Draft

Decent Work Country Profile

SOUTH AFRICA

Analysis of decent work indicators and identification of locally relevant indicators for South Africa[1]

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The Republic of South Africa

International Labour Organization

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Preface

Decent work is central to efforts to reduce poverty and is a means for achieving equitable, inclusive and sustainable development. It involves opportunities for work that is productive and delivers a fair income, provides security in the workplace and social protection for workers and their families, and gives people the freedom to express their concerns, to organize and to participate in decisions that affect their lives.

In this regard, monitoring and assessing progress towards decent work at the country-level is a longstanding concern for the ILO and its constituents. In September 2008, the ILO convened an international Tripartite Meeting of Experts (TME) on the Measurement of Decent Work, and consequently, adopted a framework of Decent Work Indicators, that was presented to the 18th International Conference of Labour Statisticians in December 2008. The Governing Body endorsed the proposal to test the framework in a number of countries, by developing Decent Work Country Profiles. The Decent Work Country Profiles compile in one document all available data on decent work, statistical and legal indicators, as well as analysis of gaps and trends on decent work. The Profiles facilitate the evaluation of progress made towards decent work and inform national planning and policymaking. Current document is a draft of The Decent Work Country Profile for South Africa.

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Summary

The Decent Work Country Profile for South Africa analyses progress and challenges across the ten internationally agreed thematic areas of decent work. Within each area, the profile is based on a set of Decent Work Indicators; and information on rights at work and the legal framework for decent work is presented in the form of Legal Framework Indicators. Internationally recommended sets of indicators are used for both the Statistical Decent Work Indicators and Legal Framework Indicators (LFI). However, the profile departs from the international recommendations where data for particular indicators is not available in South Africa. There are also several additions or adaptations of indicators to suit the South African context.

The profile begins with a summary of the economic and social context for decent work. This is followed by a chapter on each of the thematic areas. In addition, this profile for South Africa includes a chapter recommending a smaller set of indicators that could be used for monitoring of the country's Decent Work Programme, which was signed by the social partners in the National Economic Development and Labour Council (NEDLAC) and the International Labour Organization in September 2010. This smaller set represents indicators based on data that are relatively reliable, produced regularly, and available relatively soon after the period which they measure. The indicators are also those that align most closely to the specific outcomes of the South African Programme.

South Africa is relatively fortunate in the availability and reliability of statistics. In particular, the Quarterly Labour Force Survey provides regular data that can be used for a large proportion of the Decent Work Indicators. Unfortunately, however, the survey-based data produced by Statistics South Africa do not provide very reliable measures of the coverage of the legislation and policies described in the more qualitative LFI. While administrative data could offer an alternative source for these indicators, the quality of the administrative data is also sometimes open to question.

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In terms of **economic and social context**, South Africa's current situation needs to be read against the background of the first non-racial elections of 1994, and the wide range of legal, policy and programmatic interventions since that have attempted to address imbalances of the past and create an inclusive society characterized by shared and equitable economic growth.

The background chapter notes the ongoing attempts to address the major problem of unemployment, with additional challenges caused by the international financial and economic crisis of recent years. Further, it notes that despite its middle income status, South Africa is characterized by high levels of poverty and high income inequality between population (race) groups and within groups.

The high rate of unemployment in South Africa emerges as a key issue in the area of **employment opportunities**. The New Growth Path document launched in late 2010 envisages the creation of five million new jobs by 2020. Its vision is that by that time more than half of all working-age South Africans would be in paid employment and unemployment would have fallen to approximately 15 per cent. However, the unemployment rate, which was slightly above 22 per cent in the period 2006 through 2008, increased to 24.9 per cent in 2010, i.e. ten percentage points higher than the New Growth Path goal. If those who have given up looking for work are included, the expanded unemployment rate stood at 35.8 per cent overall in 2010 – 31.5 per cent for men and 40.7 per cent for women. There are further stark differences by race group and – as elsewhere in the world – substantially higher unemployment rates for youth than for older people.

South Africa is relatively unusual among developing countries in its low levels of self-employment. In 2010, employees accounted for 84.4 per cent of employed people, while 5.4 per cent recorded as employers, with only 9.3 per cent recorded as self-employed or own-account workers with no employees.

Informal employment is defined to include all persons in the informal sector and persons helping unpaid in their family business. It also includes employees in the formal sector or in private households who are not entitled to basic benefits from their employer such as a pension, medical aid and who also do not have a written contract of employment. A little less than a third (30.7 per cent) of employed people was estimated to be in informal employment in 2010.

Adequate earnings and productive work is one of the areas where some of the international indicators cannot be produced, in this case because South Africa does not have a national minimum wage. The low pay rate – the proportion of workers with monthly earnings less than two-thirds of the median – is thus used as the main indicator of inadequate earnings.

In 2010, just over a third (34.0 per cent) of non-agricultural workers earned less than two-thirds of median monthly earnings. Earnings less than two-thirds of the median were more common among self-employed workers (37.6 percent monthly) than among employees (33.4 percent monthly). Across both categories of status in employment low earnings were more common for women than for men, and for rural than urban.

While South Africa does not have a minimum wage, minimum wages are set for some sectors considered vulnerable through ministerial and sectoral determinations in terms of the Basic Conditions of Employment Act (BCEA). Godfrey et al estimate that the nine sectoral determinations in force mid-decade covered approximately 3.4 million employees – or 36 per

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cent of the 9.5 million employees.[2] Together with the 25 per cent estimated to be covered by bargaining council agreements, which also determine minimum wages in sectors where the parties are considered sufficiently representative, a significant share of workers are covered by minimum wage regulation.

On **decent hours**, the percentage of workers working more than 48 hours per week dropped sharply after 2008, to the 2010 rate of 24.1 per cent. The BCEA sets ordinary hours of work at 45 hours per week, and a week of 48 hours thus suggests regular overtime work. The sudden drop could be the result of the global economic crisis, with reduced demand resulting in less need for overtime. Time-related under-employment appears to have increased somewhat over the period, but the trend is less clear than for some other indicators. The two indicators together resulted in 71.7 per cent of workers having hours that were neither excessive nor less than they would like in 2010.

Indicators present a challenge both internationally and in South Africa in the area of **combining work, family and personal life**. Analysis of data from the 2010 Time Use Survey, once available, will be helpful in this respect. Meanwhile, analysis of the 2000 Time Use data confirms the international pattern of women being responsible for the overwhelming bulk of unpaid housework and care of others in the household. When all work, including unpaid care work, is counted, South African women were responsible for 57 per cent of the hours spent on work in the country despite their lower levels of employment.

The BCEA provides some relief for women employees in respect of their reproductive role by providing for a minimum of four consecutive months of maternity leave when they give birth. Leave is also provided where a child is adopted. The Act does not provide for pay during this period, but the Unemployment Insurance Act provides for a proportion of the wage or salary to be paid to employees who have contributed to the Fund. In 2009-10, payments were made to 104,529 claimants for maternity and adoption benefits.

In terms of **work that should be abolished**, forced labour is outlawed in the Constitution, and this prohibition is repeated in the BCEA. The Act also sets 15 as the minimum possible age for legal employment of a child as an employee and also prohibits the employment of a child who is under the minimum school leaving age.

An add-on module to the Labour Force Survey of March 2006 included questions specifically designed to capture those forms of child labour that can be captured by such a survey. Overall, 847,000 children – about 10 per cent of the total aged 10 to 17 years – were found to be vulnerable on at least one of the indicators.

Stability and security of work have become an ever more important concern in the light of general shifts in the workplace away from permanent employment combined with the impact of the global economic and financial crisis. In late 2010, 66 per cent of employees had permanent contracts, 12 per cent had limited duration contracts, while 22 per cent had contracts of unspecified duration. Comparison with estimates for 2006 suggests a declining rate of permanent and secure work for those fortunate enough to continue to be employed.

[2] S. Godfrey, S. Maree and J. Theron: *Conditions of employment and small business: Coverage, compliance and exemptions*, Development Policy Research Unit Working Paper 06/106 (Labour and Enterprise Project, Sociology Department, Institute of Development and Labour Law, University of Cape Town, 2006).

Workers who feel that they have been dismissed or otherwise treated unfairly can refer their dispute to a statutory or bargaining council or to the Commission for Conciliation, Mediation and Arbitration (CCMA). During the 2009-10 financial year, a total of 153,657 disputes were referred to the Commission. Of this total, 81 per cent related to unfair dismissals, and 2 per cent to severance pay.

The Employment Equity Act is a key instrument for achieving **equal opportunity and treatment** in respect of employees. The Act focuses on race and gender alongside disability. The ongoing gender and race imbalances in the upper echelons of the workforce are clear in that African men accounted for only 14.2 per cent of top management, African women for 6.1 per cent, white men for 54.5 per cent and white women for 9.3 per cent. Similarly, among senior managers, African men accounted for 13.5 per cent of the total, African women for 6.5 per cent, white men for 46.3 per cent and white women for 2.1 per cent. Statistics South Africa's Labour Force and Quarterly Labour Force Survey data tell a similar story.

In 2010, the gender earnings gap stood at 30 per cent for wages, salaries and earnings from non-agricultural self-employment combined. Disaggregation reveals a smaller, but still noticeable, gap of 23.1 per cent if the calculation is restricted to employees, but a very large – 52 per cent – shortfall for the self-employed. These gaps are, in part, related to the uneven distribution of women and men across occupations. The impact of the uneven distribution is exacerbated by the fact that within each occupational grouping except domestic work, median earnings are higher for women than men employees. There is currently no South African law or policy that provides for equal remuneration for work of equal value.

Safe work environment is an area in which the available data – and in particular administrative data – are currently especially weak. The high level of vacancies in Inspection and Enforcement Services exacerbates the problem of monitoring of health and safety. The Department of Labour is currently upgrading its database and also plans to employ additional specialist inspectors.

Compensation for injuries and work-related diseases is provided for by the Compensation for Occupational Injuries and Diseases Act, and is funded primarily through levies paid by employers. Compensation is available in cases of injury, disablement and death. Domestic workers are not covered by the Act.

Beyond compensation, within Government the responsibility for health and safety at work is divided across to national departments, namely Labour and Mineral Resources. The latter is responsible for mine health and safety, an extremely important area given the extreme depth, and accompanying danger, of many South African mines when compared to those elsewhere.

In terms of **social security**, South Africa for decades has had a non-contributory old-age grant that is currently payable to women and men aged 60 years and above who pass a means test. This grant is one of a set of grants that provide social protection to old people, disabled people, children and war veterans. In March 2010, close on 2.5 million individuals were receiving the old-age grant, accounting for an estimated 46.8 per cent of people aged 55 years and above.

South Africa does not have a national law that provides for work-related pension benefits. However, a recent study found that 29 of the 40 private bargaining councils between them had 43 retirement funds. Some employers who do not fall under these councils also

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contribute to pension funds for their employees. However, the Labour Force and Quarterly Labour Force Surveys record a decrease in the percentage of the economically active population whose employers contributed to a pension scheme, from around 50 per cent in 2006 to around 46 per cent in 2010.

The Quarterly Labour Force Survey of the fourth quarter of 2010 recorded 32 per cent of employees as being entitled to medical aid benefits from their employers, with almost no difference between women and men. Among private bargaining councils, 15 councils had a medical or sick benefit fund of some kind. The situation in respect of payment of medical expenses as well as contributions is likely to change radically as National Health Insurance is introduced.

Freedom of association related to employment was considered important enough in South Africa to be included in the Bill of Rights in the Constitution, thus setting a firm basis for **promotion of social dialogue and representation of workers and employers**. As at September 2011 there were 196 trade unions and 162 employers' organizations registered with the Department of Labour. The Quarterly Labour Force Surveys of 2010 recorded a total of about 3.3 million union members, of whom 1.3 million (41 per cent) were female. An estimated 2,846,235 workers are currently covered by bargaining councils, of whom 1,390,655 are government employees and 1,332,116 are employed by employers who are not party to councils.

The National Economic Development and Labour Council is South Africa's foremost 'social dialogue' forum for the country's traditional social partners. Indeed, it is within NEDLAC that the Decent Work programme for South Africa was agreed, and it is also within NEDLAC that various amendments to labour laws are currently under discussion.

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List of abbreviations

ANC	African National Congress
BCEA	Basic Conditions of Employment Act
CCMA	Commission for Conciliation, Mediation and Arbitration
GDP	Gross domestic product
ILO	International Labour Organization
LFI	Legal framework indicator
NEDLAC	National Economic Development and Labour Council
PSCBC	Public Service Co-ordinating Bargaining Council
R	South African Rand
WFCL	Worst Forms of Child Labour

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1. Economic and social context for decent work

South Africa held its first non-racial elections in 1994. The election ushered in a new democratic and political dispensation after years of apartheid and white political hegemony. Since 1994, the African National Congress (ANC)-led Government has engaged in a range of transformation initiatives to address the deep-rooted social and economic disparities resulting from the legacy of apartheid. Government's transformation agenda has been defined by a series of legislative and policy measures aimed at redressing the imbalances of the past in order to create an inclusive society characterized by shared and equitable economic growth.

The Constitution of the Republic of South Africa (1996) and the Reconstruction and Development Programme that were adopted at the dawn of the new democratic dispensation in South Africa provided a broad legal and policy framework to address the social and economic imbalances of the apartheid legacy, and to improve the quality of life of all South Africans. The Bill of Rights in the Constitution upholds and guarantees respect, protection and promotion of rights of all citizens. These include the protection of rights to equality, rights to equal treatment and protection against unfair discrimination; rights to human dignity, freedom of expression and association; and rights to fair labour practices and to fair access to social security including social assistance.

The core objective of the ANC-led Government as set out in Vision 2014 and Government's Medium Term Strategic Framework and Programme of Action 2009-2014 is to halve poverty and unemployment by 2014, and to ensure a more equitable distribution of the benefits of economic growth. The commitment to the promotion of decent work and employment was clearly articulated in the run up to the last elections by the ANC and its alliance partners at the Polokwane conference in 2008 and in the 2008 election manifesto. The national elections saw a third consecutive victory for the ANC.

South Africa is a middle-income emerging economy with an abundant supply of natural resources and a gross domestic product (GDP) income of US$1,834,435 in 2010. South Africa has well-developed financial, legal, communications, energy and transport sectors, a stock exchange ranked favourably in the world, and modern infrastructure. Although previously reliant on its mineral wealth, South Africa's economy has become increasingly more diversified. Currently, key sectors include tourism, mining, automotive assembly, information and communications technology, and the chemical industries. More than half of the gross national product is derived through exports and imports and trade liberalization has been one of the central policies of South Africa's development strategy since 1994. While trade liberalization saw exports increasing in volume and value, it did not result in the expected growth in employment or decrease in the poverty rate. Capital intensity in manufacturing, as in other sectors such as mining, contributed to a loss of employment for unskilled and semi-skilled workers.

GDP growth averaged 3 per cent during the first decade of the new democratic dispensation, and rose to 5.6 per cent in 2007. However, economic activity in South Africa began to take strain in 2008 as a result of several negative factors, including unprecedented power shortages; rising interest rates; hikes in global oil and food prices; a slow-down of private consumption; and a decline in foreign investment and exports as a result of the global financial and economic crisis.

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GDP shrank by 1.7 per cent in 2009, and then recovered to show a small increase of 2.8 per cent in 2010. The economic crisis also impacted negatively on national efforts to reduce unemployment in the country. Jobs have been lost in both the formal and informal sectors across all major sectors of the economy. Thus, while the statistical indicators in this report for the most part cover the period up to 2010, the Quarterly Labour Force Survey for the second quarter of 2011 recorded a further increase of 0.5 percentage points in the unemployment rate when compared to 12 months previously, to reach a level of 25.7 per cent. The employment rate meanwhile fell by 0.4 percentage points.[3]

Despite its middle income status, South Africa is characterized by high levels of poverty and high income inequality between population (race) groups and within groups. Leibbrandt et al[4] find that the Gini coefficient, the most oft-used indicator of income inequality, increased from 0.66 in 1993 to 0.70 in 2008.

Poverty and inequality in South Africa have race, gender and age dimensions with high concentrations found predominantly among Africans and in woman-headed households. Statistics South Africa's calculations, using the 2005-06 Income and Expenditure Survey data on earnings and social grants, yielded an overall Gini coefficient of 0.72, with within-group coefficients highest for Africans at 0.63 and lowest for white people at 0.56. While these estimates suggest considerable within-group inequality, it also shows that inequality within groups is lower than inequality in the society as a whole. Statistics South Africa notes that if social grants and taxes were not in place, the overall Gini coefficient would be much higher, at 0.80.[5]

Unfortunately, South Africa does not have an official poverty line against which poverty can be monitored. The debate as to the level at which the poverty line should be set has been ongoing for many years. A national consensus on what constitutes a minimum wage and a minimum level of living sufficient to meet the various Constitutional guarantees would be a welcome development.

In terms of the standard decent work indicators, the percentage of children aged 5 to 17 years not in school is relatively low and has fallen during the period 2006-2010. The rate is highest among the 15 to 17 year age group, which reflects the fact that children can legally leave school after the year in which they turn 15. It is also higher among the 5 to 9 year age group because the official school entry age is six years. However, the percentage of children not in school in this age group has fallen dramatically over the period with the expansion of the reception year, Grade R.

South Africa is one of the countries hardest hit by the HIV and AIDS epidemic, with an estimated 5.2 million people living with the virus in 2008.[6] HIV prevalence is disproportionately high for females overall in comparison to males and it peaks in the 25 to 29 age group where one in three (32.7 per cent) young women were found to be HIV-

[3] Statistics South Africa: *Quarterly Labour Force Survey: Quarter 2, 2011*, Statistical Release P02112 (Pretoria, 2011), p. 6.
[4] M. Leibbrandt et al.: *Trends in South African income distribution and poverty since the fall of apartheid*, OECD Social Employment and Migration Working Paper No 101 (OECD, Paris, 2010).
[5] Statistics South Africa: *Income and Expenditure of Households: Analysis of results* (Pretoria, 2007), p. 3.
[6] Human Sciences Research Council: *The South African National HIV Prevalence, Incidence, Behaviour and Communication Survey 2008* (Pretoria, 2009).

positive in 2008. Recent national antenatal surveys suggest a stabilization of HIV prevalence among women younger than 20 years of age, as well as a decline among women 20 to 24 years of age.

The epidemic has impacted negatively on household income security through the loss of income caused by HIV related deaths and illnesses. The HIV epidemic has also put considerable strain across all sectors and levels of the economy as infection rates are high among the able-bodied workforce. Sectors which are particularly badly affected by the pandemic include the transport, mining, construction, metals processing and agribusiness sectors. The standard indicators suggest levelling off in the period 2006 through 2010. However, the impact will continue to be felt for many years to come, especially as numbers of orphans and deaths peak later than prevalence levels.

Despite the many challenges, labour productivity as measured in 2000 Rands (R) increased during the period 2006 to 2010, with the highest growth rate recorded for 2010. This indicator should, however, be treated with caution given the debates as to the meaning of the concept and the way in which it is affected by shifts in earnings. Further, to the extent that productivity is measured by output per worker, an increase in productivity could indicate higher levels of capital intensity – a characteristic of growth that might not be desirable in a context of high rates of unemployment.

Regular measures of income or earnings inequality beyond those discussed in Chapters 3 and 8 are not readily available. However, calculations based on average annual household expenditure suggest that the top percentile of households have expenditure that is nearly 50 times greater than households in the bottom percentile. As discussed above, the Gini coefficient is in the high 60s.

Inflation ranged between 4.3 per cent and 11.5 per cent during the period 2006-2010. It was only in 2006 and 2010 that it fell squarely within the Government's inflation target range of 3 to 6 per cent. The inflation rate is currently increasing again, and is relatively close to the top end of the target range.

The adult literacy rate, as measured by the percentage of the population aged 18 and above with at least Grade 7 completed, increased over the period. This is primarily due to improvements among younger women who are still in school. However, Government's Kha Ri Gude literacy programme implemented among those who have left or missed out on schooling has also proved to be the most far-reaching of Government's adult education initiatives in the post-apartheid period, and has disproportionately reached women. The impact of improved educational opportunities for younger people is meanwhile also reflected in the increase in the adult secondary school graduation rate (those aged 18 and above who have completed at least grade 12) over the period 2006 through 2010. The rate of increase has been higher for women than for men.

Table 1. Economic and social context for decent work – Economic indicators

Context Indicator	2006	2007	2008	2009	2010
Children not in school, in %	**7.7**	**6.8**	**6.8**	**4.8**	**4.3**
Male	7.7	6.8	7.0	5.0	4.2
Female	7.7	6.7	6.6	4.6	4.4
5-9	12.3	11.3	11.4	6.0	5.0
10-14	1.9	1.3	1.5	1.2	1.1

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15-17	9.8	8.3	8.3	8.7	8.5
Estimated % of working-age population who are HIV positive[1]					
Male	12.6	12.5	12.3	12.3	12.3
Female	16.3	16.3	16.3	16.4	16.5
Urban areas					
Rural areas					
Labour productivity, in 2000 constant Rands	**77.0**	**77.2**	**78.5**	**79.7**	**82.6**
Labour productivity growth rate, in %	**-4.7**	**0.3**	**1.7**	**1.5**	**3.6**
Income/Earnings inequality (income or consumption), P90/P10	**49.1**				
Gini index	**0.67**				
Inflation rate (CPI), in %	**4.6**	**7.2**	**11.5**	**7.1**	**4.3**
Employment by major branch of economic activity, in % to the total[6]					
Agriculture	6.4	5.5	5.7	5.1	4.9
Industry	25.1	25.7	25.8	25.3	24.5
Services	68.4	68.8	68.5	69.6	70.6
Education of adult population					
Adult literacy rate, in %	**76.4**	**77.2**	**77.3**	**80.4**	**81.2**
Male	77.7	78	78.8	81.5	82.3
Female	75.3	76.5	76	79.4	80.2
Urban areas					
Rural areas					
Adult secondary school graduation rate, in %	**32.1**	**32.3**	**34.0**	**35.6**	**36.5**
Male	33.6	33.3	35.1	35.9	36.9
Female	30.9	31.5	33.1	35.3	36.1
Urban areas					
Rural areas					
GDP, in million US$	**1,659,122**	**1,751,499**	**1,814,134**	**1,783,617**	**1,834,435**
GDP growth (annual), in %	**5.6**	**5.6**	**3.6**	**-1.7**	**2.8**
GDP per capita, in PPP$					
GDP per capita growth (annual), in %					
Wage/Labour share in GDP, in %					

References:

1 Godfrey, Maree, Theron, 2006

6 National Treasury, 2011

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Legal Framework Indicator 1. Labour administration

Law, policy and institutions: The Constitution defines labour and employment primarily as a function of national government, although local governments are required to draw up integrated development plans that encompass employment among other issues. Within the national sphere of government, the Department of Labour bears primary responsibility for employment policy and administration, especially as it relates to employers and employees. The Department of Public Service and Administration is responsible for public service employment, which encompasses national and provincial government employees, but does not currently extend to local government employees. The Department of Trade and Industry has a policy, implementation and administration role in respect of promotion and support to entrepreneurship.

The Department funds a number of bodies that have specific roles in policy making and administration. The National Economic Development and Labour Council must be consulted by Government when drawing up laws and policies related, among others, to labour and employment. The Employment Conditions Commission, established in terms of the BCEA, advises the Minister of Labour on minimum wages and conditions of work for vulnerable workers. The Commission on Employment Equity, established in terms of the Employment Equity Act, advises the Minister of Labour on employment equity. The Commission for Conciliation, Mediation and Arbitration, established in terms of the Labour Relations Act, is funded by, but independent of, the Department of Labour and is responsible for services to ensure observance of fair labour practices. Productivity South Africa aims to improve the productive capacity of the economy through social dialogue and enhanced collaboration between government, labour and business.

There are also several agencies that report to the Department of Labour but are funded from other sources. The Unemployment Insurance Fund, established in terms of the Unemployment Insurance Act, manages contributions and payments related to unemployment insurance of employees. It is funded by a dedicated tax on the wage/salary bill. The Compensation Fund, established in terms of the Compensation for Occupational Injuries and Diseases Act, manages compensation for disability, illness and death resulting from occupational injuries and diseases. It is funded primarily through risk-rated levies paid by employers. The Department of Labour was allocated R131.7m for 2011-12, amounting to 0.1 per cent of the national votes.

Evidence of implementation effectiveness: No information provided by the ILO supervisory bodies.

Ratification of ILO Conventions: South Africa has not ratified the Labour Administration Convention, 1978 (No. 150).

Sources:
National legislation; NATLEX database.
(http://www.ilo.org/dyn/natlex/country_profiles.basic?p_lang=en&p_country=ZAF)

Scope of the law and employment contracts

The Basic Conditions of the Employment Act defines employees as persons who work or conduct business for another person or for the state for remuneration. The Act is applicable to all employees and employers, except members of the National Defence Force, the National Intelligence Agency and the South African Secret Service, and unpaid volunteers working for an organization serving a charitable purpose. It also applies to persons undergoing vocational training. The Minister of Labour may make a sectoral determination setting different minimum standards for specific sectors and may deem categories of persons to be employees. Civil servants are covered by the Public Service Act, 1994 and the Public Service Labour Relations Act, 1994.

Employment agreements may be concluded orally or in writing, and expressly or by implication. Certain employment agreements, such as for apprentices or clerks, must be concluded in writing. The Act also requires employers (except those who employ fewer than five employees and employees who work for less than 24 hours a month or are domestic workers) to provide certain aspects of the terms of the employment agreement in writing. Employment agreements may be concluded for a definite or an indefinite period, and can provide for full- or part-time work as well as temporary work.

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The chapters that follow present indicators related to each of the ten domains of the ILO's Decent Work framework. To the extent possible, the indicators presented follow the international guidelines. These standard indicators are, in a few cases, supplemented so as to be appropriate for the South African context. For example, the indicators in respect of youth are provided for different sub-groups of the national definition of youth, which has a cut-off at 35 years. The final chapter presents proposals for a smaller set of indicators that could be used going forward to monitor the country's Decent Work Programme. This smaller set represents indicators based on data that are relatively reliable, produced regularly, and available relatively soon after the period which they measure. The indicators are also those that align most closely to the specific outcomes of the South African Programme.

South Africa is relatively fortunate in the availability and reliability of statistics. In particular, the Quarterly Labour Force Survey provides regular data that give consistent results over time. Unfortunately, this survey does not include questions that can provide information for all the internationally specified indicators. Further, the survey-based data produced by Statistics South Africa do not provide very reliable measures of the coverage of the legislation and policies described in the more qualitative legal framework indicators (LFI). While administrative data could offer an alternative source for these indicators, the quality of the administrative data is also sometimes open to question. The coverage indicators must thus be treated with caution.

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2. Employment opportunities

In September 2010, the social partners in the National Economic Development and Labour Council (NEDLAC) and the International Labour Organization signed the Decent Work Country Programme for South Africa. The overall goal of the programme is to promote opportunities for people to obtain decent and productive work in conditions of freedom, equity, security and human dignity. The four pillars of the Decent Work agenda are: the fundamental principles and rights at work and international labour standards; employment and income opportunities; social dialogue and tripartism, and social protection and social security.

The high rate of unemployment in South Africa is recognized across the political spectrum as among the most serious issues facing the country. On the policy side, an important step forward was taken with the launch of the New Growth Path in late 2010. While the document launched at that time does not in itself present a fully developed employment policy, it commits Government to generating consensus and taking the lead in identifying areas for large-scale employment creation and developing a policy package to facilitate such employment creation. It is to do so through enhancing social equity and competitiveness, introducing changes that will mobilize domestic investment, and stimulating social dialogue to unite all stakeholders behind such growth in employment opportunities.

The New Growth Path document envisages the creation of five million new jobs by 2020. Its vision is that by that time more than half of all working-age South Africans would be in paid employment and unemployment would have fallen to approximately 15 per cent. The document is explicit from the first paragraph that the aim is to create decent work that will contribute to reducing inequality and defeating poverty.

The document was not put forward by Government as a complete and detailed policy, but instead provides a framework in which more detailed plans can be developed. The framework is structured around five job drivers, namely infrastructure for employment and development, improving job creation in economic sectors, seizing the potential of new economies, investing in social capital, and spatial development.

The Industrial Policy Action Plan which covers the period 2010-11 to 2012-13, contains more detail about proposed actions from the perspective of industrial development. The five core objectives of the plan are to facilitate diversification beyond traditional commodities and non-tradable services; to intensify the industrialization process and move towards a knowledge economy; to promote a labour-absorbing industrialization path; to promote a broader-based path that increases participation of the marginalized and disadvantaged; and to contribute to industrial development on the African continent. The intention is to create a minimum of 43,000 direct jobs between 2011 and 2014, along with 86,000 indirect jobs.

Phase II of the Expanded Public Works Programme commenced in April 2009, and builds on the experience of the first five years. The programme aims to deliver 4.5 million work opportunities over five years, targeting unemployed unskilled or low-skilled individuals. In 2009-10, the programme provided 625,859 work opportunities, more than the target of

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500,000 for that year.[7] The second phase of the programme provides for performance-based incentive grants to be paid to provincial departments and local governments that deliver 35 per cent or more of their targets. A further innovation for the second phase was the introduction of a minimum level for the stipend, at R60 per day. The programme is unusual, from an international perspective, in its inclusion of social sector work, although the bulk of job opportunities is found in the infrastructure sector. The social sector work initially focused on early childhood development and home- and community-based care, but has since expanded into other services. The programme includes a national youth service component.

The Code of Good Practice for employment and conditions of work for Special Public Works Programmes issued in 2002 in terms of the Basic Conditions of Employment Act stipulates that such programmes, which include the Expanded Public Works Programme, should aim to ensure that 60 per cent of beneficiaries are women, 20 per cent are youth aged 18 to 25 years, and 2 per cent are people with disabilities. The Code further states that programmes should seek to ensure that these targets are achieved in all occupational categories. However, subsequent official documents, including documents issued by the lead Department of Public Works, specify different targets. This mis- or re-specification seems to have happened in the absence of any formal process, and without the required consultation with NEDLAC. For example, the 60 per cent target for women slips to 40 per cent or 45 per cent, depending on the source.[8]

Legal framework Indicator 2. Government commitment to full employment

Law, policy or institutions: The New Growth Path of 2010 commits to the creation of 5 million additional job opportunities by 2020 and to bringing the unemployment rate down to 15 per cent by the same date. The document was drawn up under the leadership of the Minister of Economic Development in the Presidency, and the initiative is being driven from within the Economic Cluster of Cabinet.

The Industrial Policy Action Plan 2010-11 to 2012-13, developed in line with the National Industrial Policy Framework of 2007, aims to attract R115 billion investment pipeline projects, creating at least 43,000 direct and 86,000 indirect jobs between 2011 and 2014. The policy was drawn up under the leadership of the Ministry of Trade and Industry within the Economic Cluster of Cabinet.

The Expanded Public Works Programme was introduced in 2004 as a way of creating short-term, unskilled employment with training for the unemployed at the same time as creating assets and delivering services. The Programme was extended into a second five-year phase in 2009, during which time it aims to provide 4.5 million job opportunities.

In his budget speech of February 2011, the Minister of Finance announced the creation of a jobs fund for which R9 billion was allocated for the three-year medium-term expenditure framework period.

Evidence of implementation effectiveness: No information provided by the ILO supervisory bodies.

Ratification of ILO Conventions: South Africa has not ratified the Employment Convention, 1964 (No. 122).

Sources:
National legislation; NATLEX database
http://www.ilo.org/dyn/natlex/country_profiles.basic?p_lang=en&p_country=ZAF).

Employment opportunities in South Africa, like other countries, have been affected by the global economic and financial crisis. This is clearly seen in many of the employment

[7] National Treasury: *2011 Estimates of National Expenditure* (Pretoria, 2011), p. 110.

[8] D. Budlender: *Towards minimum wages and employment conditions for the Expanded Public Works Programme Phase II* (Shisaka Development Management Services, Johannesburg, 2009).

opportunity-related indicators. These indicators show a generally worsening situation in terms of employment despite the development of these key employment-related policies.

The employment-to-population ratio was more or less constant at just over 44 per cent for the period 2006 through 2008, but subsequently fell quite sharply to 40.8 per cent in 2010.[9] The ratio is markedly lower for women than men, at 34.4 per cent for women and 47.7 per cent for men in 2010. There is an even greater difference between rural and urban areas, with the ratio at only 26.2 per cent in rural areas as against 48.5 per cent in urban areas also in 2010.

Not shown among the standard indicators are the stark differences in employment rates across population groups. These ranged from 36.3 per cent among Africans in the second quarter of 2011 to 64.9 per cent among whites. Coloured and Indian/Asian rates were in between these two groups. Provincially, the range was from 28 per cent in Limpopo to nearly twice as high, at 52.6 per cent, in Western Cape.[10]

The impact of the global crisis is also seen in the unemployment rate, which was slightly above 22 per cent in the period 2006 through 2008, but increased to 24.9 per cent in 2010, i.e. ten percentage points higher than the New Growth Path goal. Again, women are worse off than men, with a rate of 27.5 per cent as against the male 22.8 per cent. Here, the difference between rural and urban is smaller than the gender gap because of the large number of rural people recorded as not economically active and thus not included in the calculation of the unemployment rate.

The unemployment rate would be even higher than this if discouraged workers – those who have given up looking for work – were included. This is seen in the expanded unemployment rates, which stood at 35.8 per cent overall in 2010 – 31.5 per cent for men and 40.7 per cent for women. The narrower rate 'under-counts' the full extent of unemployment for women more seriously than it does for men. In the second quarter of 2011, the effect of including discouraged workers was a 9.4 percentage point increase for women (from 28.7 per cent to 38.1 per cent respectively), compared to a 7.2 percentage point increase for men (from 23.2 per cent to 30.4 per cent).

There are also again stark differences by race group when we consider unemployment. In the second quarter of 2011, the (narrowly defined) unemployment rate for Africans stood at 30 per cent, as against 23.1 per cent for coloured people, 10.8 per cent for Indian/Asian and 5 per cent for white people.

The percentage of youth aged 15 to 24 years who are neither in education nor in employment again shows the impact of the crisis, and reached 33.9 per cent in 2010. Among young women, the rate was 37.9 per cent, compared to 29.9 per cent for young men. This difference exists despite the fact that South Africa currently has more young women than young men in education even at the tertiary level. There is no clear trend over time in terms of the percentage of youth of this age in education and not in employment.

[9] Most of the labour market-related indicators in this report are derived from data from the Labour Force Survey (LFS) and Quarterly Labour Force Survey (QLFS). For the LFS March and September data were pooled and an average derived for the year. For the QLFS all four quarters were pooled and an average derived. However, where a variable was not collected in all four quarters (for example, earnings in 2009 and union membership and collective bargaining in 2010) the last quarter was used.

[10] Statistics South Africa, 2011: Op.cit.

For older youth, those aged 25 to 34 years, the percentage neither in education nor employment is markedly higher than for their younger peers, at 44.1 per cent overall – 34.9 per cent for men and 52.7 per cent (over half) for women. Unlike for younger youth, the percentage of older youth in this situation fell during the period 2006 through 2010, although it remained much higher than that for younger youth throughout the period. The higher rate for this group can be explained by the fact that far fewer youth of this age will still be studying.

Unlike the trend for the percentage of youth aged 15 to 24 neither in education nor in employment, there is a clear – and steep – increase in the unemployment rate for the period. This suggests that education could be taking up some of the slack resulting from limited jobs opportunities. While the gender difference in unemployment rates for the full economically active age group was 4.7 percentage points in 2010, among youth it was 7.4 percentage points. This again is counter-intuitive given that young women, overall, have higher educational achievement than young men.

A similar trend of increasing unemployment is found among older youth, although at a lower level than for younger youth, at 28.9 per cent overall in 2010. The lower rate could, in part, reflect the difficulty that new entrants to the labour market, in particular, experience in finding jobs. The increase for the older age group as a whole is 2.9 percentage points between 2006 and 2010. However the increase is larger for young men – at 4.3 percentage points – than for young women (1.5 percentage points).

The expanded unemployment rate for the younger group was a very high 64.9 per cent in 2010 – suggesting that nearly two-thirds of youth who might want work could not find it. Again, the rate for the older group is noticeably lower, but still shows that well above a third of young people of this age (38.9 per cent) who want it do not have work.

The youth unemployment crisis sparked discussion of a youth wage subsidy, and this policy option was proposed in the February 2011 budget speech of the Minister of Finance. There are, however, concerns that such a subsidy could undermine workers' hard-won rights and also result in replacement of existing workers by 'cheaper' youth. The proposal is currently under discussion in the National Economic Development and Labour Council.

Unemployment rates vary markedly by educational level, but not always in the expected direction. The unemployment rate among the small grouping with no formal education stood at 'only' 16.5 per cent in 2010, higher only than the rate for those with tertiary education. The unemployment rate was highest for those with incomplete secondary schooling, at 31.5 per cent. These unexpected patterns can be partly explained by the rapid increase in access to schooling over the last few decades. As a result, youth are far more likely than their elders to have some secondary education. While completion of secondary schooling sees some decrease in the unemployment rate, it is only with tertiary education that there is a substantial decrease.

The country's Unemployment Insurance Act, which dates back to the pre-apartheid era, provides some protection for formal sector employees who become unemployed. By end March 2010, the number of employees registered with the Unemployment Insurance Fund was 1,280,950, encompassing a total of 7,757,241 registered employees.[11] In 2009-10 the

[11] National Treasury: *2011 Estimates of National Expenditure* (Pretoria, 2011), pp. 383-4.

Fund paid R5.7 billion in claims to 779,604 beneficiaries, of which R4.5 billion took the form of unemployment benefits paid to 628,595 claimants.[12] The Act is redistributive to the extent that the contributions are set at a standard percentage of earnings for all employees, while the benefits paid are set at a higher percentage for low earners than for higher earners. Further, there is a ceiling to the benefit. The Act is also relatively unusual from an international angle in that it covers domestic workers and seasonal workers. This is important from a gender perspective given that the overwhelming majority of domestic workers are women, while women predominate among casual agricultural workers.

The weaknesses of the Act include that it does not reach beyond the formal sector (or to formal sector workers who are not registered by their employers), and the period for which benefits are received is limited. Further, benefits are not available for the large number of people – among whom youth predominate – who have never been employed. The limitations of coverage, combined with increased efficiencies in recent years have allowed the Fund to accumulate a substantial surplus, despite the growing unemployment rate. This surplus has given rise to proposals from the Fund for the benefit period to be extended. The surplus has also been used as one of the sources of funds for the Training Layoff Scheme described in Chapter 6.

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[12] Op.cit., p. 383.

Legal Framework Indicator 3. Unemployment Insurance

Law, policy or institutions: The Unemployment Insurance Act of 2001 establishes the Unemployment Insurance Fund, while the Unemployment Insurance Contributions Act of 2002 provides for compulsory and equal contributions from all employees and their employers to the Fund. These two acts together provide for short-term benefits equal to a portion of earnings for those who have contributed in respect of unemployment, maternity and adoption leave and illness. Since 2003, the Unemployment Insurance Act has covered all employees, including domestic workers and seasonal workers. Excluded categories are public servants, workers with registered learnerships, foreigners working on contract, and employees employed for less than 24 hours per month by a given employer.

Qualifying Conditions: For unemployment benefits, that the contract of employment was terminated or a fixed-term contract came to an end, that the person was dismissed in terms of section 186 of the Labour Relations Act, that the employer was declared insolvent, or – in the case of a domestic worker – that the employer died.

Benefits: A contributor is entitled to one day's benefit for every completed six days of employment as a contributor, up to a maximum of 238 days benefit over the four years preceding the date of application. Maternity benefits paid are not included when calculating benefits already paid during the four years. The percentage of previous earnings paid is in inverse proportion to the level of earnings, with a maximum percentage of 60 per cent for the lowest paid employees.

Financing: A tax equal to 2 per cent of the employee's earnings is paid, with half paid by the employer and the other half deducted by the employer from the employee's earnings. Additional funds are secured from interest on investments.

Evidence of implementation effectiveness: No information provided by the ILO supervisory bodies.

Coverage of workers in law: 9.3 million.[13]

Coverage of workers in practice: By end March 2010, the number of registered employees was 1,280,950, encompassing a total of 7,757,241 registered employees. In 2009-10, payments were made to 628,595 claimants in respect of unemployment benefits, 24,720 claimants for illness benefits, 104,529 claimants for maternity and adoption benefits, and 21,760 claimants for dependant benefits.[14]

Ratification of ILO Conventions: South Africa has not ratified the Social Security (Minimum Standards) Convention, 1952 (No. 102), Part IV, and the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168).

Sources:
National legislation; NATLEX database (http://www.ilo.org/dyn/natlex/country_profiles.basic?p_lang=en&p_country=ZAF); National Treasury, 2011, pp. 383-4.

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Informal employment is defined statistically for the purposes of this report to include all persons in the informal sector and persons helping unpaid in their family business. It also includes employees in the formal sector or in private households who are not entitled to basic benefits from their employer such as a pension, medical aid and who also do not have a written contract of employment

A little less than a third (30.7 per cent) of employed people was estimated to be in informal employment in 2010. The percentage of employed people in informal employment fell during the period. This could illustrate the fact that those in precarious situations associated with informal employment are more likely to lose their jobs when the economic situation deteriorates. On this indicator, as on others, women tend to be worse off than men, and those in rural areas are again markedly worse off than their urban counterparts. However, the

[13] Non-public servant employees estimate from QLFS 2010, Qtr 4.
[14] National Treasury: Op.cit., pp. 383-4.

percentage in informal employment decreased for all the sub-groups examined during the period.

South Africa is relatively unusual among developing countries in the low levels of self-employment. This is reflected in the fact that throughout the period employees accounted for 80 per cent or more of employed people. Indeed, this percentage increased over the period, to reach 84.4 per cent in 2010. A further 5.4 per cent of employed people were recorded as employers, with only 9.3 per cent recorded as self-employed or own-account workers with no employees. The fact that the percentage of employees increased over time while the percentage of self-employed fell suggests that those affected by the economic crisis have not turned to self-employment as an alternative option in substantial numbers. The pattern could also reflect the growing relative importance of public employment compared to private sector employment.

Own-account workers and unpaid (or contributing) family workers accounted for a larger proportion of employed women than employed men throughout the period 2006 to 2010, but the gender difference narrowed markedly over time. By 2010, 11.7 per cent of employed women were recorded as own-account compared to 9.0 per cent of employed men. The gender difference in this indicator could be partly explained by the greater number of women in rural than urban areas, in that in 2010 the indicators stood at 16.5 per cent for women and men combined in rural areas, as compared to 8.4 per cent in urban areas.

Table 2. Employment opportunities

Decent Work Indicator[15]	2006	2007	2008	2009	2010
Employment-to-population ratio (15-64 years), in %	**44.9**	**44.4**	**44.8**	**42.7**	**40.8**
Male	52.8	52.2	52.7	49.7	47.7
Female	37.8	37.4	37.4	36.2	34.4
Urban areas	..	..	52.5	50.4	48.5
Rural areas	..	..	29.9	28.1	26.2
Unemployment rate, in %	**22.6**	**22.3**	**22.8**	**23.9**	**24.9**
Male	18.6	18.8	19.8	22.0	22.8
Female	27.2	26.4	26.4	26.2	27.5
Urban areas	..	..	21.2	22.8	24.0
Rural areas	..	..	27.9	27.3	27.9
Expanded unemployment rate, in %	**35.0**	**35.3**	**30.2**	**32.9**	**35.8**
Male	27.8	28.5	25.2	28.9	31.5
Female	42.3	42.2	35.8	37.4	40.7
Urban areas	..	..	25.6	28.0	30.3
Rural areas	..	..	42.2	45.5	49.7
Youth not in education and not in employment (15-24 years), in %	**33.5**	**31.0**	**32.6**	**32.5**	**33.9**
Male	28.2	25.7	28.2	28.6	29.9
Female	38.6	36.2	37.0	36.4	37.9

[15] Most of the employment-related indicators are derived from the Labour Force Surveys (prior to 2008) and the Quarterly Labour Force Surveys (2008-2010). For the former set of surveys, the data from the March and September waves were generally pooled and averaged. For the latter set of surveys, the data from all four quarters were pooled and averaged. Pooling and averaging was not done where a particular variable was not collected in all four quarters, as was the case for earnings in 2009 and union membership and collective bargaining in 2010.

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Urban areas	..	..	..	..	..
Rural areas	..	..	..	..	..
Youth not in education and not in employment (25-34 years), in %	**48.6**	**46.4**	**45.5**	**43.0**	**44.1**
Male	36.6	33.9	35.1	32.8	34.9
Female	59.6	57.9	55.0	52.5	52.7
Urban areas	..	..	..	..	..
Rural areas	..	..	..	..	..
Youth not in education and not in employment (15-34 years), in %	**40.3**	**38.0**	**38.4**	**37.2**	**38.5**
Male	31.9	29.3	31.2	30.4	32.1
Female	48.3	46.2	45.3	43.8	44.7
Urban areas	..	..	..	..	..
Rural areas	..	..	..	..	..
Informal employment (proxy), in %	**34.0**	**36.1**	**32.9**	**30.5**	**30.7**
Male	31.2	32.9	30.4	28.1	28.8
Female	37.6	40.1	36.1	33.5	33.2
Urban areas	..	..	27.3	25.4	25.9
Rural areas	..	..	51.8	47.9	47.8
Youth unemployment rate (15-24 years), in %	**46.7**	**46.5**	**45.5**	**48.1**	**50.5**
Male	41.5	41.1	41.4	44.5	47.2
Female	52.3	52.8	50.5	52.3	54.6
Urban areas	..	..	44.0	46.6	49.6
Rural areas	..	..	49.7	52.1	53.2
Youth unemployment rate (25-34 years), in %	**26.0**	**26.0**	**26.0**	**27.9**	**28.9**
Male	20.7	20.9	21.2	24.7	25.0
Female	32.0	32.0	31.7	31.7	33.5
Urban areas	..	..	23.6	26.5	27.6
Rural areas	..	..	33.4	32.5	32.9
Youth unemployment rate (15-34 years), in %	**32.6**	**32.5**	**32.3**	**34.1**	**35.4**
Male	27.2	27.4	27.7	30.9	31.8
Female	38.7	38.6	37.7	38.1	39.8
Urban areas	..	..	30.0	32.5	34.1
Rural areas	..	..	39.0	39.1	39.5
Youth expanded unemployment rate (15-24 years), in %	**62.1**	**62.6**	**55.6**	**60.3**	**64.9**
Male	55.7	55.5	50.3	56.0	60.9
Female	68.2	69.7	61.4	65.1	69.4
Urban areas			50.3	54.1	58.4
Rural areas			66.5	71.9	76.2
Youth expanded unemployment rate (25-34 years), in %	**38.1**	**38.5**	**32.9**	**36.4**	**38.9**
Male	29.3	29.9	25.8	30.7	32.7
Female	47.1	47.2	40.6	42.5	45.6
Urban areas	..	..	27.8	31.4	33.3
Rural areas	..	..	46.4	49.3	52.7
Youth expanded unemployment rate (15-34 years), in %	**46.7**	**47.1**	**40.7**	**44.5**	**47.8**
Male	38.5	39.0	34.3	39.4	42.4
Female	54.7	55.2	47.8	50.2	53.7
Urban areas	..	..	35.2	38.6	41.3
Rural areas	..	..	54.2	58.3	62.1

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Unemployment rate by level of education, in %	**22.6**	**22.3**	**22.8**	**23.9**	**24.9**
None	16.3	13.2	14.6	16.4	16.5
Less than primary completed	20.3	20.4	21.6	22.3	24.3
Primary completed	23.5	24.2	23.9	23.2	24.1
Secondary not completed	28.3	28.9	29.2	30.5	31.5
Secondary completed	23.7	22.6	24.1	25.5	26.6
Tertiary	8.0	7.2	7.7	8.4	9.2
Other	13.9	9.8	15.4	16.8	16.5
Employment by status in employment, in %	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**
Employees	80.0	82.0	84.3	84.6	84.4
Employers	7.2	6.8	5.6	5.3	5.4
Self employed	12.1	10.8	9.2	9.2	9.3
Unpaid family worker	0.6	0.4	0.9	0.9	0.8
Other workers not classified	0.0	0.0			
Proportion of own-account workers and contributing family workers in total employment, in %	**12.7**	**11.2**	**10.1**	**10.0**	**10.2**
Male	9.6	8.4	8.1	8.6	9.0
Female	16.7	14.8	12.8	11.9	11.7
Urban areas	..	..	8.2	8.3	8.4
Rural areas	..	..	16.6	15.8	16.5

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3. Adequate earnings and productive work

South Africa does not have a national minimum wage. It is thus not possible to calculate some of the standard statistical indicators for this area. Indicators can, however, be calculated in relation to median earnings. This is done in respect of both monthly earnings and hourly earnings.

In 2010, just over a third (34.0 per cent) of non-agricultural workers earned less than two-thirds of median monthly earnings. The percentage was almost identical in respect of hourly earnings, at 34.2 per cent. Low wages were much more common for female workers, at 43 per cent, than for male workers, at 27 percent when using the monthly measure, and 30 per cent and 40 per cent respectively when looking at hourly earnings. The situation was almost twice as likely for rural workers than for urban workers.

Earnings less than two-thirds of the median were more common among self-employed workers (37.6 percent monthly) than among employees (33.4 percent monthly). Across both categories of status in employment, low earnings were more common for women than for men, and for rural than for urban.

Table 3. Adequate earnings and productive work – Low pay rate (below 2/3 of median monthly and hourly earnings)

Decent Work Indicator	2006	2007	2008	2009	2010
Low pay rate (proportion of workers with monthly earnings below 2/3 of median monthly earnings, excl. agriculture), in %[2]					
All workers	..	..	..	**32.5**	**34.0**
Male	..	..	..	25.7	27.0
Female	..	..	..	41.1	43.0
Urban areas	..	..	..	27.0	28.7
Rural areas	..	..	..	54.8	55.8
Workers predominantly in paid employment	..	..	..	**31.4**	**33.4**
Male	..	..	..	25.0	26.8
Female	..	..	..	39.3	41.6
Urban areas	..	..	..	26.5	28.6
Rural areas	..	..	..	53.7	55.2
Workers predominantly in self-employment	..	..	..	**38.6**	**37.6**
Male	..	..	..	29.4	28.5
Female	..	..	..	52.9	51.6
Urban areas	..	..	..	30.3	29.1
Rural areas	..	..	..	59.0	58.1
Low pay rate (proportion of workers with hourly earnings below 2/3 of median hourly earnings, excl. agriculture), in %[2]					
All workers	..	..	..	**36.3**	**34.2**
Male	..	..	..	32.1	30.0
Female	..	..	..	41.6	39.8
Urban areas	..	..	..	29.1	27.3

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Rural areas	..	..	..	61.2	58.7
Workers predominantly in paid employment	..	..	..	**35.6**	33.7
Male	..	..	..	32.1	30.0
Female	..	..	..	40.0	38.3
Urban areas	..	..	..	28.7	26.9
Rural areas	..	..	..	61.6	59.6
Workers predominantly in self-employment	..	..	..	**40.3**	**37.4**
Male	..	..	..	32.4	29.7
Female	..	..	..	52.9	49.6
Urban areas	..	..	..	31.9	29.5
Rural areas	..	..	..	59.6	55.3

Reference:

2 Statistics South Africa, 2011.

In nominal terms, average earnings stood at R3,000 per month in 2010, up from R2,686 per month in 2009. The highest average was recorded in mining, and the lowest in agriculture, but with only a small difference between the two. The male average was R3,250 with again a much lower R2,200 for women. The urban average, at R3,466, was more than double the R1,500 average recorded for rural areas.

When earnings are examined separately for the self-employed and employees, both the gender and the urban-rural gaps are greater among the self-employed than among paid employees. Further, in contrast to the pattern found for earnings below two-thirds of the median, average earnings are higher overall for the self-employed than for paid employees. These patterns suggest a higher degree of variation in earnings among the self-employed than among paid employees.

Table 4. Adequate earnings and productive work – Median nominal wages/earnings, by sector

Decent Work Indicator	2006	2007	2008	2009	2010
Average real wages/earnings					
All wages/earnings	..	..	..	**2 686**	**3 000**
Agriculture	..	..	..	1 200	1 300
Mining				3 000	3 033
Industry	..	..	..	2 800	3 000
Services	..	..	..	2 700	3 000
Male	..	..	..	3 033	3 250
Female	..	..	..	2 166	2 200
Male/Female ratio	..	..	..	1.4	1.5
Urban areas	..	..	..	3 200	3 466
Rural areas	..	..	..	1 500	1 500
Urban/Rural ratio	..	..	..	2.1	2.3
Wages/earnings from paid employment	..	..	..	**2 650**	**2 900**
Agriculture	..	..	..	1 200	1 278
Mining				3 000	3 033
Industry	..	..	..	2 816	3 000
Services	..	..	..	2 773	3 000
Male	..	..	..	3 000	3 200
Female	..	..	..	2 253	2 400
Male/Female ratio	..	..	..	1.3	1.3

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Urban areas	..	..	..	3 100	3 300
Rural areas	..	..	..	1 500	1 500
Urban/Rural ratio	..	..	..	2.1	2.2
Wages/earnings from self-employment	..	..	..	**2 800**	**3 033**
Agriculture	..	..	..	6 000	5 833
Mining[16]				3 000	3 033
Industry	..	..	..	2 500	3 000
Services	..	..	..	2 426	3 033
Male	..	..	..	4 000	4 333
Female	..	..	..	1 516	1 820
Male/Female ratio	..	..	..	2.6	2.4
Urban areas	..	..	..	3 640	4 116
Rural areas	..	..	..	1 500	1 516
Urban/Rural ratio	..	..	..	2.4	2.7

As noted above, South Africa does not have a minimum wage. However, minimum wages are set for some sectors considered vulnerable through ministerial and sectoral determinations in terms of the Basic Conditions of Employment Act. The sectors covered by such determinations include agriculture, civil engineering, contract cleaning, domestic work, forestry, hospitality, private security, taxi operators, and the wholesale and retail trade.

The table below lists the minimum hourly wages applicable for each of these sectors as at September 2011. As can be seen, some sectors provide different minima for different areas or for employers with a smaller or larger number of employees. Not shown in the table is that several determinations provide a higher rate for workers with shorter hours, while for the private security sector there is a lower wage (not shown in the table) during the first six months of employment. Overall, the lowest minima are prescribed for domestic, farm and forestry workers, all of which have a minimum less than R7 per hour. The highest minimum is set for civil engineering, at R18.97 per hour. The next highest, contract cleaning, is substantially lower than this, at R12.51 per hour.

Table 5. Minimum hourly wages in sectoral determination as at September 2011

Civil engineering	18.97
Contract cleaning	12.51
Domestic work Area A	7.72
Domestic work Area B	6.44
Farm workers	6.74
Forestry	6.55
Hospitality <11 workers	10.72
Hospitality 11+ workers	11.92
Private security Area 1	10.05
Private security Area 2	9.27
Private security Area 3	8.33
Taxi	11.08
Wholesale/retail Area A	11.07
Wholesale/retail Area B	9.67

[16] Number of observations too small to give a reliable estimate.

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The determinations by no means cover all employees in South Africa. Nevertheless, Godfrey et al. estimate that the nine sectoral determinations in force mid-decade covered approximately 3.4 million employees – or 36 per cent of the 9.5 million employees.[17] Together with the 25 per cent estimated to be covered by bargaining council agreements, which also determine minimum wages in sectors where the parties are considered sufficiently representative, a significant share of workers are covered by minimum wage regulation.

As seen in the table, the (unweighted) minimum hourly rate for unskilled workers specified in the more than 30 bargaining council agreements for which information was available in September 2011 was in the same range as those specified for many of the sectoral determinations. However, while most of the sectoral determinations do not specify minima for higher-paid workers, this is done in most bargaining council agreements. The Furniture Free State agreement specifies the lowest hourly wage (R6.99 per hour) while the highest is Metal and Engineering, at R23.85 per hour.

Table 6. Minimum wages specified in bargaining councils, September 2011

	Hourly	Weekly	Monthly
Unskilled	11.70	494.49	1932.05
Semi-skilled	16.52	675.56	2608.34
Skilled	23.42	880.82	3654.85

Nevertheless, the bargaining council agreements and sectoral determinations combined leave some employees uncovered by minimum wage regulation, other than what can be negotiated on a company-by-company or plant-by-plant basis.

While weaknesses in the labour inspectorate contribute to poor enforcement of the determinations, research has revealed a marked improvement in earnings of domestic workers after the determination for that sector came into effect.[18] Nevertheless, a substantial number of domestic workers are still not paid the specified minimum.

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[17] S. Godfrey, J. Maree and J. Theron: Op. cit.

[18] T. Hertz: *The effect of minimum wages on the employment and earnings of South Africa's domestic service workers*, Development Policy Research Unit Working Paper No 05/99 (University of Cape Town, Cape Town, 2005) .

Legal Framework Indicator 4. Statutory minimum wage

Law, policy or institutions: The Basic Conditions of Employment Act provides for the setting of minimum wages through sectoral and ministerial determinations. The Minister of Labour issues these determinations after receiving advice from the Employment Conditions Commission. The Commission is made up of three independent labour experts appointed by the Minister of Labour, and two members each (one member and one alternative) for business and labour nominated by NEDLAC. The Labour Relations Act provides for the registration of bargaining councils which can draw up agreements which include minimum wages for the relevant sector.

Minimum wage levels: In September 2011, the minimum monthly wages prescribed by determinations ranged from R6.44 per hour for domestic workers in Area B to R18.97 per hour for civil engineering.

Evidence of implementation effectiveness: No information provided by the ILO supervisory bodies.

Coverage of workers in law: For determinations: 3.4 million employees. [19]

Coverage of workers in practice: The determinations are not well enforced due, among others, to limitations of the labour inspectorate.

Ratification of ILO Conventions: South Africa has not ratified the Minimum Wage Fixing Convention, 1970 (No. 131), or the Minimum Wage-Fixing Machinery, (Agriculture) Convention, 1951 (No. 99). South Africa ratified the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) on 28 December 1932.

Sources:
National legislation; NATLEX database (http://www.ilo.org/dyn/natlex/country_profiles.basic?p_lang=en&p_country=ZAF); Godfrey, Maree and Theron, 2006, Development Policy Research Unit Working Paper 06/106. See also TRAVAIL legal database (http://www.ilo.org/dyn/travail/travmain.sectionReport1?p_lang=en&p_countries=ZA&p_sc_id=1&p_year=2009&p_structure=1).

In addition to the sectoral determinations, there are several ministerial determinations that specify minimum rates of pay. These include ministerial determinations for the Expanded Public Works Programme and for the learnerships which are central to South Africa's skills development strategy. The minimum for the Expanded Public Works Programme is set at R60 per day, while the lowest minimum for learnership is set at R204.47 per week, or 35 per cent of the ordinary wage, whichever is higher.

The sectoral determinations are gender-sensitive to the extent that they include sectors with substantial numbers of low-paid women workers, such as the domestic work sectors, farm workers, hospitality, contract cleaning and wholesale and retail trade. Nevertheless, as already seen above, analysis of wages and salary data relating to the labour force as a whole reveals that the average female employee continues to earn less than the average male employee. Further earnings gaps are found between employees in different race groups. These patterns are seen clearly in the table below, which records median earnings of employees recorded in and averaged across the Quarterly Labour Force surveys from the fourth quarter of 2009 through to the third quarter of 2010.[20]

[19] S. Godfrey, J. Maree and J. Theron: Op. cit.

[20] Statistics South Africa: *Monthly earnings of South Africans, 2010*, Statistical Release P021122010 (Pretoria, 2010).

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Table 7. Median earnings of employees by gender and population group

All employees	2,800
Male	3,033
Female	2,340
African	2,167
Coloured	2,652
Indian	6,000
White	9,500

Overall, a woman employee's earnings were likely to be only 77 per cent those of men. This pattern is found across all occupations other than domestic work, where there are very few men employed. Given that the occupational classification is based on skill levels, this finding suggests that earnings discrimination does exist on the basis of gender in South Africa. This mirrors other research that finds such disparities after controlling for factors such as occupation and education.[21] Such findings highlight the need for employment equity legislation (discussed below), including the need for such legislation to specify equal remuneration for work of equal value.

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[21] D. Shepherd: *Post-apartheid trends in gender discrimination in South Africa: Analysis through decomposition techniques*, Stellenbosch Economic Working Paper No 6 (University of Stellenbosch, Stellenbosch, 2008);
D. Casale and D. Posel: "Unions and the gender wage gap in South Africa", ERSA Working Paper no 113 (Economic Research Southern Africa, Cape Town, 2009).

4. Decent hours

The Basic Conditions of Employment Act sets the maximum number of ordinary hours at 45 per week, and the maximum number of overtime hours at ten per week. The clause is not applicable to managers and those earning more than R115,572 per year, or to sales staff who travel and regulate their own working hours. The overtime rate is set at one-and-a-half times the normal hourly rate. Higher rates are specified for work on Sundays (except for those for whom this is an ordinary workday) and on public holidays.

Legal Framework Indicator 5. Maximum hours of work

Law, policy or institutions: The Basic Conditions of Employment Act and collective agreements. Overtime must be remunerated at one–and-a-half times the basic wage. The Minister may prescribe different working hours, not exceeding the limits set by the Act, on grounds of health and safety. Work time on Sundays must be remunerated at double the employee's wage for each hour worked; and one and a half of the employee's wage if the employee usually works on Sundays. The Act defines ordinary hours of work as the hours of work and overtime work as the time that an employee works during a day or a week in excess of ordinary hours of work. The provisions of the Act in respect of working hours do not apply to senior management, sales staff who travel and regulate their own working hours, workers who work less than 24 hours in a month, workers earning above R115,572 per year, and workers engaged in emergency work.

Number of hours allowed: 45 hours per week, nine hours per day, maximum ten hours overtime. A collective agreement may allow for working hours to be averaged over a period of up to four months, but in such cases the average of ordinary hours may not exceed 45 and the average of overtime may not exceed five hours per week.

Evidence of implementation effectiveness: No information provided by the ILO supervisory bodies.

Coverage of workers in law: 10.4 million employees (excluding managers).[22]

Coverage of workers in practice: The extent of compliance is not known, but the statistical indicators suggest that there is substantial contravention of the law.

Ratification of ILO Conventions: South Africa has ratified neither the Hours of Work (Industry) Convention, 1919 (No. 1) nor the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30).

Sources:
National legislation; NATLEX database (http://www.ilo.org/dyn/natlex/country_profiles.basic?p_lang=en&p_country=ZAF); Godfrey, Maree and Theron, 2006, op.cit. See also TRAVAIL Legal Database on working time (http://www.ilo.org/dyn/travail/travmain.sectionReport1?p_lang=en&p_countries=ZA&p_sc_id=1001&p_year=2009&p_structure=2).

The percentage of workers working more than 48 hours per week dropped sharply after 2008, to the 2010 rates of 24.1 per cent. The BCEA sets ordinary hours of work at 45 hours per week, and a week of 48 hours thus suggests regular overtime work. The sudden drop could therefore be the result of the global economic crisis, with reduced demand resulting in less need for overtime.

Throughout the period, male workers were markedly more likely than female workers to work excessive hours. This could reflect a larger proportion of women workers in part-time work as well as lesser ability of women to work overtime because of domestic demands. For

[22] S. Godfrey, J. Maree and J. Theron: Op. cit.

the years for which data are available, rural workers were markedly more likely than urban to work overtime. This could reflect both the need for longer hours in agriculture, and perhaps lesser adherence to legal restrictions in rural areas.

Time-related under-employment appears to have increased somewhat over the period, but the trend is less clear than for some other indicators. The male rate was markedly lower than the female rate throughout the period, which suggests that many women were not working part-time out of choice. While, as seen above, rural workers were more likely than urban workers to work excessive hours, they were also more likely to work fewer hours than they would have liked. The measure probably undercounts this phenomenon in rural areas as the question would not capture those doing seasonal work.

The two indicators together resulted in 71.7 per cent of workers having hours that were neither excessive nor less than they would have liked in 2010. The indicator shows a clear increase from 2008 onwards, and this pattern is found for both women and men, and in both urban and rural areas.

Table 8. Decent hours

Decent Work Indicator	2006	2007	2008	2009	2010
Excessive hours (workers with more than 48 hours per week), in %	**28.9**	**27.2**	**28.0**	**25.5**	**24.1**
Male	32.4	31.1	32.0	29.3	27.9
Female	24.5	22.2	22.7	20.5	19.1
Urban areas	..	..	25.1	22.5	21.1
Rural areas	..	..	37.9	35.8	34.6
Time-related underemployment rate, in %	**3.5**	**2.8**	**4.5**	**4.7**	**4.2**
Male	2.6	2.1	3.1	3.1	2.8
Female	4.6	3.8	6.3	6.8	5.9
Urban areas	..	..	4.0	4.3	3.7
Rural areas	..	..	6.1	6.3	5.7
Rate of workers with decent hours, in %	67.6	70.0	67.5	69.9	71.7
Male	64.9	66.8	64.8	67.7	69.3
Female	71.0	74.0	71.0	72.8	75.0
Urban areas	..	..	70.9	73.4	75.2
Rural areas	..	..	56.0	58.1	59.7

In addition to specifying the number of hours to be worked per day and per week, the Basic Conditions of Employment Act provides for a meal break after five hours of work and a rest period of at least 24 uninterrupted hours per week. It also provides for annual leave of a minimum of 21 consecutive days per year on full pay. As with other clauses, collective bargaining agreements may set higher levels of protection. For example, the public service agreement – which covers government employees in the national and provincial spheres – allows for 22 work days of paid annual leave.

While the provision for unpaid leave might seem relatively generous, survey data suggest that this benefit is not available for many workers who should be covered. Thus, for example, 64 per cent of employees covered in the Quarterly Labour Force Survey of the fourth quarter of 2010 were said not to have this entitlement.

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Legal Framework Indicator 6. Paid annual leave

Law, policy or institutions: The Basic Conditions of Employment Act provides for a minimum of 21 consecutive days of annual leave each year on full pay for employees covered by the Act.

Qualifying conditions: The provisions in respect of annual leave apply to all employees covered by the Act.

Levels of leave: Employees are entitled to 21 consecutive days of paid leave, or one day/hour for every 17 days/hours worked.

Evidence of implementation effectiveness: No information provided by the ILO supervisory bodies.

Coverage of workers in law: 11.1 million employees in 4th quarter 2010.

Coverage of workers in practice: Approximately 64 per cent of employees who should be entitled to paid leave are reported to get such leave, while 35 per cent are reported not to have this entitlement.[23]

Ratification of ILO Conventions: South Africa has ratified neither the Holidays with Pay Convention (Revised), 1970 (No. 132), the Holidays with Pay Convention, 1936 (No. 52) nor the Holidays with Pay (Agriculture) Convention, 1952 (No. 101).

Sources:

National legislation; NATLEX database (http://www.ilo.org/dyn/natlex/country_profiles.basic?p_lang=en&p_country=ZAF); Calculated from raw data of Quarterly Labour Force Survey 2010, p.4. Whether the person was entitled was not known in the remaining 1 per cent of cases. See also Travail Legal Database on working time (http://www.ilo.org/dyn/travail/travmain.sectionReport1?p_lang=en&p_countries=ZA&p_sc_id=1001&p_year=2009&p_structure=2).

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[23] Calculated from raw data of Quarterly Labour Force Survey 2010, p.4. Whether the person was entitled was not known in the remaining 1 per cent of cases.

5. Combining work, family and personal life

Unfortunately, the available national survey instruments do not allow estimation of most of the standard decent work statistical indicators relative to combining work, family and personal life. Nevertheless, some quantitative indicators are available from the Time Use Survey conducted by Statistics South Africa in 2000, and further similar indicators should be available when analysis of the Time Use Survey conducted in 2010 has been completed.

Analysis of the 2000 Time Use data reveals that South African women aged 15 years and above spent an average of 246 minutes of the 1,440 minutes in a day on unpaid care work, while men spent an average of 89 minutes. For women these minutes were made up of 94 minutes on household maintenance (housework), 35 minutes on care of persons in the household (mainly childcare), and 3 minutes of unpaid care for people from other households. For men the comparable time spent was 70, 7 and 4 minutes respectively.

The gender gap in respect of care of persons is larger for South African than for the six other countries (Argentina, India, Japan, South Korea, Nicaragua and Tanzania) covered in an international study coordinated by the United Nations Research Institute for Social Development.[24] This pattern is partly explained by the low rates of marriage in South Africa and high rates of childbearing and rearing outside of marriage. Women living in households with their own children aged less than 18 years spent an average of more than an hour (64 minutes) on childcare, compared to the six minutes spent by men in a similar situation. Indeed, women who did not have children younger than 18 years old spent nine minutes on this task – more than men living with their own children.[25]

When all work, including unpaid care work, is counted, South African women were left with an average of 1,052 minutes per day for non-work activities, while men had 1,116 minutes available. Overall, women were responsible for 57 per cent of the hours spent on work in the country despite their lower levels of employment.[26]

The Basic Conditions of Employment Act provides some relief for women employees in respect of their reproductive role by providing for a minimum of four consecutive months of maternity leave when they give birth. Leave is also provided where a child is adopted. The Act does not provide for pay during this period, but the Unemployment Insurance Act provides for a proportion of the wage or salary to be paid to employees who have contributed to the Fund. In 2009-10, payments were made to 104,529 claimants for maternity and adoption benefits.[27]

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[24] D. Budlender: "What do Time Use Studies Tell Us about Unpaid Care Work?" in D. Budlender (ed.): *Time use studies and unpaid care work* (Routledge, New York, 2010), pp. 1-45.
[25] D. Budlender, N. Chobokoane and Y.Mpetsheni: *A survey of time use: How South African women and men spend their time*. (Statistics South Africa, Pretoria, 2001), p. 68.
[26] D. Budlender, 2010: Loc.cit.
[27] National Treasury, 2011: Op.cit., pp. 383-4.

Legal Framework Indicator 7. Maternity leave

Law, policy or institutions: The Basic Conditions of Employment Act provides for maternity leave, while the Unemployment Insurance Act provides for pay during maternity leave.

Qualifying conditions: All employees covered by the Act are entitled to maternity leave. Maternity pay in terms of the Unemployment Insurance Act is not available for public servants, foreigners on contract, and workers paid only through commission. A female employee must work for her employer at least 24 hours a month to be eligible to maternity leave.

Benefits (level and duration): Employees are entitled to a minimum of four consecutive months of maternity leave in terms of the BCEA. The Unemployment Insurance Act provides for 17 weeks of maternity pay at a level that varies based on the earnings, with the highest rate being 60 per cent of the ordinary earnings for those earning low amounts.

Financing: Payments are financed primarily through the Unemployment Insurance Fund contributions paid monthly by employers in respect for all employees registered with the Fund. The contribution, of 2 per cent of the wage/salary, is divided equally between the employer and employee.

Evidence of implementation effectiveness: No information provided by the ILO supervisory bodies.

Coverage of workers in law: 4.9 million workers in 4th quarter 2010 (females only)

Coverage of workers in practice: In 2009-10, maternity leave benefits were paid to 104,529 claimants for maternity and adoption benefits.[28]

Ratification of ILO Conventions: South Africa has ratified neither the Maternity Protection Convention, 1919 (No. 3), the Maternity Protection (revised), 1952 (No. 103), the Maternity Protection Convention, 2000 (No. 183) nor the Social Security (Minimum Standards) Convention, 1952 (No. 102).

Sources:
National legislation; NATLEX database (http://www.ilo.org/dyn/natlex/country_profiles.basic?p_lang=en&p_country=ZAF); National Treasury, 2011, pp. 383-4. See also Travail Legal Database on maternity protection (http://www.ilo.org/dyn/travail/travmain.sectionReport1?p_lang=en&p_countries=ZA&p_sc_id=2000&p_year=2009&p_structure=3).

There is no legislative provision targeting specifically parental leave. Instead, employees are expected to use the provision of the Basic Conditions of Employment Act in respect of paid family responsibility leave. Employees are entitled to a total of a minimum of three days per year for this type of leave. While the Act names the birth of a child, and illness or death of a child, including an adopted child, as grounds for claiming such leave, an employee will not be entitled to three days at the time of birth of a child if she has already used her family responsibility leave entitlement for other family occurrences.

[28] National Treasury, 2011: Loc.cit.

Legal Framework Indicator 8. Parental leave

Law, policy or institutions: The Basic Conditions of Employment Act provides for family responsibility leave, which can be used, among others, for paternity leave purposes. The Act specifically refers to the birth of a child, and illness or death of a child, including an adopted child. (Adopting parents are covered in terms of maternity leave and pay.)

Qualifying conditions: Employees who have been employed for at least four months and who work at least four days a week.

Benefits (level and duration): The Act provides for up to three days per year of paid family responsibility leave, irrespective of the reason for the leave request.

Financing: The employer is responsible for payment of the full wage or salary.

Evidence of implementation effectiveness: No information provided by the ILO supervisory bodies

Coverage of workers in law: 11.1 million, although female workers would – except in cases of lesbian couples – apply for maternity rather than parental leave.

Coverage of workers in practice: Unknown.

Ratification of ILO Conventions: South Africa has not ratified the Workers with Family Responsibilities Convention, 1981 (No. 156).

Sources:
National legislation; NATLEX database (http://www.ilo.org/dyn/natlex/country_profiles.basic?p_lang=en&p_country=ZAF); TRAVAIL legal database (http://www.ilo.org/dyn/travail/travmain.sectionReport1?p_lang=en&p_countries=ZA&p_sc_id=2000&p_year=2009&p_structure=3). See also Travail Legal Database on maternity protection (http://www.ilo.org/dyn/travail/travmain.sectionReport1?p_lang=en&p_countries=ZA&p_sc_id=2000&p_year=2009&p_structure=3).

Despite these legislative provisions, which should cover all employees, the Quarterly Labour Force Survey records only just over half (53.2 per cent) of employees as being entitled to maternity or paternity leave. Women workers were somewhat more likely to be reported as having such an entitlement, but even among women less than three-fifths (56.3 per cent) were said to be entitled. Reported levels of entitlement were much lower in rural than urban areas.

Table 9. Combining work and family life

Decent Work Indicator	2006	2007	2008	2009	2010
Proportion of employees entitled to maternity/Paternity leave	..	..	..	..	**53.2**
Male	..	..	..	..	50.8
Female	..	..	..	..	56.3
Urban areas	..	..	..	..	58.1
Rural areas	..	..	..	..	34.4

Trade unions have attempted to win parental rights agreements since the early 1980s. The South African Commercial, Catering and Allied Workers and its predecessors have been particularly active in this area, winning their first such agreement – with OK Bazaars – in 1983. Agreements have also been won in the metal and engineering field, in the chemical industry, and in clothing and textiles.[29]

In addition to parental leave, low-earning workers who are the primary caregivers of children under 17 years of age are entitled to the child support grant. This non-contributory grant, which is paid on a monthly basis, had a value of R260 in September 2011, with an increase to

[29] D. Budlender: *Promoting gender equality through social dialogue in South Africa* (ILO, Geneva, 2010).

R270 per month planned for October 2011. The means test is set at ten times the amount of the grant, and would thus exclude all those earning more than R2, 600 in September 2011.

While the Quarterly Labour Force Survey does not allow many of the standard decent work indicators to be estimated, it does allow for some further indicative findings on the impact of family responsibilities on employment. Thus, for example, in the survey of the fourth quarter of 2010, 15 per cent of the women who did not look for work or try to start a business in the previous four weeks gave their homemaking responsibilities as the reason, while this reason was offered by only 1 per cent of the men. Similarly, 12 per cent of women who had previously worked said that the reason they had left their last job was related to pregnancy, caring for family members or other family and community responsibilities, while these reasons were given by only 1 per cent of men.

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6. Work that should be abolished

The Basic Conditions of Employment Act sets 15 as the minimum possible age for legal employment of a child as an employee. In practice, however, most children of 15 cannot be legally employed, as the Act prohibits the employment of a child who is under the minimum school-leaving age and the South African Schools Act makes schooling compulsory for children between the ages of 7 to 15 or until they have completed grade nine. Most children will complete grade nine at the earliest in the year in which they turn 15.

Work that is prohibited by the BCEA is regarded as child labour because the Act prohibits the work on the basis that it is harmful for children. However, not all children who work should be regarded as involved in child labour. South Africa's Child Labour Programme of Action (CLPA) defines child labour as: "Work by children under 18 which is exploitative, hazardous or otherwise inappropriate for their age, detrimental to their schooling, or social, physical, mental, spiritual or moral development."

There is a ministerial determination in respect of children in performing arts which regulates this work, and stipulates that employers require permission from the Department of Labour for employing children in this type of work, while specifying minimum conditions of work and other forms of protection.

Labour force surveys are not able to capture all forms of child work. In particular, a household survey is unlikely to capture illegal activities or activities about which household members feel shame. A household survey will also not fully capture activities that are mostly done by people who are not living in households, for example those living on the street. These exclusions mean that these surveys will not capture some forms of work that are considered worst forms of child labour (WFCL) under the Worst Forms of Child Labour Convention, 1999 (No.182) which South Africa ratified in 2000. The WFCL Convention includes several pre-defined worst forms, including trafficking of children, commercial sexual exploitation of children and use, procuring or offering of a child by others for illegal activities, including trafficking or production of drugs. None of these WFCL is likely to be captured by labour force surveys. These activities are, however, covered by the multi-sectoral Child Labour Programme of Action, for which the Department of Labour is the lead agency.

South Africa's second Survey of Activities of Young People (SAYP) was conducted as an add-on module to the Quarterly Labour Force Survey of the third quarter of 2010. This module included questions specifically designed to capture those forms of child labour that can be captured by such a survey. The survey was used to generate a set of indicators developed for the purposes of monitoring the Child Labour Programme of Action, with any child who was rated as being vulnerable in respect of any one of the indicators counted as being in child labour.

Overall, 784 000 children were revealed by the SAYP[30] as being vulnerable on at least one of the indicators. This is slightly less than the 847 000 found in this position in the add-on module to the 2006 Labour Force Survey despite the fact that the SAYP covered children 7-17 years while the 2006 survey covered children 10-17 years. Girls were more likely than

[30] Statistics South Africa: *Survey of Activities of Young People, 2010*; Statistical release P0212; Pretoria, 2010.

boys to be affected in 2010. This is different to 2006 when there was little gender difference. As in 2006, children aged 10-15 were the most likely to be in child labour.
Overall[31]:

- 116 000 (93 000 in 2006) children appeared to be doing work prohibited by the BCEA
- 431 000 (383 000 in 2006) appeared to be working excessive hours for their age when all types of work were combined
- For 11 000 (108 000 in 2006) there were indications that school enrolment was affected by work
- 36 000 (57 000 in 2006) children appeared to have been absent from school because of work-related activities
- 290 000 reported having been injured at work or exposed to hazardous conditions. In 2006, 183 000 children reported having been injured while working, but there was not a question on hazardous conditions.

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[31] D. Budlender: *Child labour and other work-related activities in South Africa* (Department of Labour, Statistics South Africa and ILO, Pretoria, 2011, DRAFT not released yet).

Legal Framework Indicator 9. Child labour

Law, policy or institutions: The Basic Conditions of Employment Act prohibits employment of children less than 15 years of age. The Act prohibits work for children aged 15 to 17 years where it is inappropriate for the child's age, places at risk the child's education, well-being, health or development, or has been expressly prohibited by the Minister of Labour. The Government stated in its report to the CEACR that education is compulsory from the age of 7 to 15 in terms of the South African Schools Act No. 84 of 1996 which provides for penalties in case of violations. A ministerial determination issued in terms of the BCEA governs employment of children in performing arts. The Children's Act, as amended, prohibits child trafficking, use of children to commit crime, and commercial sexual exploitation of children. The CEACR noted that Sectoral Determinations 6 to 14 cover the employment of children in various sectors. The CEACR pointed out that the Children's Act of 2005 provides for assistance to child victims of trafficking and for the safe repatriation to the country of origin of child victims of trafficking. While the Constitution permits emergency legislation providing for the conscription of children between the age of 15 and 18, the Government has stated in a report to the CEACR that section 52 of the Defence Act only permits the compulsory conscription of persons above the age of 18 even in a state of emergency.

The Child Labour Programme of Action was first adopted in 2003 and specifies multi-sectoral actions against child labour. The second phase of the CLPA was adopted by Cabinet in February 2009. Implementation of the CLPA is coordinated by an Implementation Committee with representation from government departments, organized business and labour, and civil society. The Department of Labour is the lead agency. Government has indicated that it aims to reach the 2015 target for the eradication of the worst forms of child labour during the second phase of the CLPA.

Evidence of implementation effectiveness: The Department of Labour is due to submit its first two-yearly report to Cabinet during 2011. Statistics South Africa conducted a second Survey of Activities of Young People (equivalent to a child labour survey) as an add-on survey to the Quarterly Labour Force Survey of the third quarter of 2010.

The CEACR noted with interest that Regulations 8 and 9 of the Basic Conditions of Employment Act contain a list of 38 types of work prohibited to children under the age of 18 years, including work where remuneration is based on the completion of specific tasks and night work. The Government was requested to adopt the draft Occupational Health and Safety regulations on the Health and Safety of Children at Work which aims to protect children from hazardous work. Furthermore, the CEACR requested the Government to increase school attendance rates and reduce school drop-out rates, in particular for secondary schooling, in order to prevent the worst forms of child labour. Noting information provided by the CLPA which indicates that a large number of children between the age of 5 and 14 are working several hours a week, the CEACR requested the Government to include provisions regulating light work by children of 13 to 15 years of age. The CEACR repeatedly noted that no violations for cases of child trafficking, commercial sexual exploitation and pornography were registered, even though the Criminal Law (Sexual Offences and Related Matters) Amendment Act of 2007 includes relevant provisions and has strengthened enforcement measures. Pursuant to information provided by the Government, 16 cases of violations of child labour in the agricultural sector were registered, of which 14 cases were investigated, six cases prosecuted, and a fine of R5,000 rand imposed in one case. As a result of the CLPA project, 186 children were prevented or withdrawn from trafficking through the provision of educational or training opportunities. The CLPA identified that the phenomenon of child scavenging must immediately be dealt with. The Government has reported several measures it has undertaken to address this problem. The CEACR noted that despite large-scale programmes and the National Plan of Action 2009-2012 for orphans and other children rendered vulnerable by HIV and AIDS, there were about 1,400,000 HIV and AIDS orphans in South Africa (Epidemiological Fact Sheet for 2008 of UNAIDS).

Ratification of ILO Conventions: South Africa ratified the Minimum Age Convention, 1973 (No. 138) on 3 March 2000 and the Worst Forms of Child Labour Convention, 1999 (No. 182) on 7 June 2000.

Sources:
National legislation; NATLEX database

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(http://www.ilo.org/dyn/natlex/country_profiles.basic?p_lang=en&p_country=ZAF);
CEACR, direct request concerning Convention No. 138, 2009
(http://webfusion.ilo.org/public/db/standards/normes/appl/appl-displaycomment.cfm?hdroff=1&ctry=0650&year=2009&type=R&conv=C138&lang=EN);
CEACR, direct request concerning Convention No. 182, 2009
(http://webfusion.ilo.org/public/db/standards/normes/appl/appl-displaycomment.cfm?hdroff=1&ctry=0650&year=2009&type=R&conv=C182&lang=EN).

Forced labour is outlawed in the Constitution, and this prohibition is repeated in the Basic Conditions of Employment Act. Both the development of the Child Labour Programme of Action and South Africa's hosting of the Rugby World Cup in 2010 gave impetus to the development of specialized legislation on trafficking. As yet, however, South Africa does not have specialized legislation and traffickers must therefore be prosecuted under other laws.

Legal Framework Indicator 10. Forced Labour

Law, policy or institution: The Bill of Rights in the Constitution states that no one may be subjected to slavery, servitude or forced labour. The Basic Conditions of Employment Act prohibits forced labour and states that no one may cause, demand or impose labour on anyone else either for their own benefit or for the benefit of someone else. South Africa does not have another Act that explicitly prohibits trafficking for the purpose of forced labour. The South African Law Reform Commission has developed recommendations on specialized legislation against trafficking.

Evidence of implementation effectiveness: A 2006 study by the International Organization for Migration found that South Africa is source, transit and destination country for human trafficking. While noting the adoption of the Criminal Law (Sexual Offences and Related Matters) Amendment Act of 2007, which addresses trafficking for sexual purposes, the CEACR expressed its hope that comprehensive legislation on human trafficking will be adopted in the near future. While Chapter V of Service Order 5 of the Department of Correctional Services authorizes the employment of prisoners by employers requiring skilled labour with the permission of the Commissioner, the CEACR requested South Africa to indicate which provisions require the consent of the prisoners concerned to work for private enterprises and to clarify wage arrangements. The CEACR took note of the Correctional Services Act of 1998 and requested the Government to indicate whether offenders formally consent to community work. The Committee noted the Government's White Paper on Traditional Leadership and Governance, issued in July 2003 by the Minister of Provincial and Local Government, indicating that it would introduce legislation to regulate the accountability of traditional leadership and authorities. The Government stated that no legal proceedings have been undertaken in respect of sections 48 and 93(2) BCEA under which persons who cause, demand or impose forced labour are punishable with a fine or imprisonment for up to three years. The CEACR expressed the hope that Government will bring certain sections of the Merchant Shipping Act of 1951, which provide for the imposition of sanctions involving compulsory labour as a means of labour discipline and for the forcible conveyance of seafarers on board ship to perform their duties, in line with Convention No 105.

Ratification of ILO Conventions: South Africa ratified both the Forced Labour Convention, 1930 (No. 29) the Abolition of Forced Labour Convention, 1957 (No. 105) on 5 March 1997.

Sources:
National legislation; NATLEX database
(http://www.ilo.org/dyn/natlex/country_profiles.basic?p_lang=en&p_country=ZAF);
CEACR, direct request concerning Convention No. 29, 2010
(http://webfusion.ilo.org/public/db/standards/normes/appl/appl-displaycomment.cfm?hdroff=1&ctry=0650&year=2010&type=R&conv=C029&lang=EN);
CEACR, direct request concerning Convention No. 105, 2010
(http://webfusion.ilo.org/public/db/standards/normes/appl/appl-displaycomment.cfm?hdroff=1&ctry=0650&year=2010&type=R&conv=C105&lang=EN).

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7. Stability and security of work

Stability and security of work have become an ever more important concern in the light of general shifts in the workplace away from permanent employment combined with the impact of the global economic and financial crisis.

The Quarterly Labour Force Survey unfortunately does not have questions that allow for compilation of the standard decent work indicators. However, analysis of data from the fourth quarter of 2010 shows that 66 per cent of employees at that point were described as having permanent contracts, 12 per cent had limited duration contracts, while 22 per cent had contracts of unspecified duration. Women, at 63 per cent, were somewhat less likely than men (66 per cent) to have permanent contracts. African employees, at 57 per cent, were noticeably less likely than coloured (76 per cent), Indian/Asian (79 per cent) and especially white (89 per cent) employees to have permanent contracts. A similar question in the Labour Force Survey of September 2006 found that 70 per cent of employees had permanent contracts. This suggests a declining rate of permanent and secure work for those fortunate enough to continue to be employed.

Earlier Labour Force Survey data suggest that just under a quarter of paid employees were working on a temporary, part-time or seasonal basis in 2006 and 2007. In both years, women were somewhat more likely than men to be in precarious work as measured by this indicator.

Table 10. Stability and security of work

Decent Work Indicator	2006	2007	2008	2009	2010
Proportion of paid employees in precarious types of work (temporary, part-time, and seasonal workers), in % of all paid employees[1]	**24.2**	**23.5**	..	..	..
Male	23.5	22.7	..	..	..
Female	25.2	24.6	..	..	..
Urban areas	..	..	..	..	..
Rural areas	..	..	..	..	..

Reference:

1 Godfrey, Maree, Theron, 2006.

The Basic Conditions of Employment Act regulates termination of employment and severance pay. It specifies the period of notice required, which is a minimum of four weeks for those who have been employed for at least a year. It includes a provision that a worker who has been living in employer-provided accommodation must be allowed to stay in the accommodation for at least a month after dismissal. Severance pay is set at one week's pay at the current rate of pay for every year of service.

The Labour Relations Act defines what constitutes an unfair dismissal. It also defines unfair labour practices, which can occur during dismissals for operational requirements. Codes of Good Practice have been drawn up in respect of both dismissal and dismissal based on operational requirements. Such codes (of which other examples are referred to in other chapters) are discussed in the National Economic Development and Labour Council where agreement is reached before they become official. These particular codes provide guidance in terms of both substantive and procedural issues. The latter code refers to dismissals based on

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operational requirements as 'no fault' dismissals, and states that special care must thus be exercised in trying to avoid employees losing their job.

Legal Framework Indicator 11. Termination of employment

Law, policy or institutions: The Basic Conditions of Employment Act covers ordinary termination of employment and severance pay. The Labour Relations Act includes provisions in relation to the process of retrenchment. The Labour Relations Act also defines what is meant by an unfair dismissal and makes provision for unfair labour practices, including in respect of dismissals for operational requirements. The Act also includes a Code of Good Practice on Dismissal and a Code of Good Practice on Dismissal based on operational requirements.

Substantive requirements for dismissals: Fair dismissal occurs in cases where the worker is not meeting the needs of the job (capacity) or where their conduct is unacceptable. A dismissal is unfair if it happens as a result of the worker exercising a right, including the right to strike; if the worker is pregnant or planning pregnancy; if it involves discrimination on a range of grounds; if the worker refuses to accept a demand with good reason; or if the employer cannot prove misconduct or inability or that operational needs require the dismissal.

Procedure for individual dismissals: Schedule 8 of the Labour Relations Act provides a Code of Good Practice: Dismissal that sets out dismissal procedures. The Basic Conditions of Employment Act states that notice must be given in writing except when the worker is illiterate. The Act specifies a notice period of four weeks for those employed for a year or longer, two weeks for those employed for more than six months but less than a year, and one week for those employed for six months or less. Workers in employer-provided accommodation must be allowed to stay in the accommodation for at least a month if the contract is terminated prematurely.

Collective dismissals for economic reasons: An employer who is considering retrenchment must consult in writing with the people mentioned in the collective agreement, the workplace forum, the registered trade union/s, or workers or their representatives. The parties must agree on ways of minimizing retrenchment, the timing of the retrenchments, and reducing the impact; the choice of workers who will be retrenched; and severance pay. The Act specifies the minimum information that the employer must provide to the other party/ies.

Severance pay: The Basic Conditions of Employment Act specifies that retrenched workers are entitled to one week's pay for every year of service.

Evidence of implementation effectiveness: No information provided by the ILO supervisory bodies.

Coverage of workers in law: 11.1 million workers (all employees)

Coverage of workers in practice: Not applicable.

Ratification of ILO Conventions: South Africa has not ratified the Termination of Employment Convention, 1982 (No. 158).

Sources:
National legislation; NATLEX database
(http://www.ilo.org/dyn/natlex/country_profiles.basic?p_lang=en&p_country=ZAF);
EPlex database
(http://www.ilo.org/dyn/eplex/termdisplay.dismissReqts?p_lang=en&p_country=ZA&p_all_years=Y).

Workers who feel that they have been dismissed or otherwise treated unfairly can refer their dispute to a statutory or bargaining council or to the Commission for Conciliation, Mediation and Arbitration (CCMA).

During the 2009-10 financial year, a total of 153,657 disputes were referred to the Commission – an average of 617 every working day. Of this total, 81 per cent related to unfair dismissals, and a further 7 per cent to unfair labour practices and 2 per cent to severance pay.[32] The Commission explained the 'unprecedented' increase in retrenchment

[32] Commission for Conciliation, Mediation and Arbitration: *Annual Report 2009/2010* (Pretoria, 2010), p. 18.

cases referred to it as reflecting the global economic crisis. The number of disputes in respect of retrenchments by employers of less than 50 employees increased by 37 per cent when compared to the previous year, and the number of disputes from larger employers by 48 per cent. Together, these requests involved more than 45,000 employees. Through its intervention, the Commission was able to 'save' 15,426 jobs, while there were 2,980 voluntary and 10,525 forced retrenchments.

The CCMA is able to save jobs through its oversight and facilitative role in the Labour Training Layoff Scheme. This scheme was initiated by Government in September 2009 in an attempt to lessen the impact of the economic crisis. The scheme is in line with the National Economic Development and Labour Council's Framework Document of February that year. A sum of R6.4 billion was allocated to implement this initiative, of which R2.4 billion was for training allowances and R4 billion for costs of training.

The scheme provides for temporary suspension of work of a worker or group of workers who earn up to R180, 000 per year. During the time that they are part of the scheme, the contract of employment continues, the worker/s receive training and the worker/s receive up to three-quarters of their usual earnings (up to a maximum of R9,538) as a training allowance and their social benefits are maintained. The scheme is financed by the National Skills Fund (which pays the training allowances), sector education and training authorities (which provide the training) and the Unemployment Insurance Fund (which provides funds for training). As already noted, the scheme is facilitated and overseen by the CCMA.

The Training Layoff Scheme started slowly, among other reasons, as a result of its complexity. By August 2010, just over 6,000 workers had benefited from the scheme, of whom over half were from the motor industry and about a quarter from the clothing, textiles and leather sectors.[33] The fact that the stipend was originally set at 50 per cent of the usual wage also made it difficult for workers to survive on the reduced earnings. Both the percentage of the wage paid as stipend and the maximum cut-off for the stipend were therefore raised.[34] By May 2011, training had been completed for close on 3,000 workers from ten companies, one of which (with 65 workers) had closed. Training was either already being implemented or had been approved in respect of a further 3,859 workers at 16 companies. Requests from a further 18 companies, with a combined total of 1,837 workers, were being processed. Finally, two companies with a combined total of 169 workers were being evaluated.[35]

Concern about the lack of security of work is one of the reasons why there is opposition to labour broking in South Africa. The issue is contentious, as some argue that outlawing of labour broking would further reduce opportunities for employment, while others argue that the type of employment offered through labour broking too often does not represent decent work and that the practice encourages poor conditions of work.

[33] L. Ensor: "Layoff training scheme 'too late' and 'too complex' for workers", in *Business Day*, 7 January 2010.

[34] J. Daphne and W. Everett: "Tackling business distress and job loss: Training Layoff Scheme", in Statistics South Africa: *Income and Expenditure of Households: Analysis of results, South African Labour Bulletin* 35(2), June/July 2011, pp.7-9.

[35] Commission for Conciliation, Mediation and Arbitration: *Bi-weekly update of progress made with Training Layoff Scheme implementation process*, CCMA Retrenchment Support and Training Layoff Project Office Report (Pretoria, 30 May 2011).

The Employment Services Bill endeavours to represent Government's attempt towards addressing these concerns through the expansion of the provision of employment services by Government and further regulation of the operations of private employment agencies. At the time of writing, the Bill is under discussion in the National Economic Development and Labour Council.

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8. Equal opportunity and treatment in employment

Post-apartheid South Africa has placed great emphasis on representativity in terms of both race and gender. The Employment Equity Act is a key instrument for achieving this in respect of employees. The Act focuses on race and gender alongside disability. It requires that all employers with 150 or more employees submit a detailed report on an annual basis to the Department of Labour, while employers with between 50 and 140 employees report two-yearly.

Legal Framework Indicator 12. Equal opportunity and treatment

Law, policy or institutions: The Constitution and other subordinate legislation outlaws unfair discrimination on a wide range of factors. The Employment Equity Act focuses specifically on promoting equal opportunity among employees in respect of race, gender and disability. The Act provides for the establishment of an advisory Commission on Employment Equity, which is funded and serviced by the Department of Labour. The Act requires regular reports from all employers with more than 50 employees detailing their employment equity plans, achievements and challenges. Where individuals have complaints, these can be taken up with the Commission on Conciliation, Mediation and Arbitration, established in terms of the Labour Relations Act. The Labour Relations also defines unfair labour practices, and the definition of an unfair labour practice includes dismissal of a worker on account of pregnancy, intended pregnancy; any reason related to her pregnancy is automatically unfair. The CEACR noted the National Skills Development Strategy which focuses on the training of black persons, women, people with disabilities and youth.

Evidence of implementation effectiveness: The CEACR noted from the Government's report that various cases of sexual harassment in the workplace were brought before tribunals, including cases addressing the employers' duty to take reasonable steps to prevent it. Furthermore, the decision of the High Court of Pretoria of May 2008, declaring the HIV testing policy of the South African National Defence Force as an entrance requirement to be unfair discrimination in terms of article 9(3) of the Constitution, was noted. While noting that women are disproportionately found in the lowest paid and lowest ranking occupations, the CEACR pointed out that there are disproportionately more black women employed in unskilled occupations than white women. The Government indicated that this situation is the result of the persisting effects of apartheid which the Employment Equity Act aims to address. The Government stated in its report that in 2006 the 'white group', which accounted for only 10 per cent of the population, represented between 50 per cent and 65 per cent of all recruitments and all promotions at the middle-to-upper occupational levels. The Government stated in its report that employers have difficulties in finding suitable qualified candidates and in providing reasonable accommodation for disabled workers. The CEACR repeatedly pointed out that indigenous people are highly marginalized and concentrated at the lower end of the socio-economic scale. The Committee noted the decision by the Labour Court of Johannesburg of March 2008, highlighting that irregular migrant workers enjoy the right to fair labour practices laid down in article 23 of the Constitution, and the protections enshrined in the Labour Relations Act.

Coverage of workers in law: 11.1 million (all employees).

Ratification of ILO Conventions: South Africa ratified the Equal Remuneration Convention, 1951 (No. 100) on 3 March 2000; and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) on 5 March 1997.

Sources:

National legislation; NATLEX database (http://www.ilo.org/dyn/natlex/country_profiles.basic?p_lang=en&p_country=ZAF); CEACR, direct request concerning Convention No. 111, 2009 (http://webfusion.ilo.org/public/db/standards/normes/appl/appl-displayAllComments.cfm?conv=C111&ctry=0650&hdroff=1&lang=EN).

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The most recent analysis available at the time of writing relates to the 2009 submissions, which covered only the larger employers. Reports were submitted by a total of 3,695 employers, and 3,369 submissions were sufficiently detailed to be included in the analysis. These reports between them provided information on 4.4 million employees. The number of employers submitting reports is itself a measure of the success of implementation of the Act as in 2001 only 2,369 employers submitted reports.[36]

The analysis provided by the Commission focuses on the management levels, comparing representation of different groups with their representation in the economically active population where, for example, African men accounted for 39.2 per cent of the total and African women for 34.2 per cent, while white men accounted for 6.7 per cent and white women for 5.5 per cent.

The ongoing gender and race imbalances in the workforce profile are clear in that African men accounted for only 14.2 per cent of top management, African women for 6.1 per cent, white men for 54.5 per cent and white women for 9.3 per cent. Similarly, among senior managers, African men accounted for 13.5 per cent of the total, African women for 6.5 per cent, white men for 46.3 per cent and white women for 2.1 per cent.

Statistics South Africa's Labour Force and Quarterly Labour Force Survey data tell a similar story. Women's share of employment in the high-status occupations of legislators, senior officials, directors and chief executives remained more or less constant at around 32 per cent throughout the period 2006 through 2010. This percentage is markedly lower than women's share of wage employment, which was around 45 per cent throughout the period.

The female percentage share of high-status occupations was very similar for industry, but noticeably higher for services. The latter pattern can be explained by the dominance of government employment in the services category, and the strong efforts that have been made to promote employment equity in respect of black people and women within government employ. The extreme volatility of the indicator for agriculture suggests that the data are unreliable for this broad sector. This results in similar lack of reliability for the rural indicator.

The gender wage (or earnings) gap measures the extent to which earnings of women differ from those of men. A value of 0 would mean that the earnings are equal (at least on average), while positive values reflect the percentage by which women's earnings are less than those of men. In 2010, the earnings gap stood at 30 per cent for wages, salaries and earnings from non-agricultural self-employment combined. Disaggregation reveals a smaller, but still noticeable, gap of 23.1 per cent if the calculation is restricted to employees, but a very large – 52 per cent – shortfall for the self-employed. The gap was larger in rural than urban areas.

Women's share of employment differs substantially across occupational groups. The share is highest among domestic workers, where women were recorded as accounting for 95 per cent or more of workers in all years except 2007. In 2010, women's share was lowest for craft and related workers, and the share in this occupational group seems to have decreased over the period. The share is also very low among plant and machine operators and assemblers. Apart from domestic work, women clearly dominate among clerks, and are in the majority among technicians and associate professionals. The last-named pattern would be partly explained by

[36] Department of Labour: *10th Commission for Employment Equity Annual Report: 2009-2010* (Pretoria, 2010).

the inclusion of large numbers of nurses and teachers in this category. The sudden decrease in the trend for skilled agricultural and fishery workers suggests a change in classification in 2008.

The uneven distribution of women and men across occupations can also be seen if one compares the distributions in the various broad occupational groupings. For example, while 20.7 per cent of women were in domestic work in 2010 and 17.6 per cent were in clerical occupations, for men the comparable percentages were 0.5 per cent and 6.1 per cent respectively. Conversely, while 19.1 per cent of men were in craft and related work and 13.0 per cent were plant and machine operators and assemblers the percentages were 3.3 per cent and 2.8 per cent respectively for women.

The impact of these different occupations is exacerbated by the fact that within each occupational grouping, except domestic work (where median earnings are the same for women and men), median earnings are higher for women than men employees.[37]

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[37] Statistics South Africa: *Monthly earnings of South Africans 2010* (Pretoria, 2010), p. 12.

Table 11. Equal opportunity and treatment in employment – Occupational segregation by gender

Decent Work Indicator		2006		2007		2008		2009		2010	
		Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Occupational segregation by gender (distribution of employment within ISCO-88 major groups), in %											
Total employment		**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**
1	Legislators, administrators and managers	8.4	4.7	8.9	5.2	9.4	5.2	9.6	5.3	10.0	5.5
2	Professionals	3.3	3.9	3.7	4.8	5.2	5.9	5.1	5.6	5.4	5.8
3	Technicians and associate professionals	8.8	12.9	8.6	13.3	8.6	13.5	9.5	14.0	8.9	14.1
4	Clerks	5.8	15.3	5.7	16.0	5.9	16.8	5.8	17.4	6.1	17.6
5	Service workers and shop sales workers	12.8	13.9	12.8	13.3	12.0	14.0	12.6	15.0	13.9	14.8
6	Skilled agricultural and fishery workers	0.8	1.4	0.7	0.9	1.0	0.5	0.9	0.3	0.9	0.4
7	Craft and related workers	22.6	5.5	22.0	5.7	21.2	4.7	20.0	3.8	19.1	3.3
8	Plant and machine operators and assemblers	12.7	2.8	13.2	3.1	13.1	2.9	13.4	2.9	13.0	2.8
9	Elementary occupations	24.5	22.7	23.4	21.8	23.1	21.2	22.7	20.4	22.3	20.7
10	Domestic worker	0.2	16.9	1.0	15.9	0.5	15.3	0.4	15.3	0.5	14.9

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Table 12. Equal opportunity and treatment in employment – Gender differences

Decent Work Indicator	2006	2007	2008	2009	2010
Female share of employment in high-status occupations (ISCO-88 groups 11 and 12), in %					
Female share of employment, total	**32.2**	**32.8**	**31.5**	**33.6**	**31.9**
Agriculture	25.7	8.5	30.0	35.7	11.0
Industry	30.3	32.2	29.3	31.9	29.1
Services	41.1	38.1	42.1	40.2	42.4
Urban areas	..	..	31.3	33.8	32.9
Rural areas	..	..	35.0	31.1	18.2
Gender wage gap (Total monthly earnings from paid employment and non-agricultural self-employment), in %					
Gender wage gap, total	..	..	..	28.6	30.0
Monthly wages/earnings from paid employment	..	..	..	23.3	23.1
Monthly wages/earnings from non-agricultural self-employment	..	..	..	62.1	52.0
Urban areas	..	..	..	25.7	25.0
Rural areas	..	..	..	35.4	30.0
Share of women in wage employment in the non-agricultural sector, in %					
Share of women in wage employment, total	..	..	**43.9**	**45.0**	**44.5**
Urban areas	..	..	43.4	44.7	44.2
Rural areas	..	..	45.7	46.1	46.0
Female share of employment by major occupational groups, in %[4]					
Female share of employment/occupations, total	**44.2**	**44.1**	**43.3**	**43.8**	**43.4**
Legislators, administrators and managers	30.9	31.7	29.7	30.2	29.7
Professionals	48.1	50.4	46.2	46.2	45.4
Technicians and associate professionals	53.7	55.0	54.6	53.5	55.0
Clerks	67.7	69.0	68.4	70.1	68.8
Service workers and shop sales workers	46.4	45.2	47.2	48.1	45.0
Skilled agricultural and fishery workers	57.7	49.6	26.6	22.7	27.8
Craft and related workers	16.2	16.9	14.6	12.8	11.6
Plant and machine operators and assemblers	14.8	15.7	14.2	14.5	14.0
Elementary occupations	42.3	42.4	41.2	41.2	41.6
Domestic worker	98.7	92.8	96.0	96.5	96.1

Reference:

4 Statistics South Africa, 2007, p.3.

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Legal Framework Indicator 13. Equal remuneration of men and women for work of equal value

Law, policy or institutions: There is currently no law or policy that provides for equal remuneration for work of equal value. The Employment Equity Act provides for the Employment Conditions Commission (established under the Basic Conditions of Employment Act) to advise the Minister on employment differentials, and the employer submissions under the Act include a form that requires employers to indicate earnings for different groups. The Act does not currently refer explicitly to the requirement of equal remuneration for work of equal value. However, Clause 2 of the Employment Equity Amendment Bill currently under discussion at NEDLAC provides for equal remuneration for work of equal value for employees working for the same employer. The CEACR pointed out that section 12.3 of the Code of Good Practice on the Integration of Employment Equity into Human Resources Policies and Practices spells out that remuneration should be based on the value of the post.

Evidence of implementation effectiveness: Welcoming the Government's intention to include the principle of equal remuneration for work of equal value in the new Employment Equity regulations, the CEACR expressed the hope that the Government will also include the principle in the Employment Equity Act. The Government stated that Section 8 of the Promotion of Equality and Prevention of Unfair Discrimination Act (the Equality Act), which prohibits unfair discrimination on the ground of gender, also covers the principle of equal remuneration for men and women for work of equal value. The CEACR noted that small employers are not required to provide information on barriers to employment equity in respect of remuneration and benefits. Furthermore, it noted that the Commission on Conciliation, Mediation and Arbitration has addressed various disputes concerning unfair discrimination based on unequal remuneration for work of equal value. The Government indicated to the CEACR that its current inspection system does not allow the collecting of information directly related to the Convention.

Coverage of workers in law: Not applicable.

Ratification of ILO Conventions: South Africa ratified the Equal Remuneration Convention, 1951 (No. 100) on 3 March 2000; and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) on 5 March 1997.

Sources:
National legislation; NATLEX database (http://www.ilo.org/dyn/natlex/country_profiles.basic?p_lang=en&p_country=ZAF); CEACR, direct request concerning Convention No. 111, 2009 (http://webfusion.ilo.org/public/db/standards/normes/appl/appl-displayAllComments.cfm?conv=C100&ctry=0650&hdroff=1&lang=EN).

While the concept of equal opportunity and treatment in the workplace might suggest that the aim is to have male and female workers treated the same, in reality, for substantive equality (or equity) one needs to recognize that the different situations of women and men sometimes require different treatment. Legislation and policies thus need to go beyond ensuring equal representation of women and men at different levels and equal pay.

The need for this is recognized implicitly in the concept of equal pay for work of equal value. This approach is important because only too often women occupy different jobs from those occupied by men. The distinction between formal and substantive equality is also recognized more explicitly in provisions for maternity leave. The need to address particular situations facing different groups of workers is also recognized in instruments that address gender-based violence and its impact on the workforce. Although such instruments may not explicitly differentiate between women and men, they are especially helpful to women given that they are most commonly the target of such violence.

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The Code of Good Practice on Handling Sexual Harassment Cases has as its ultimate aim the elimination of sexual harassment in the workplace. It provides guidance to employers on the development and implementation of policies and procedures that will create a workplace free of sexual harassment.

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9. Safe work environment

Compensation for injuries and work-related diseases is provided for by the Compensation for Occupational Injuries and Diseases Act. Administration of the Act is the responsibility of the Compensation Fund, which falls under the Department of Labour and is funded primarily through levies paid by employers. The levies vary according to the level of risk associated with the workplace concerned. Domestic workers are not covered by the Act.

Compensation is available in cases of injury, disablement and death. Medical payments are covered, as are the related transport costs. The amount paid for disability depends on the seriousness of the disability, but never reaches the full rate of pay received before the disability was incurred.

Legal Framework Indicator 14. Employment injury benefits
Law, policy or institutions: The Compensation for Occupational Injuries and Diseases Act provides for compensation for workers who are injured at work or contract a work-related disease. Where death occurs, the compensation is paid to dependants. The Act applies to all employees except domestic workers and those in the employ of the South African National Defence Force or Police Service.
Qualifying conditions: Compensation is not provided for total or partial disablement of less than three days' duration. It is also not available for a worker whose wilful misconduct caused the injury or illness unless the worker is seriously disabled or killed.
Benefits (level and duration): Compensation takes the form of medical payments, and compensation in respect of temporary or permanent disablement or death. Transport costs are covered, as are the full (reasonable) cost of medical fees for a period of up to two years. The amount paid for disability varies according to the seriousness of the disability. A lump sum is paid when permanent disablement is 30 per cent or less, with the amount reflecting the degree of disablement. A pension, which again is related to the degree of disablement, is paid when the disablement is 31 per cent or more. The amount paid may be increased if the injury or disease was due to the negligence of the employer or another employee. On death, a lump sum is payable to the widowed spouse and a pension is payable to the widowed spouse and children. The pension is equal to 40 per cent of the pension that the worker would have received for 100 per cent permanent disablement.
Financing: Benefits are financed through risk-rated levies paid by employers.
Evidence of implementation effectiveness: No information provided by the ILO supervisory bodies.
Coverage of workers in law: 11.1 million employees.
Coverage of workers in practice: In 2010-11 just under 350,000 new claims were registered.[38]
Ratification of ILO Conventions: South African has ratified neither the Social Security (Minimum Standards) Convention, 1952 (No. 102) nor the Employment Injury Benefits Convention, 1964 (No. 121).

Source:
National legislation; NATLEX database (http://www.ilo.org/dyn/natlex/country_profiles.basic?p_lang=en&p_country=ZAF).

Beyond compensation, within Government the responsibility for health and safety at work is divided across to national departments, namely Labour and Mineral Resources. The latter is responsible for mine health and safety, an extremely important area given the extreme depth, and accompanying danger, of many South African mines when compared to those elsewhere. In addition, mine workers are vulnerable to industry-specific diseases, such as silicosis. The

[38] National Treasury, 2011: Op.cit., p. 386.

Department of Labour bears responsibility for health and safety in other parts of the economy.

Unfortunately, the data available in respect of occupational health and safety are sparse and the Department of Labour acknowledges that they are unreliable and must be treated with extreme caution. The number of incidents recorded in the Department of Labour's database (a total of just over 1,500 for 2008-09) are so much fewer than the number of claims recorded by the Compensation Commissioner (203,711 for the same financial year) that it does not seem valid to attempt to calculate the occupational injury rate contained in the standard decent work indicators. Some part of this difference might be explained by the fact that the Department's database excludes mining. Another part of the difference might be accounted for by multiple claims on behalf of a single injured or deceased worker. However, it does not seem possible for these two reasons alone to account for the large discrepancy.

The number or incidents recorded on the database also contradicts the 5,325 incidents reported for 2008-09 in the budget vote for 2010-11.[39] (The budget vote records a substantial decrease, to 3,788, in 2009-10, which it attributes to advocacy activities.) The fact that the number of fatal incidents recorded on the database is so much larger than the number of non-fatal incidents suggests severe under-recording (and probably under-reporting) of non-fatal incidents. Further, the inclusion of some reported incidents for private households and mining, for which the Department is not responsible, is confusing. The database is currently being upgraded and will, hopefully, in future produce more accurate statistics of reported incidents.

The reported number of labour inspectors within the Department of Labour stood at 755 for 2009, giving a rate of 0.7 inspectors for every 10,000 paid employees and 0.l6 inspectors for every 10,000 employed persons. The number of workplaces inspected in the same year was 147,556 or 133.4 workplaces for every 10,000 employees and 112.4 for every 10,000 employed persons. These indicators are an undercount of coverage as they exclude the inspectors employed by and inspections conducted by the Department of Mineral Resources.

Table 13. Safe work environment – Reported occupational injuries and labour inspectors

Decent Work Indicator	2006	2007	2008	2009	2010
Reported occupational injuries[40] (fatal and non-fatal), total number			**1561**		
Industry			1146		
Services			341		
Commerce			74		
Reported occupational injuries (non-fatal), total number			**211**		
Industry			157		
Services			44		
Commerce			10		
Reported occupational injuries (fatal), total number			**1298**		
Industry			949		
Services			287		

[39] Op.cit., p.375.
[40] The numbers recorded for this and the following two indicators reflect 'incidents'.

Commerce	62
Number of labour inspectors[41]	
per 10,000 paid employees	0.7
per 10,000 employed persons	0.6
Number of labour inspections	
per 10,000 paid employees	133.4
per 10,000 employed persons	112.4

The Department recognizes weaknesses in this area of its work and the need to upgrade the database. On the human resources side, the 2011 budget vote of the Department records high levels of vacancies in Inspection and Enforcement Services and notes plans to employ additional specialist inspectors.[42]

In addition to the Department's inspectors, within the workplace the Occupational Health and Safety Act provides for health and safety representatives and health and safety committees. Employers are obliged to appoint health and safety representatives when they employ 20 or more workers. Shops and offices are required to have one such representative for every 100 employees, while other workplaces must have one representative for every 50 employees. The representatives are tasked with monitoring, investigating and reporting on health and safety matters. They must accompany labour inspectors when they do their inspections of the workplace. The representatives must receive training for these tasks during working hours.

The number of inspections and mine audits conducted by the Department of Mineral Resources varies from year to year. For example, in 2008-09 it stood at 12,700, dropped to 7,164 in 2009-10 and even further to 3,327 in 2010-11, but is expected to increase again to over 10,000 in this and coming years.[43] The Mine, Health and Safety (Regions) budget sub-programme is responsible for inspections, audits, monitoring and enforcing compliance with the Mine Health and Safety Act. The sub-programme has 267 staff, and a budget of R100.9 million.

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[41] This and the following indicator reflect only the inspectors and inspections by the Department of Labour.
[42] National Treasury, 2011: Op.cit., p. 373.
[43] Op.cit., p.697.

Legal Framework Indicator 15. OSH labour inspection

Law, policy or institutions: The Occupational Health and Safety Act governs health and safety at work. It covers all workplaces except mines and ships. It provides for the appointment of inspectors and defines their functions and powers. The inspectors are employed by the Department of Labour. The Act also provides for workplace-based health and safety representatives and committees. The Mine Health and Safety Act provides for a separate inspectorate, for which it defines the powers and functions. The Mine Health and Safety Act falls under the Department of Mineral Resources.

Evidence of implementation effectiveness: No information provided by the ILO supervisory bodies.

Coverage of workers in law: 10.8 million (employees excluding mining industry) for Occupational Health and Safety Act, and just over 300,000 for Mine Health and Safety Act.

Coverage of workers in practice: Not applicable

Ratification of ILO Conventions: South Africa ratified the Occupational Safety and Health Convention, 1981 (No. 155) on 18 February 2003. South Africa has ratified neither the Labour Inspection Convention, 1947 (No. 81), its 1995 Protocol, the Labour Inspection (Agriculture) Convention, 1969 (No. 129), nor the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).

Source:
National legislation; NATLEX database
(http://www.ilo.org/dyn/natlex/country_profiles.basic?p_lang=en&p_country=ZAF).

A health and safety-related issue of particular importance in current-day South Africa is HIV and AIDS. The Code of Good Practice on Key Aspects of HIV and Employment was issued in terms of the Employment Equity Act. The goals of the Code include elimination of unfair discrimination in the workplace on the basis of HIV status, promotion of a non-discriminatory workplace in which people living with HIV or AIDS are able to be open about their HIV status without fear of stigma or rejection, and promotion of appropriate and effective ways of managing HIV in the workplace. The primary focus of the Code is thus not on health and safety. However, it includes measures to create a safe working environment for all employees, as well as measures to restrict the spread of HIV.

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10. Social security

South Africa has for decades had a non-contributory old-age grant that is currently payable to women and men aged 60 years and above who pass a means test. This grant is one of a set of grants that provide social protection to old people, disabled people, children and war veterans. The grant currently accounts for a larger total amount of money than each of the other grants, with R36.6 billion allocated for this grant alone in 2011-12.[44] However, the smaller (in monetary terms) child support grant reaches a larger number of beneficiaries.

In March 2010, close on 2.5 million individuals were receiving the old-age grant.[45] This number accounted for an estimated 46.8 per cent of people aged 55 years and above. The percentage was much higher for women than men, at 52.6 per cent against 39.2 per cent. This gender difference is explained by women's greater longevity, higher rates of poverty among women, and the fact that previously the eligible age cut-off for men stood at 65 years.

South Africa does not have a national law that provides for work-related pension benefits. Nevertheless, such benefits are available to many employees. In some cases the benefits are provided in terms of collective bargaining agreements, including bargaining council agreements. In other cases, the employer contributes to a pension fund in terms of a private agreement with the employee. In yet other cases the employer may deduct contributions from the wage or salary for a pension fund but may not contribute as the employer.

Legal Framework Indicator 16. Pension (public/private)

Law, policy or institutions: There is no national law providing for work-related pension benefits. However, some of the bargaining councils and statutory councils established in terms of the Labour Relations Act have established pension and provident funds. The Social Assistance Act provides for a non-contributory old-age grant which is available to persons aged 60 years and above who pass a means test. The grant is administered by the South African Social Security Agency, which reports to and is funded by the Department of Social Development.

Qualifying conditions: 60 years is the qualifying age for the old-age grant. There is a means test based on the income and assets of the individual, of the individual's spouse if married.

Benefits (level): Payments are made on a monthly basis. The maximum amount of the grant was increased to R1,140 as from 2011. The amount is, in theory, reduced based on the level of the person's income and assets, but the majority of pensioners receive the full amount.

Financing: There are no contributions. The grant is financed through general tax revenue of government.

Evidence of implementation effectiveness: No information provided by the ILO supervisory bodies

Coverage of workers in law: Not applicable.

Coverage of workers in practice: Estimated 2,659,470 beneficiaries of the old-age grant as at March 2011.

Ratification of ILO Conventions: South Africa has ratified neither the Social Security (Minimum Standards) Convention, 1952 (No. 102), Part V, nor the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128).

Source:
National legislation; NATLEX database (http://www.ilo.org/dyn/natlex/country_profiles.basic?p_lang=en&p_country=ZAF).

[44] National Treasury, 2011: Op.cit., p. 403.
[45] Op.cit., p. 404.

The Labour Force and Quarterly Labour Force Surveys record a decrease in the percentage of the economically active population whose employers contributed to a pension scheme, from around 50 per cent in 2006 to around 46 per cent in 2010. This decrease in part reflects the decrease in the employment rate over the period. Throughout the period, the share was higher for men than for women, with the rate at 48 per cent for men in 2010 as compared to 43 per cent for women. The urban-rural gap was much larger than the gender gap, at 50 per cent to 29.4 per cent. This is expected, given the much lower employment rate in rural areas.

The above estimates should include a substantial number of workers who fall under bargaining council agreements, as many of the bargaining councils provide for pension funds. A recent study found that 29 of the 40 private bargaining councils between them had 43 retirement funds.[46] The reason that some councils have more than one fund is to some extent due to a historical legacy where in previous years lower-paid predominantly black workers had a provident fund while higher-paid white workers had a pension fund.

The Department of Labour is investigating the feasibility of establishing provident funds for domestic workers and farm workers alongside the existing sectoral determinations for these sectors.

Table 14. Social security

Decent Work Indicator	2006	2007	2008	2009	2010
Share of population aged 55 years and above benefiting from a pension, in %					
Direct government pensions	46.4	44.3	44.9	48.0	46.8
Male	35.6	31.7	33.0	40.6	39.2
Female	54.6	53.9	53.9	53.7	52.6
Old-age pensions from contributory social security schemes	..	..	..	..	..
Share of economically active population contributing to a pension scheme, in %	50.0	50.3	45.2	46.1	45.8
Male	53.1	52.7	47.6	48.8	48.0
Female	46.0	47.1	42.1	42.8	43.0
Urban areas	..	..	49.6	50.6	50.0
Rural areas	..	..	28.8	29.6	29.4
Total public and private social security expenditure, in % of GDP					
Public health-care expenditure, in % of GDP	3.4	3.5	3.7	4.2	4.1
Other public social security expenditure, in % of GDP		3.2	3.3	3.5	3.5
Private social security expenditure, all, in % of GDP					

During the period 2006 to 2010, public health-care expenditure increased from 3.4 per cent of gross domestic product (GDP) to 4.1 per cent. In 2009, total public sector health expenditure was estimated at R99,726 million.[47] This estimate included health-related spending by the national and provincial Departments of Health and selected public entities, Defence, Correctional Services, alongside spending by police, local government from own revenue, the Compensation Fund and the Road Accident Fund. In the same year approximately R121,557

[46] Jacques Malan Consultants and Actuaries: *Retirement funds provided by bargaining councils in South Africa* (Department of Labour, Pretoria, 2010), p. 9.
[47] National Treasury*: Budget Review 2010* (Pretoria, 2010), p.113.

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million was spent by the private sector in terms of expenditure by medical schemes (R81,128 million), out-of-pocket expenditures (R36,498 million), medical insurance (R2,660 million) and private employers (R1,271 million). A further R6, 319 million was spent by donors and non-governmental organizations.

Public social security expenditure accounted for a slightly smaller percentage of GDP than public health expenditure over the period, increasing to 3.5 percent in 2009 and 2010.[48]

The Basic Conditions of Employment Act provides for sick leave on full pay for a period equivalent to six work weeks over a 36-month period. The employer is responsible for payment during sick leave and there are no contributions from the employee.

The recent study of bargaining council funds found that 14 councils still had sick pay funds.[49] These are a legacy from a period in which national legislation did not provide for paid sick leave.

The sick leave provisions provide only for the payment of ordinary wages. The provisions do not cover payment of medical expenses. The Quarterly Labour Force Survey of the fourth quarter of 2010 recorded 32 per cent of employees as being entitled to medical aid benefits from their employers, with almost no difference between women and men.

Among private bargaining councils, 15 councils had a medical or sick benefit fund of some kind. While some of these assisted with payment of medical fees, others provided free or cheap consultation with panel doctors or through fund-operated clinics.[50] The Department of Labour is investigating the feasibility of establishing a medical scheme for the private security sector alongside the existing sectoral determination that governs minimum wages and conditions of work.

The situation in respect of payment of medical expenses as well as contributions is likely to change radically as National Health Insurance is introduced.

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[48] National Treasury, 2011: Op.cit.
[49] Jacques Malan Consultants and Actuaries: OP.cit., p. 17.
[50] Loc.cit.

Legal Framework Indicator 17. Incapacity for work due to sickness / sick leave
Law, policy or institutions: The Basic Conditions of Employment Act provides for sick leave to be paid by the employer.
Qualifying conditions: The employer can ask for a medical certificate where the worker is absent for more than two consecutive days or is absent more than twice in an eight-week period.
Benefits (level and duration): Employees are entitled to sick pay on full pay for the number of days they would normally work in a six-week period over a 36-month period. During the first six months of employment, employees are entitled to one day of paid sick leave for every 26 days worked
Financing: There are no contributions. The employer pays the sick leave.
Evidence of implementation effectiveness: No information provided by the ILO supervisory bodies.
Coverage of workers in law: 11.1 million (all employees).
Coverage of workers in practice: Estimated 2,659,637 beneficiaries as at end March 2011.[51]
Ratification of ILO Conventions: South Africa has ratified neither the Social Security (Minimum Standards) Convention, 1952 (No. 102), Part III, nor the Medical Care and Sickness Benefits Convention, 1969 (No. 130).

Sources:
National legislation; NATLEX database (http://www.ilo.org/dyn/natlex/country_profiles.basic?p_lang=en&p_country=ZAF); National Treasury, 2011, p. 404.

The Social Assistance Act provides for non-occupational disability through the non-contributory disability grant for those aged 18 to 59 years, alongside a care dependency grant for the caregivers of severely disabled children. The amount of the grant is the same as the old-age grant.

Two types of disability grant are available – permanent and temporary. The number of beneficiaries of the grant increased dramatically in the early years of this century. This occurred at a time when the procedures for assessing disability were shifting from a purely medical conceptualization of disability. Analysis of the beneficiary data revealed that the profile of grant beneficiaries changed during this time in favour of younger people and women.[52] The trends suggested strongly that HIV and AIDS was a strong contributor to the increase in demand for the grant.

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[51] National Treasury, 2011: Op.cit., p. 404.
[52] T. Moultrie, D. Budlender and A. Delaney: *Trends in disability and care dependency grants in South Africa, 2001-2004* (Community Agency for Social Enquiry, Johannesburg, 2006).

Legal Framework Indicator 18. Incapacity for work due to invalidity

Law, policy or institutions: The Social Assistance Act provides for temporary and permanent non-contributory disability grants.

Qualifying conditions: The grant is available to persons aged 18 to 59 who are medically assessed as unable to work and pass a means test. Permanent grants are available to those assessed as being permanently unable to work.

Benefits (level): In April 2010 the grant amount was increased to R1,140 per month. In theory, beneficiaries receiving permanent grants should be re-assessed periodically. In practice, the grant continues until the person's 60th birthday when they are transferred to an old-age grant.

Financing: There are no contributions. The grant is financed from general tax revenue.

Evidence of implementation effectiveness: No information provided by the ILO supervisory bodies.

Coverage of workers in law:

Coverage of workers in practice: Estimated 1,231,323 beneficiaries as at March 2011.[53]

Ratification of ILO Conventions: South Africa has ratified neither the Social Security (Minimum Standards) Convention, 1952 (No. 102), (Part IX), nor the Old-Age and Survivors' Benefits Convention, 1967 (No. 128).

Sources:

National legislation; NATLEX database (http://www.ilo.org/dyn/natlex/country_profiles.basic?p_lang=en&p_country=ZAF); National Treasury, 2011, p. 404.

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[53] National Treasury, 2011: Op.cit., p. 404.

11. Social dialogue, workers' and employers' representation

Freedom of association related to employment was considered important enough in South Africa to be included in the Bill of Rights in the Constitution. Employees are guaranteed the right to form and join a trade union and participate in its activities and programmes as well as the right to use the important trade union 'weapon' of strike. Employers are accorded the right to form and join an employers' organization and to participate in its activities and programmes.

Legal Framework Indicator 19. Freedom of association and the right to organize

Law, policy or institutions: The Bill of Rights in the Constitution affords every worker the right to form and join a trade union, participate in union activities and programmes, and strike. The Bill of Rights gives every employer the right to form and join an employers' organization and to participate in its activities and programmes. The Labour Relations Act elaborates on these rights.

Chapter VI of the Labour Relations Act provides for the registration of trade unions and employers' organizations. To be registered, trade unions must have an address and a name. Trade unions must be independent, that is, they must not be under the direct control or subject to interference from any employer's organization. Furthermore, they must have a constitution. The registrar must register the trade union if it meets these requirements or grant the union 30 days to fulfil the requirements. Discrimination based on trade union membership is prohibited.

Evidence of implementation effectiveness: There are no active cases before the CEACR on freedom of association. The CEACR noted the comments by the International Trade Union Confederation in a communication dated 24 August 2010, reporting acts of violence and arrests of workers, including trade union leaders, during the course of demonstrations and strikes in various sectors, as well as the dismissal of strikers, in 2009. The Committee recalled that in 2008 the Confederation had sent comments on serious infringement of trade union rights including attempts to obstruct unionization in the agricultural and communication sectors, police repression during a general strike and, in the mine sector, intimidation and mass dismissals following strikes.

Coverage of workers and employers in law: 11.1 million employees.

Coverage of workers and employers in practice: Quarterly Labour Force Survey 2010 4th quarter records more than 3 million trade union members.

Ratification of ILO conventions: South Africa ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) on 19 February 1996.

Sources:

National legislation; NATLEX database (http://www.ilo.org/dyn/natlex/country_profiles.basic?p_lang=en&p_country=ZAF); CEACR, observation concerning Convention No. 87, 2010 (http://webfusion.ilo.org/public/db/standards/normes/appl/appl-displaycomment.cfm?hdroff=1&ctry=0650&year=2010&type=O&conv=C087&lang=EN);

Committee on Freedom of Association Cases (http://webfusion.ilo.org/public/db/standards/normes/libsynd/index.cfm?Lang=EN&hdroff=1).

The Labour Relations Act (LRA) provides for the registration of trade unions and employer organizations, as well as federations of these two types of organization, with the Department of Labour. There are several benefits to registering. In particular, registered unions are guaranteed organizational rights if they can prove that they are 'representative' and collective agreements between registered trade unions and registered employers organizations are binding on members. The relatively simple requirements for registration resulted in a large number of unions and employer organizations registering after the promulgation of the Act. As at September 2011, there were 196 trade unions and 162 employers' organizations registered with the Department of Labour.

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The LRA does not explicitly afford the right to collective bargaining but probably effectively accords enough related rights to satisfy the ILO definition and convention. The Act does not oblige employers to bargain. As Todd explains, the Act instead encourages "process voluntarism",[54] but does not prescribe what issues can be covered by collective bargaining. However, Todd notes that wages have tended to dominate the bargaining agenda, while other "important non-distributive matters" tend to get neglected. The Act also does not prescribe at what level bargaining should occur. However, only registered unions and registered employer organizations can establish bargaining councils.

The bargaining councils, which replaced the industrial councils of the apartheid era, bring together employers or employer organizations and unions within a particular sector. While for most sectors it is up to the employers and unions concerned to establish a bargaining council, the Act itself established the Public Service Coordinating Bargaining Council (PSCBC), and further allowed for the establishment of separate councils for sectors within the public service. The PSCBC covers national and provincial government, but not municipal government as municipal employees are not considered to be public servants. While the Act does not explicitly provide for a separate bargaining council for local government, such a council has been established.

The trade union and employer parties do not need to represent the majority of workers or employers within the sector to establish a bargaining council. The Act allows for extension of agreements to non-members if the union/s who sign the agreement represent a majority of all employees in the workplace. There are currently 41 bargaining councils in the private sector alongside the South African Local Government Bargaining Council and the Public Sector Central Bargaining Council and its sub-councils. An estimated 2,846,235 workers are currently covered by bargaining councils, of whom 1,390,655 are government employees and 1,332,116 are employed by employers who are not party to councils

The LRA has also provided for workplace forums, which were intended to provide a non-adversarial workplace-based forum where employers and workers could discuss non-distributive issues, but very few of these have been established.

When engaging in collective bargaining, employers and labour can agree to adapt, replace or exclude clauses of the Basic Conditions of Employment Act, as long as the agreement remains consistent with the purpose of the Act. However, there are several clauses that may not be varied downwards. These include those relating to working time and hours of work, night work, maternity leave, and sick leave. Annual leave may not be reduced to less than two weeks. In many cases, the variations in the collective bargaining agreements set higher levels of protection than those provided for in the Basic Conditions of Employment Act.

[54] C. Todd: *Collective Bargaining Law* (SiberInk: Cape Town, 2004), p. 42.

Legal Framework Indicator 20. Collective bargaining right

Law, policy or institutions: The Bill of Rights in the Constitution gives every trade union, employers' organization and employer the right to engage in collective bargaining. The Labour Relations Act elaborates on that right. The Act does not oblige employers to bargain and does not prescribe at what level bargaining should occur. However, only registered unions and registered employer organizations can establish bargaining councils. Bargaining councils bring together employers or employer organizations and unions within a particular sector. The parties do not need to represent the majority of workers or employers within the sector to establish a bargaining council. The LRA allows for extension of agreements to non-members if the union/s who sign the agreement represent a majority of all employees in the workplace. The LRA does not prescribe what issues can be covered by collective bargaining. Bargaining councils are responsible for enforcement of their own collective agreements, and can request the Minister to designate agents who fulfil this responsibility. Where this is done, the agents are accorded substantial powers. While, for most sectors it is up to the employers and unions concerned to establish a bargaining council, the Act itself established the Public Service Co-ordinating Bargaining Council (PSCBC), and further allowed for the establishment of separate councils for sectors within the public service. Strikes and lock-outs are permitted if the dispute could not be resolved otherwise or if 30 days have passed after the referral of the dispute to the council or commission. Notice of the strike must be given 48 hours in advance. Strikes are prohibited if it is contrary to a collective agreement; the dispute has been referred to arbitration or the labour court; or the worker is engaged in essential services or maintenance services.

Evidence of implementation effectiveness: According to the Quarterly Labour Force Survey of 2009 about 15 per cent of the workers in the agricultural sector are unionized. The Government indicated that there is no information on existing collective agreements in the agricultural sector since it is most likely that agreements are negotiated at company and farm level. The CEACR encouraged the Government to promote collective bargaining in the agricultural sector and to collect data on collective agreements in the sector and the number of workers covered.

Coverage of workers in law: 11.1 million employees.

Coverage of workers in practice:

Ratification of ILO conventions: South Africa ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) on 19 February 1996.

Sources:

National legislation; NATLEX database (http://www.ilo.org/dyn/natlex/country_profiles.basic?p_lang=en&p_country=ZAF); CEACR, direct request concerning Convention No. 98, 2010 (http://webfusion.ilo.org/public/db/standards/normes/appl/appl-displaycomment.cfm?hdroff=1&ctry=0650&year=2010&type=R&conv=C098&lang=EN).

The National Economic Development and Labour Council Act of 1994 provides for the establishment of a forum which brings together government, employer and labour representatives and – to a lesser extent – community representatives to discuss economic and development policy which extends beyond a particular sector or workplace. NEDLAC is thus South Africa's foremost social dialogue forum for the traditional social partners. Indeed, it is within NEDLAC that the Decent Work programme for South Africa was agreed, and it is also within NEDLAC that various amendments to labour laws discussed above are currently under discussion.

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Legal Framework Indicator 21. Tripartite consultations

Law policy or institutions: The National Economic Development and Labour Council Act establish the National Economic Development and Labour Council (NEDLAC). The Council brings together government, employer and labour representatives and – to a lesser extent – community representatives to discuss economic and development policy which extends beyond a particular sector or workplace. The Act requires that when a cabinet minister wants to introduce new policy, or a new law, the law or bill must be discussed and debated in NEDLAC before coming to Parliament if it relates in any way to labour. Labour is represented on NEDLAC by the Federation of Unions of South Africa, National Council of Trade Unions, and Congress of South African Trade Unions. Business is represented by Business Unity South Africa. The Department of Labour leads the government delegation.

Evidence of implementation effectiveness: The CEACR noted with interest the information supplied on the procedures of the tripartite consultative process on matters covered by Convention No. 144. Any constituency of NEDLAC may at any time submit a matter under Article 5, paragraph 1, of the Convention for discussion in the appropriate chamber or at the over-arching management committee which is made up of representatives of the employers, workers and community organizations.

Ratification of ILO Conventions: South Africa ratified the Tripartite Consultation (International Labour Standards) Convention 1976 (No. 144) on 18 February 2003.

Sources:
National legislation; NATLEX database (http://www.ilo.org/dyn/natlex/country_profiles.basic?p_lang=en&p_country=ZAF); CEACR, direct request concerning Convention No. 144, 2008. (http://webfusion.ilo.org/public/db/standards/normes/appl/appl-displayAllComments.cfm?conv=C144&ctry=0650&hdroff=1&lang=EN).

The Quarterly Labour Force Surveys of 2010 recorded a total of about 3.3 million union members, of whom 1.3 million (41 per cent) were female and 2.8 million (84 per cent) were urban. Trade union density, i.e. membership calculated as a percentage of all employees appears to have increased slightly over the period 2006 through 2010, with the increase somewhat more marked for women workers than for men workers. Female membership nevertheless remained lower than male membership, at 27.7 per cent for female employees as against 31.8 per cent for male. This pattern would, however, be different if the approximately one million domestic workers were excluded from the calculation, as membership is very low in this heavily female-dominated sector.

Unfortunately, there are no reliable statistics available in relation to density of membership of employers' federations. There are, however, statistics for 2010 on trade union density and the coverage of collective bargaining. For 2010, the overall coverage of employees by collective bargaining was 32.7 per cent for all employees – 34.5 per cent for males and 30.3 per cent for females. The urban-rural difference in this respect was much larger than the gender difference, mirroring the difference in union density.

Table 15. Trade union and employer organization membership

Decent Work Indicator	2006	2007	2008	2009	2010
Trade union members, total	**3 106**	**3 347**	..	..	**3 311**
Male	1 887	2 026	..	..	1 966
Female	1 219	1 321	..	..	1 345
Urban areas	..	..	..	..	2 784
Rural areas	..	..	..	..	527
Trade union density rate, in % of employees	**28.9**	**30.3**	..	..	**30.0**
Male	31.0	32.4	..	..	31.8
Female	26.2	27.6	..	..	27.7
Urban areas	..	..	..	..	31.8

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Rural areas	..	..	..	..	23.1
Enterprises that are members of all employers' federations	..	..	..	..	..
Number of employees in member enterprises	..	..	..	..	..
Density rate (weighted), in %	..	..	..	..	..
Collective bargaining coverage rate	..	..	..	..	**32.7**
Male	..	..	..	..	34.5
Female	..	..	..	..	30.3
Urban areas	..	..	..	..	34.8
Rural areas	..	..	..	..	24.3

As noted above, the Bill of Rights affords the right to strike. The number of strikes declined steadily during the period 2006 to 2009, from 99 to 51 respectively, but then dropped to 74 in 2010. The number of work days lost showed a much more variable pattern. It reached its high point in 2010, with 20,674,737 working days lost. The previous peak was in 2007, when 9,528,945 days were lost.[55]

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[55] Department of Labour: *Annual Industrial Action Report 2009* (Pretoria, 2009), p. 28.

12. Proposal for monitoring indicators

This South African decent work profile departs from the standard international template by including proposals for indicators through which the country's Decent Work Programme can be monitored. Ideally, definition of such monitoring indicators should be done at the time the Programme is developed. Such indicators can assist in promoting social dialogue between government officials, employers, workers and – in the South African case – community representatives. It can assist in ensuring that the dialogue is based on evidence.

This chapter puts forward proposals for possible ongoing monitoring indicators for South Africa's Decent Work Programme. The proposals take several factors into account, namely:

- The outputs and outcomes of South Africa's Decent Work Country Programme 2011-14 as reflected in the revised document of 18 March 2010
- The indicators presented in the preceding text, which are based primarily on the international recommended indicators
- The specific needs in respect of South Africa's labour market.

In considering the interplay between the first and second factors, the recommendations focus on those indicators that are most relevant for the outputs of the Programme and for which data are either already available or could, conceivably, be made available without major effort, expense or lapse of time. The focus is also on indicators for which timely data are available on an ongoing basis, as out-of-date data are of little use for monitoring.

A further important consideration is the amount of energy and other resources that should be spent on monitoring. While one can always think of additional indicators, these are meant to serve as warning signals of where things are going wrong – and there can therefore be further investigation – rather than attempting to measure everything. A short list can also be seen as sending the message that the most important thing is implementation, and that it is there that the bulk of financial and human resources and energy should be focused.

OUTCOME 1: Up-to-date International Labour Standards are ratified, complied with and reported on

- List of all conventions listed in the labour force indicator boxes, with an indication of which have been ratified, date of ratification, date when last report was submitted, date when next report is due, and evidence of compliance.

OUTCOME 2: Labour administrations apply up-to-date labour legislation and provide effective services

- Number of unfilled labour inspector posts
- Number of labour inspectors per 10,000 paid employees
- Number of labour inspectors per 10,000 employed people
- Number of labour inspections per 10,000 paid employees
- Number of labour inspections per 10,000 employed people.

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The inspector and inspection indicators might need to be disaggregated into those employed by the Department of Labour and those employed by the Department of Mineral Resources.

The inspection indicators might also need to be disaggregated into those relating to employment equity, those relating to accidents and injuries, and those relating to other legislation.

OUTCOME 3: More women and men, especially youth and persons with disabilities, have access to productive and decent employment through inclusive job-rich growth

- Employment-to-population ratio, disaggregated by sex, race and broad age group (youth 15-24, 25-34, and 35-64): MDG indicator 1.5
- Unemployment rate, disaggregated by sex, race and broad age group
- Expanded unemployment rate, disaggregated by sex, race and broad age group
- Youth not in education and not in employment, disaggregated by sex, race and broad age group
- Informal employment, disaggregated by sex, race and broad age group
- Proportion of own-account and contributing family workers in total employment, disaggregated by sex and urban/rural: MDG indicator 1.7
- Median real earnings of employees by sex and race
- Minimum hourly wages in sectoral determinations by determination
- Rate of work with decent hours by sex and race
- Occupational segregation among employees by sex, race and age group
- Share of women in wage employment in the non-agricultural sector, by race and urban/rural: MDG indicator 3.2
- Gender monthly wage/earnings gap disaggregated by employment status

The above could be supplemented by indicators from Employment Equity reports. This would serve to capture disability, which is not captured adequately in other data sources. However, the Employment Equity data are not enough on their own as they have a smaller coverage than the Quarterly Labour Force Surveys.

OUTCOME 4: Sustainable and competitive enterprises (including cooperatives) create productive and decent jobs especially among women, youth and persons with disabilities.[56]

- Employment by status in employment, disaggregated by sex, race and broad age group
- Median real earnings of employers by sex and race
- Median real earnings of self-employed by sex and race

OUTCOME 5: Skills development increases the employability of workers and the inclusiveness of growth

This is covered by the occupational segregation and earnings indicators

[56] South Africa does not yet have agreed definitions for indicators for working poor (MDG indicator 1.6) and labour productivity (MDG indicator 1.4). Once agreed these will be included under Outcome 4.

OUTCOME 6: More people have access to better managed and more gender equitable social security and health benefits

- Share of employees whose employers contribute to a medical scheme by sex and race
- Share of employees whose employers contribute to a retirement scheme by sex and race

The above are not included in the standard international indicators but can be generated from the Quarterly Labour Force Survey data.

OUTCOME 7: Workers and enterprises benefit from improved safety and health conditions at work

- Reported occupational fatalities disaggregated by mines/other
- Reported occupational non-fatal injuries disaggregated by mines/other

The above indicators are not currently available, but are important enough to require urgent focussed work to ensure that they are.

OUTCOME 8: The World of Work responds effectively to the HIV and AIDS epidemic

- HIV prevalence rate disaggregated by sex
- Number of people on antiretroviral treatment provided by Government.

The above indicators do not relate directly to work. However, provision of antiretroviral treatment should facilitate a greater number of HIV-positive people being able to work.

OUTCOME 9: Strengthened labour market institutions and capacitated social partners (tripartite-plus) contribute to effective social dialogue and sound industrial relations.

- Trade union density rate disaggregated by race, sex and industry
- Collective bargaining coverage of workers disaggregated by race, sex and industry.

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Annex 1

List of South African legislation relating to Decent Work

Constitution of the Republic of South Africa (Act No. 108 of 1996) (Constitution)

Basic Conditions of Employment Act (No. 75 of 1997)

Labour Relations Act, 1995 (No. 66 of 1995)

Employment Equity Act, 1998 (No. 55 of 1998)

The Unemployment Insurance Act, 2001

Public Service Act, 1994 (No. 103 of 1994)

Public Service Labour Relations Act, 1994 (No. 105 of 1994)

Unemployment Insurance Contributions Act of 2002

South African Schools Act No. 84 of 1996

Children's Act No. 38 of 2005

Criminal Law (Sexual Offences and Related Matters) Amendment Act of 2007

Correctional Services Act No. 111 of 1998Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993)

Occupational Health and Safety Act, 1993 (No. 85 of 1993)

Social Assistance Act, 2004 (No. 13 of 2004)

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