the way of people who want to set up new firms and employ more people. What is needed is 'an active attempt to improve the ease of doing business, especially for small and medium-sized businesses'.<sup>vi</sup> Small, often informal businesses are located far from the main centres of economic activity and their efforts are frequently frustrated by regulations. The emphasis should be on reducing the time to register a new business, getting appropriate permits, i.e. construction permits, getting telephone and electricity services, registering a property and accessing sources of business development funding.

Registered small and medium enterprises face high costs of doing business, often related to regulations which constrain growth in output

and employment. To ease the burden on such businesses, enterprises that employ small numbers of people should be exempted from certain regulations, including the obligation to pay the minimum wage and specific components of BEE legislation.

Finally, small companies are placed in an invidious position when they are in the same bargaining council as large ones and are compelled to abide by the terms of the collective bargaining agreement reached by these employers and representative unions. This forces the terms of an agreement reached by large employers and large unions onto small firms, which results in higher than manageable wages for these firms – with negative consequences for growth and employment generation. The Panel recommends that Parliament amends the Labour Relations Act to remove the 'extension to non-parties' clause or to prescribe that the extension to non-parties will not be applicable to small and medium enterprises.<sup>vii</sup>

### **Recommendations to combat youth unemployment and exclusion**

Young unemployed individuals, especially those in rural areas, constitute a large share of the unemployed who have never worked before. One reason for this is that the cost to an employer of taking on someone who has no experience in the workplace is the same as that of employing a more mature and experienced person. Thus, employers prefer experienced workers, who are usually more productive than inexperienced workers. To overcome this undesirable situation, firms should be allowed to employ young people, those that have been unemployed for a long time, people in rural areas and the disabled, at lower wages.

### **Recommendations on immigration reform**

At least as an interim strategy, skilled people should be encouraged to come into South Africa to overcome the country's skills shortages and to stimulate the economy and job creation. South Africa should follow global trends by:

- Streamlining immigrant application processes by putting them online;
- Government using independent recruitment organisations to source and place required skills;
- Amending policies to open the doors to potential applicants.

Current restrictive policies that place limits on qualified foreign professionals do not serve the needs of the country. There is an urgent need to lower barriers to entry and to simplify bureaucratic processes.

### **Recommendations to reform basic schooling**

A new national assessment should be instituted that contains a system of universal testing that makes it possible to gauge how well individual schools perform, particularly at primary school level. Improvements in the way reading is taught in the first years of primary school are also vital, and the country should add an additional compulsory year of pre-primary education, below grade R.

A key lever for improving schooling systems is to strengthen 'school autonomy' while ensuring adequate funding and strong accountability. There are widespread concerns about corruption in the appointment of school principals. Rather than the state micro-managing principals, they should be given the space to run their schools and to act as powerful agents of change in the system. The NDP supports this policy direction by calling for more powers to principals appointed on merit. Legislators should pass laws that devolve management autonomy to school principals, who in turn hold heads of departments and teachers accountable, while central and provincial departments monitor and evaluate the performance of

schools. If schools were allowed to operate in this way, it would lead to significant improvements within South Africa's weak education system.

## **Recommendations to strengthen vocational education**

South Africa needs a track at the basic schooling level that would channel the majority of learners into vocational education. In countries with low youth unemployment, around 50% of learners pursue a vocational track.

Government should redesign TVET qualifications so that they align with employer needs and make sure that they actually improve students' employability. This could be achieved through:

- More on-the-job experience from the first year of study;
- Adjusting the current B-BBEE codes to create incentives for companies to provide the apprenticeships and other forms of workplace-based learning;
- Reviewing qualification content regularly with employer/industry bodies to ensure that the curricula meet industry requirements.

The overregulation and bureaucratisation of the system is impeding skills delivery. The complexity and lack of flexibility in the system creates severe difficulties and disincentives for key stakeholders.

## **Recommendations to improve the land reform programme**

### *Do not change the Constitution*

The Panel is opposed to changing the Constitution. There is, in fact, no willing buyer, willing seller formulation in the Constitution. This has been confirmed by such prominent jurists as former Justice Albie Sachs, who said that, "far from being a barrier to radical land redistribution, the Constitution in fact requires and facilitates extensive and progressive programmes of land reform. It provides for constitutional and judicial control to ensure equitable access and prevent abuse. It contains no willing seller, willing buyer principle, the application of which could make expropriation unaffordable".<sup>viii</sup>

Instead of changing the constitution, what is required is greater clarity on what is meant by 'expropriation in the public interest' as well as clear guidelines to determine 'just and equitable' compensation in any particular case.<sup>ix</sup>

### *Tackle the real challenges of land reform*

Land reform policy is marked by signs of elite Capture. Implementation has also been dysfunctional. To ensure that land reform delivers the land rights set out in the Constitution, Parliament must enact framework legislation that addresses the deficiencies of law and policy.

The poor outcomes and slow pace of land restitution have been confirmed by numerous government reports. Public hearings testified to the divisions and disappointments restitution has sown on the ground. Lack of capacity, inadequate resources and failures of accountability are key constraints that must be urgently addressed.

### *Strengthen security of tenure*

All the evidence indicates that land reform has generally failed to make poor South Africans substantially

better off. A major problem undermining prosperity and reducing the benefits that land reform could deliver, is that there are too many South Africans, in rural and urban areas, who have insecure tenure to the property that they occupy. This completely contradicts the Constitution's promise of tenure security to all those whose insecurity derives from past racially discriminatory laws or practices. To tackle this challenge, the panel proposes:

- The creation of a robust 'land recordal system' that gives visibility to a continuum of rights in property;
- Legislation within the constitutional framework that clarifies the status of both land and governance structures in areas under traditional leaders in order to provide certainty and avoid ongoing tension and contestation.<sup>x</sup>

### *Urban land reform*

Land and land reform are not solely associated with agriculture and rural areas. The lack of well-situated land for urban settlement remains a stark legacy of apartheid planning and discrimination. Well-situated state-owned land needs to be made available for housing for the poor, and well-situated privately owned land targeted for expropriation.<sup>xi</sup>

## **Recommendations to build more inclusive cities**

To encourage the emergence of more inclusive cities, the Panel recommends the establishment of a national co-ordinating structure, similar to the South African National AIDS Council (SANAC). This body would be responsible for spatial development, to drive a coherent and co-ordinated approach. The aim is to improve key policies and procedures in the pursuit of well-located housing, upgrading informal settlements, and support for informal enterprises. The coordinating structure should also:

- Undertake an audit of all well-located and underused land in the cities to identify opportunities for low- and middle-income housing development;
- Ensure that regulatory procedures for the three related issues of environmental, water and planning authorisations are aligned and integrated into a single approval system to avoid overlap and unnecessary duplication, causing excessive delays and compliance costs;
- Simplify and streamline restrictive regulations to reduce the burden they place on enterprise, investment and development; these include building regulations and business registration;
- Develop and pilot a Land Records Act that will provide people living in informal settlements, backyard accommodation and inner-city buildings with greater security and enable them to gradually regularise their status, invest in upgrading their property, and start a formal enterprise;
- Upgrade informal settlements without having to follow all the usual environmental, township establishment and other planning procedures;
- Establish special zones in and around certain low-income townships and informal settlements to encourage private investment in productive activity;
- Find more creative approaches to mixed-income (inclusionary) housing by including a requirement that all private sector developments above a certain size make provision for a specific proportion of the housing units to be within a predetermined affordable price bracket;
- Formulate a policy to support higher-density housing in and around economic nodes and along public transport corridors.

## Concluding remarks

While CDE does not necessarily agree with everything in the HLP report, the document contains important recommendations for reform. They are worthy of consideration as the President starts to move towards his promised New Deal, at the heart of which is the goal of bringing together government, business, labour and civil society "in a meaningful and effective social compact to construct a prosperous, just society founded on opportunities for all."<sup>xii</sup> Such a compact has to be based on new approaches to South Africa's entrenched challenges, and its goal must be to produce workable solutions that will take South Africans in new directions. We have to move away from the current policies that leave so many South African behind, stuck in unemployment, condemned to low-quality education, unable to access training or entrepreneurial opportunities and often without clearly defined or secure property rights.

Parliament's initiative to review the laws, policies and practices that underpin these unsustainable and unfair outcomes has produced a report, drafted by a panel of eminent South Africans, which provides a devastating analysis of what has gone wrong and presents many detailed and potentially workable recommendations.

Very little public engagement, at least of the constructive kind, has emerged in the wake of the published report, and there are concerns that with the two-and-a-half-month parliamentary recess over June and July and the 2019 general election, the report and its recommendations could easily be forgotten. There is some hope, however, that this will not be the case as a multiparty ad hoc committee to discuss the report has recently been appointed (April 2018) and is expected to report back to the joint rules committee by 15 May 2018.

CDE hopes that parliament will take the recommendations of the report very seriously. This is not the time to sweep new ideas and uncomfortable truths under the carpet in the hope that the electorate, going to the polls next year, will fail to notice. What we need, if there is any chance of achieving a new social compact and building a realisable 'New Deal', is frank, open and realistic discussion on what must change in the country: how to transform South Africa into a society that generates opportunities for everyone, especially the bottom half who live in poverty.

## **Appendix: A selection of CDE publications on themes covered in the HLP report**

### **Making the economy more labour intensive**

- CDE, Youth Unemployment: An Agenda for Action (*No country for young people: The crisis of youth unemployment and what to do about it*), 2017.
- CDE, Youth unemployment: An Agenda for Action (*Business, growth and inclusion: Tackling youth unemployment in cities, towns and townships*), 2017.
- CDE, Opportunities First: A new lens to shape priorities for action in middle income countries, August 2017.
- CDE, Growth Agenda: Priorities for mass employment and inclusion (*Jobs*), 2016.
- CDE, Growth Agenda: Priorities for mass employment and inclusion (*An EPZ for the Nelson Mandela Bay Metro*), 2016.
- CDE, Growth Agenda: Priorities for mass employment and inclusion (*Insights and key recommendations*), 2016.
- CDE, Growth Agenda: Priorities for mass employment and inclusion (*Accelerating inclusive growth*), 2016.
- CDE, Rethinking South Africa's Labour Market: Lessons from Brazil, India And Malaysia, 2013.
- 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, 2013.
- CDE, Special Economic Zones: Lessons for South Africa from international evidence and local experience, 2012.
- CDE, Five Million Jobs: How to add five million new jobs to the South African economy over the next five years, 2009.

### **Opening access to small and medium sized firms**

- CDE, Youth unemployment: An Agenda for Action (*Business, Growth and Inclusion: Tackling youth unemployment in cities, towns and townships*), 2017.
- CDE, Youth unemployment: An Agenda for Action (*Citizens in Action: How to build constructive business – government relationships in urban areas*), 2017.
- CDE, The World Turned Upside Down: Business innovation from the South, 2012.
- CDE, Young Soweto Entrepreneurs: Organising for small business advocacy, 2007.
- CDE, Key to Growth: Supporting South Africa's emerging entrepreneurs, 2004.
- CDE, Encouraging Small Business: Is Government doing more harm than good? 1999.

### **Combatting youth unemployment and exclusion**

- CDE, Youth Unemployment: An Agenda for Action (*No country for young people: the crisis of youth unemployment and what to do about it*), 2017.
- CDE, Youth unemployment; An Agenda for Action (*Business, Growth and Inclusion: Tackling youth unemployment in cities, towns and townships*), 2017.
- CDE, Youth Unemployment: An Agenda for Action (*Citizens in action: How to build construct business – government relationships in urban areas*), 2017.
- CDE, Cities Of Hope: Young people and opportunity in South Africa's cities, 2014.
- CDE, Coping with Unemployment: Young people's strategies and their policy implications, 2012.
- CDE, Routes into Formal Employment: Public and private assistance to young job seekers, 2012.
- CDE, Jobs for Young People: Is a wage subsidy a good idea? 2011.
- CDE, South Africa's 'Door Knockers': Young people and unemployment in metropolitan South Africa, 2008.

## **Promoting immigration reform**

- CDE, Growth Agenda: Priorities for Mass Employment and Inclusion (*Skills*), 2016.
- CDE, Comments on the Green Paper on International Migration, 2016.
- CDE, South Africa's Migration Policies: A Regional Perspective, 2011.
- CDE, Skills, Growth and Borders: Managing Migration in South Africa's national interest, 2010.
- CDE, Managing Migration in South Africa's National Interest: Lessons from international experience, 2009.
- CDE, Skills, Growth and Migration Policy: Overcoming the 'fatal constraint', 2007.

## **Reforming basic education**

- CDE, Teacher Professional Standards for South Africa: The road to better performance, development and accountability? 2017.
- CDE, Teacher Evaluation in South African Schools: Lessons from other countries, 2015.
- CDE, Teachers in South Africa: Supply and Demand 2013 – 2025, 2015.
- CDE, What Does Research Tell us about Teachers, Teaching and Learner Performance in Mathematics, 2014.
- CDE, Mathematics Outcomes in South African Schools: What are the facts? What should be done? 2014.
- CDE, The Missing Sector, Contract Schools: International experience and South African prospects, 2013.
- CDE, Teacher Pay for Performance: Lessons from other countries, 2012.
- CDE, Schooling Reform is Possible: Lessons for South Africa from international experience, 2011.
- CDE, Value in the Classroom: The quantity and quality of South Africa's teachers, 2011.
- CDE, Options for talented learners from disadvantaged backgrounds, 2010.
- CDE, International Best Practice in Schooling Reform: What can South Africa learn from other countries, 2009.

## **Strengthening vocational education**

- CDE, Opportunities First: A new lens to shape priorities for action in middle income countries, August 2017.
- CDE, Growth Agenda: Priorities for Mass Employment and Inclusion (*Skills*), 2016.
- CDE, Public Reform and Private Expansion: The development of higher education in Brazil, 2012.

## **Implementing land reform more effectively**

- CDE, Land Reform in South Africa: Getting Back On Track, 2008.
- CDE, Farmers' Voices: Practical perspectives on land reform and agricultural development, 2008.
- CDE, Land Reform in South Africa: A 21st century perspective, 2005.

## **Building more inclusive cities**

- CDE, Anthony Williams: Rebuilding Cities: Reflections on my experiences, 2017.
- CDE, Growth Agenda: Priorities for mass employment and inclusion (*Cities*), 2016.
- CDE, Cities: Pathways To Prosperity, 2015.
- CDE, Cities Of Hope: Young people and opportunity in South Africa's cities, 2014.
- CDE, South Africa's 'Door Knockers': Young people and unemployment in metropolitan South Africa, 2008.
- CDE, Johannesburg, Africa's world city: A challenge to action, 2002.
- CDE, Pretoria: From apartheid's model city to an African rising star? 1998.
- CDE, Durban: South Africa's global competitor? 1996.
- CDE, Cities and the Global Economy: New challenges for South Africa, 1996.

## Notes

- <sup>i</sup> <https://www.fin24.com/.../ramaphosa-proposes-a-new-deal-for-south-africa-20171113>, Nov 13, 2017.
- <sup>ii</sup> Cosatu rejected the call for labour law exemptions for young and other marginal people. See: COSATU rejects the High Level Panel Report on Legislation, 11 December 2017 <http://www.cosatu.org.za/show.php?ID=13451>; Traditional leaders, on the other hand were angry about the HLP's call to dissolve the Ingonyama Trust, and other proposed restrictions on the authority of traditional leaders. See: <https://www.news24.com/SouthAfrica/News/we-wont-be-intimidated-parliament-slams-ingonyama-trust-attacks-20180307>.
- <sup>iii</sup> The report we produced was titled: "Centre for Development and Enterprise: Overcoming the Triple Challenge: Report to the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change", 2017.
- <sup>iv</sup> Parliament of South Africa, 'Report of the High Level Panel on the assessment on key legislation and the acceleration of fundamental change', (November 2017), p.41.
- <sup>v</sup> Report of the High Level Panel, p. 101.
- <sup>vi</sup> Report of the High Level Panel, p. 43.
- <sup>vii</sup> Report of the High Level Panel, p. 43.
- <sup>viii</sup> Report of the High Level Panel, p. 206
- <sup>ix</sup> Report of the High Level Panel, p 206.
- <sup>x</sup> Report of the High Level Panel. p 564.
- <sup>xi</sup> Report of the High Level Panel, p 50.
- <sup>xii</sup> Cyril Ramaphosa, My New Deal for South Africa and 10 point plan for growth, jobs and transformation, 14 November 2017, <https://www.biznews.com/thought-leaders/2017/11/14/ramaphosa-new-deal-for-sa/>.



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