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# THE LABOR SECTOR AND U.S. FOREIGN ASSISTANCE GOALS

## SOUTH AFRICA LABOR SECTOR ASSESSMENT EXECUTIVE SUMMARY

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# EXECUTIVE SUMMARY

## South Africa's Labor Sector

The Republic of South Africa, with its ethnic and cultural diversity, its strong commitments to democratic functioning, and its current and emerging role in regional and global contexts, is a critical partner for the United States in southern Africa. The challenges of poverty and inequality persist in South Africa, 15 years after the attainment of democracy. U.S. foreign assistance to South Africa currently focuses on several issues related to goal of reducing the vast disparity of resources, education, and economic opportunity. The labor sector is implicated at all levels of this work. In part, this is because programming in any of these areas must negotiate intense national debate related to unemployment, labor market policy, and access to justice for vulnerable workers. In addition, labor organizations play an extremely important role in national debate, influencing public opinion as well as policy through multiple channels.

## Legal Framework

The South African legal framework for labor protection is very progressive for a developing country. South Africa has entrenched the right to fair labor practices in the Bill of Rights, a rare feature in any country's constitution. South Africa has also ratified all of the International Labor Organization's core conventions, and its labor legislation conforms to and gives effect to these norms. The Labor Relations Act not only facilitates, but promotes and encourages collective bargaining as a means of determining terms and conditions of employment and ensuring industrial peace and stability. In addition, the Basic Conditions of Employment Act is important for setting a minimum floor for all workers to prevent abuse and exploitation by employers. Also, the Employment Equity Act—with its prohibition of discrimination and requirements for employers to take affirmative action measures—is a critical legislative tool to bring about equality in the workplace.

Several experts interviewed by the team that prepared this report indicated gaps at various levels, however. Some pointed out that, since the entire framework of law had been negotiated by big government, big business and big labor, it did not shape policy addressing critical labor market issues such as SMEs and apprenticeship/ traineeship programs. Many are dissatisfied with the approach to collective bargaining adopted by the Labor Relations Act. While the promotion and facilitation of collective bargaining is listed as one of the main purposes of the legislation, the LRA actually removed a judicially imposed duty to bargain by significantly narrowing what may be considered an unfair labor practice. A number of voices are urging that the legal framework, as it stands, inadequately protects a range of atypical workers. In some cases, nongovernmental organizations, rather than unions have taken the lead on highlighting weaknesses.

## Government Institutions

The South Africa Department of Labor administers the bulk of legislation related to labor issues and is responsible, through its labor inspectorate, for enforcement. The department also has much of the responsibility for developing strategies for reducing unemployment, poverty, and inequality through policies and programs developed in consultation with social partners. One of the weaknesses of the Department of Labor is its limited enforcement capacity. The department also currently supervises the Commission for Employment Equity and the National Skills Authority. Other relevant government departments include the Department of Public Works, the Department of Social Development, the Department of Higher Education and Training, and the Department of Economic Development.

Most labor disputes in South Africa must be addressed through a process of conciliation, arbitration, or con-arbitration instead of, or prior to, an approach to the Labor Court. South Africa maintains a separate court system to deal with the interpretation and application of labor legislation. The major concern about the operation of the court—including from judges themselves—is speed and access.

A notable feature of labor regulation in South Africa is the presence of a tripartite social dialogue institution, the National Economic Development and Labor Council (NEDLAC), which came into existence as a consequence of the National Economic Development and Labor Council Act. NEDLAC's functions are to promote the goals of economic growth, to seek to reach consensus and conclude agreements on matters of social growth policy, to consider all proposed labor legislation before it is submitted to government, and to consider all significant changes to social and economic policy before implementation.

The labor sector assessment has found that the Government in South Africa has established innovative institutions and mechanisms to address challenges in its labor market. However, a number of weaknesses have been identified, and a key challenge is the lack of adequate financial and human resources to ensure the implementation and enforcement of legislation and the full operation of institutions. This was particularly the case with the labor inspectorate and NEDLAC, and to some extent, the Labor Court.

### **Labor Sector Organizations**

South Africa's trade union movement has sought to defend and protect the rights of its members in the following ways:

- Represent labor in bargaining councils and other non-statutory bargaining fora;
- Represent labor in workplace consultations with employers in matters such as workplace restructuring and training;
- Represent labor in high-level fora such as NEDLAC;
- Lobby and advise government on proposed legislation and policies that affect workers;
- Educate workers about their rights and disseminate industry-related information to workers;
- Represent workers in disciplinary hearings;
- Litigate on behalf of members in the Labor Court and higher courts; and
- Conduct and commission research on challenges faced by workers and the union movement.

Despite its many successes and achievements, the South African labor movement faces a number of challenges. One is that trade unions have been unable to cope with changes in the nature and organization of work, such as firm restructuring resulting in massive retrenchments and the greater use of temporary and casual labor and outsourcing. It would also be important to note trade unions' failure to adapt to the changing demographics of the workforce and to effectively organize women, young workers, atypical workers, service sector workers, and migrant workers that together comprise a substantial proportion of the workforce.

Other active labor sector organizations include employers' organizations and civil society organizations. The South African labor system does not place significant obstacles in the way of the formation or functioning of employers' organizations. There is no legal requirement that employers' organizations register with the Department of Labor, although they are encouraged to do so. A challenge identified for prominent employer organizations is that they are largely dominated by big business and are not representative of the needs and interests of small business at the policy-making level. Over the years, civil

society organizations have played an important role in addressing issues that directly and indirectly affect workers, the poor, and the marginalized in South Africa, including unemployment, access to social security, labor migration, service delivery, and access to socio-economic rights. They have done so through research, dissemination of valuable information, awareness raising campaigns, participation in public debates, and submissions on existing and proposed legislation and policies. Civil society organizations have thus played a critical part in filling the gaps through their work among workers that have been neglected by trade unions, which include child workers, sex workers, and migrant workers. Despite its contribution to protecting the rights of vulnerable workers, civil society has been marginalized in NEDLAC, where it is only represented in one chamber. To some extent, this deficiency has been corrected through collaboration with the trade union movement.

In sum, trade unions and civil society organizations have played a key role in representing and championing the interests of workers in South Africa. Trade unions have voiced and defended the rights of workers in various fora, including the workplace, the Commission for Conciliation, Mediation, and Arbitration, the Labor Courts, and higher level structures such as NEDLAC. However, trade unions have largely concentrated power at the top level and failed to consult with and report to middle and floor level union officials in negotiation and policy roles. Union officials responsible for high level negotiations in fora such as NEDLAC also lack the technical and policy analysis skills to articulate the needs and interests of workers and argue for approaches that are beneficial to workers.

## **Labor Market**

Unemployment in South Africa has a strong racial dimension, as the overwhelming majority of the low-skilled unemployed are black. This is a legacy of the apartheid regime that created a discriminatory system wherein white children received education superior to that of black children. Secondly, economic analysis has demonstrated that the unemployment crisis is partly attributable to a “skills mismatch” in South Africa. Growth in the labor-intensive primary sector (agriculture and mining) and manufacturing activity has declined, while the skills- and capital-intensive sectors have witnessed exponential growth. These structural shifts in the economy have led to lower demand for unskilled and low-skilled labor and increased demand for semi-skilled and highly skilled workers. This skills mismatch in the labor market has fuelled high unemployment among the unskilled and low wages among those unskilled workers who are fortunate enough to find employment.

Access to the labor market thus presents a formidable challenge, particularly for a substantial portion of the unemployed that is largely comprised of black unskilled workers. This is particularly troubling given the high number of vacancies for jobs requiring workers with medium and higher levels of skills and expertise. While the Expanded Public Works Program (the government’s public works program) has contributed to the creation of some employment opportunities, these are of limited duration, and it is doubtful whether the program has made much progress toward bridging the critical skills gap. Arguably, addressing the challenges presented by migrant labor will entail a consideration of South Africa’s skills shortage and the potential contribution of migrant workers in this regard.

## **Role of the Labor Sector in Overarching Development Themes**

Although South Africa has come a long way in terms of societal transformation, much still needs to be done to address the high levels of poverty and inequality that are endemic in the country. Measures to address these challenges must be directed toward increasing the level, quality, and security of employment. This will require the strengthening and (where necessary) improvement of policies and structures that play a role in advancing and protecting workers’ interests.

This labor sector assessment clearly indicates that there could be significant synergies between development themes *within* the broad category of democratic governance, with labor sector organizations mobilizing and propelling the connections. For example, rule of law programming that empowers workers

through rights awareness processes and better implementation of judgments would in turn promote better governance by giving voice to a new set of actors with an interest in monitoring institutions. Such processes would also deepen and strengthen social dialogue, which is critical (especially in the South African context) for governance and consensus-building objectives. Similarly, within economic growth contexts—again, speaking generally—there are many potential synergies: investing in workers at the level of education and training would clearly lead to gains at the level of private sector competitiveness, for example. However, the most interesting tensions, and potentially productive synergies, present themselves *across* democratic governance/ economic growth objectives. In the South African context, support for private sector competitiveness and macroeconomic policy formulation that is heavily focused on small and medium enterprise (SME) development could potentially have the impact of eroding trade union strength and trade union rights in those sectors, undermining key human rights and democracy objectives.

The South African context is perhaps predisposed to fostering programmatic synergies between democratic governance and economic growth objectives, given the country's experiences of apartheid, and in light of the kinds of transformation required to achieve equality and justice for all. The South African constitution closely interlinks political freedom with economic justice, urging the creation of a society in which people are socially empowered to exercise their rights. It is apparent that support for South Africa's already very strong social dialogue process—contributing to building the capacity of trade union negotiators in the process, or expanding the participants to include advocates for vulnerable workers, for example—would promote rule of law goals while ensuring sounder macroeconomic foundations that truly represent the interests of a wide swath of society.

### **Strategic Considerations for USG**

Based on a review of USAID/South Africa's Strategy Statement (FY 2007–2012) and meetings with USAID mission staff in Pretoria, we articulate the primary areas of programming as follows: 1) democracy and human rights, focused on women and justice; 2) good governance programming to address local governments, particularly in the context of anti-corruption measures and local economic development; 3) workforce development, focused on the resources and capacity of vocational colleges; and 4) private sector competitiveness, with particular attention to SMEs and their access to financing in sectors such as mining, auto parts, and agriculture.

In turn, USAID/South Africa democracy and governance or economic growth programming that is attentive to the identified labor sector strengths and weaknesses could help promote the protection of workers' rights and better implementation of core labor standards. In particular, we would focus on several specific issues, which are elaborated at greater length in the Results Framework (Appendix A):

1. There is a need to build trade union capacity to organize and represent vulnerable and atypical workers, and less organized sectors such as domestic services, private security and agriculture.
2. In order to ensure that social dialogue processes such as NEDLAC yield outcomes that benefit all tiers of society, trade unions must be assisted in building internal competence and relationships to outside technical experts, so that they are adequately represented in high-level negotiations involving key policy issues, especially economics.
3. Support is required to expand and strengthen institutions providing swift, inexpensive, and accessible resolution of labor disputes, particularly to vulnerable workers, as well as institutions monitoring and enforcing minimum labor standards.
4. Sustained tripartite collaboration will be necessary in order to create a broad-based and relevant skills development process that is responsive both to the aspirations of young workers and the needs of the labor market.

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