

COSATU Submission on the Skills Development Bill
Presented to the Portfolio Committee on Labour
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1. Introduction

The Skills Development Bill (the "Bill") is an important landmark in the history of South Africa. The Bill seeks to "provide an institutional framework to devise and implement national, sector and workplace strategies to develop and improve the Skills of the South African workforce." It envisages linking these strategies with the National Qualifications Framework (NQF), provide for learnerships that lead to recognised qualifications; establish a levy-grant system to finance skill development; and to regulate employment services.

COSATU welcomes and supports these objectives. In our view, the Bill is strategically placed to eradicate the skills deficiency facing our country. The skills deficiency is a product of both under-investment in training by companies and the skewed provision of general education. The economy generally relied on a cheap labour system, which deliberately withheld investment in education and training. Compared to the OECD countries which spend between four to seven percent of payroll on skills development, the private sector in South Africa spend between 0% and 1% of payroll on skills development.¹

Skills development or human resource development is central to economic development, and lack of investment in skills formation undermines the productive capacity of the economy. The Green Paper on Skills Development ("the Green Paper") underscores the centrality of skills development in enabling people to participate in economic and social development, as well as enabling people to respond to technological change.

Due to historical under-investment in skill formation by companies as well as the deficient education system, South Africa faces skills shortage in many sectors of the economy. These shortages have continued to worsen over time, as a result of the neglect of the previous regime. For instance, the training of apprentices declined drastically over the last ten years. The ILO estimates that the intake of apprentices between 1990 and 1994 was reduced by between 30% and 60%.² On the other hand the apprentice system was generally defective and inefficient.

¹ Presidential Commission on the Labour Market, 1995, p.43

² ILO Review, 1996, p.459

The ILO found that it produced low standard training because practical training was unsupervised and unstructured. Under-investment in skills development is further compounded by the high rate of illiteracy. It is estimate that 45% of adult Africans cannot read or write, while 35% of the economically active population in 1991 were reported as functionally illiterate.³

Eradicating this legacy of apartheid requires an integrated strategy to enhance investment in education and training, a new institutional environment, a qualifications framework that articulates between the various bands of education and training, and an improved school system. We believe in the principle of life-long learning, and in this regard support the National Qualifications Framework, as it promotes portability and articulation between different levels of learning.

We see the Bill as part of a package of measures to transform the apartheid work place. It should be linked to employment equity, including measures to reduce the wage gap; introduction of flat hierarchies; transformation of Further Education and Training; and the new qualifications framework under the South African Qualifications Authority, which places emphasis on portability of skills and articulation between the various bands of learning. These measures should work in concert and supplement each other; one measure cannot be implemented in isolation of the others.

Against this background, COSATU welcomes this opportunity to address the portfolio committee on the Skills Bill. This submission will outline COSATU's overall approach and concerns with regard to the Bill. A number of amendments are proposed which we believe strengthen the Bill and also addresses our concerns.

2. COSATU's Approach to the Bill

COSATU broadly supports the strategy and objectives of the Bill, although certain areas need to be improved. In our view, the objectives of the skill strategy must encompass:

- Redressing of past imbalances in education and training;
- Improving productivity growth;
- Facilitating workers mobility and prospects of work opportunities,
- Improving the quality of life of workers;
- Encouraging articulation between the different bands of education and training;
- Improving access to training and education;
- Create synergies between institutions of learning and the labour market.

The National Skills Authority (NSA)

The establishment of the NSA is an important step and would contribute towards an integrated and comprehensive skills strategy. For the first time in our country we will be able at a national level to determine skills development policy, map skills strategy and devise implementation strategies. The relationship envisaged in the Bill between the NSA and Sector Education Training Authority (SETA) is important and should ensure coherence of the national strategy, while at the same time incorporating sensitivity to sectoral needs. COSATU supports the functions mapped out in the Bill for the NSA, section 5 of the Bill.

Sector Education and Training Authority (SETA)

We support the establishment of the SETAs outlined in Chapter 3 of the Bill, as an important step to oversee the planning and delivery of skills at a sectoral level. In addition, the Bill makes provision for a SETA to establish chambers, which will focus on skills required for sub-sectoral company specific production competency co-ordinated by the SETA. The planning of skills programmes within a sector will now be holistic, informed by the national skills development strategy. The skills plan and the development of learnerships in line with section 10 of the Bill will assist the sectors for the first time to plan and co-ordinate their activities on a sectoral basis, but allow for portability and articulation of skills within and between these sectors.

³ Presidential Commission on the Labour Market, 1995, p.42.

COSATU supports the financial framework set out for SETAs in the Bill. The Bill provides clear criteria on how finances of the SETA have to be controlled and managed. This should go a long way in ensuring accountability and ensuring that resources are utilised for the objectives set in the Bill. In particular, the provision that government would take over administration of a SETA due to incompetence (section 15 of the Bill), is important. This is a necessary check and balance but should be used prudently, preferably as a measure of last resort if the SETA is incapable of using funds appropriately.

Learnerships

The introduction of learnerships in terms of chapter four (4) of the Bill will assist in addressing the legacy of the past in relation to apprenticeships. It focuses on quality of learning, integration of theory and practice, and places emphasis on the purpose of learning to achieve a qualification that is portable and can articulate with other bands of education and training. Learnerships would assist the unemployed and underemployed, youth and school leavers, women, and rural communities to access structured training programmes. Ultimately, the Bill would assist the unemployed to acquire skills, which would be important for securing jobs. The learnership agreement contained in section 17 of the Bill and the contract of employment is tailored to the needs of the unemployed, including the youth, women and rural communities. The accelerated implementation of the Bill will have a positive spin-off on the Job Summit process

The Bill in chapter 5 contemplates that there will be a need in the short term to embark on a learning programme which is occupationally-based to address the shortage of skills in the sector. The Bill also places emphasis on credits accumulated in learning programmes towards a registered qualification. Some forms of skills programmes will be occupationally-based in the short term, as a means of addressing immediate practical skills shortages faced by workers and employers. We should not lose sight, however, of the fact that the ultimate purpose for any form of training is to address a required qualification, which has a career path. Therefore, any form of training must take place within the context of a learnership.

Most importantly, all disputes arising out of the interpretation of this Act, pertaining to learnerships are to be referred to the existing dispute resolution structures, namely CCMA, Labour Court and Labour Appeal Court. Conditions of employment will also be governed by the Basic Conditions of Employment Act as a means of avoiding the exploitation of learners.

The Skill Development Planning Unit (SDPU)

The establishment of the SDPU should go a long way in providing research and analysis of skills shortage in South Africa for each sector of the economy and organs of state. It will play an important role in identifying areas where there are shortages of skills and thus enable prioritisation. The formulation of a skills strategy by the NSA and SETA, and the successful implementation of a demand-led training system will be highly dependent on the SDPU with regard to provision of quality of information and its relevance, and the outcomes of the skill development strategy.

Employment Services

COSATU welcomes the fact that all employment service agencies have to register with the Department of Labour according to section 24 and must comply with criteria set out in section 23 of the Bill. This will go a long way in regulating the establishment of these agencies, as they are currently not subjected to particular rules, procedures and norms and standards. There is a need to ensure that employment agencies cater for the needs of rural areas. Therefore it would be important that the state, through its public employment services should have a special focus for the rural areas. We propose the following amendment to s.23 (2) (a) of the Bill:

After “providers”, insert “at such locations and employing such means as are appropriate in order to serve all areas of the Republic, giving priority to improvement of services to rural communities”

Financing Skill Development

The success of the strategy hinges on the availability of resources in the National Skill Fund (NSF). We move from the premise that training expenditure is a long-term investment. A commitment to funding of the NSF, which will in turn provide assistance in a form of grants and subsidies to the target groups (women, youth, the unemployed and under-employed, rural communities and people with disabilities), is a step in the right direction. These sections of the community have been overlooked by the previous regime.

The White Paper on Public Service Training and Education proposed overhauling and transforming public service education and training. The commitment by government departments to budget at least one percent of their pay roll for training and education of public servants should be commended as a progressive move in this direction. In the past, the focus was on provision of crash courses because it was felt that the public service already employs “professionals”. This ignored the needs of ordinary workers at the lower end of the public service. The White Paper in conjunction with the strategy outlined in the Bill will rectify this situation.

While commending the commitment by national and provincial spheres of government to budget a minimum one percent of their payroll for training and education, we note that there is no similar commitment by local government. No tangible reasons have been advanced for the exclusion of local government to comply with the Bill. This is a matter of serious concern and should be corrected. It also contradicts the commitment in the White Paper on Local government, which asserted that local government training should be brought in line with the Skills Bill. We therefore propose the amendment of section 30 to include local government. The section would then read as follows:

30. Each public service employer in the national, provincial and local spheres of government –
- (a) must budget for at least one per cent of its payroll for the training and education of their employees; and
 - (b) may contribute funds to a SETA.

We note that the levy is referred to Ministry of Finance who should introduce the Skills Development Levy Bill. This piece of legislation needs to be introduced simultaneously to avoid hampering the implementation of the Skills Development Bill. It should be introduced as a matter of urgency in this session of parliament. Further, the Ministry should take into account the agreements reached at Nedlac on this issue. Therefore we do not envisage a version, which will undermine the negotiated consensus, and which will require substantive negotiations, thus derailing the implementation of the Bill.

Further, we have argued that there is a need to review the level of the levy from time to time. This should be addressed in the Skills Development Levy Bill. We believe that investment in education and training should be increased over time. In our view the levy should gradually be increased to 4% over time.

Having said this, COSATU supports the establishment of the National Skills Funds in terms of section 27 of the Bill. In addition, we support the fact that 20% of levies will be contributed to the National Skills Fund. There was agreement in Nedlac between labour, government and the community constituency that 20% of the levies should go to the National Skills Fund. We welcome the fact the money will be appropriated by parliament for the Fund in line with section 27(1)(c) of the Bill.

Linkage with the Employment Equity Act

There is a need to operationally link this Bill with the Employment Equity Act. Employers are required to submit employment equity plans, which indicate among others the skill levels of their employees and timeframes for development of such skills. These plans should be submitted to the Department of Labour.

Therefore there is a need for a relationship between the employment equity plans and the skills plan to be submitted to the same Director General in compliance with this Bill. These plans should inform each other and where necessary supplement each other.

3. Areas of concern

As reflected in the Nedlac report (12 May 1998), we have three main areas of concern in connection with this Bill. These are the (a) status of education and training providers on the NSA, (b) demarcation of sectors for the establishment of SETAs, and (c) community participation and representation in the chambers of the SETA.

Status of education and training providers on the NSA

Whilst in agreement with the general thrust of how NSA will be composed, there are two issues which need to be clarified:

- (a) **Chairperson of the NSA:** In terms of section 6 (1) (a) the chairperson of the NSA has voting rights. In our view the chairperson should not have a vote. There is the need to make a distinction whether the chairperson has a deliberative vote or a casting vote. Whilst this will be clarified by the Constitution of the NSA, we are not in favour of a voting chairperson because this will make him/her partial in the deliberations. We therefore propose the following amendment to section 6 of the Bill:
Delete “voting” in section 6(1)(a) and replace with “non-voting”.
- (b) **Voting by providers:** The Bill at section 6(2)(e) provides that there will be “four voting members appointed by the Minister to represent the interest of education and training providers.” Throughout the negotiations process we have argued that the providers should be excluded from the voting process. We are informed by the fact that most of these providers on the NSA will be providing education and training and they will have vested interest when tenders are awarded to institutions. Secondly, the NSA’s decisions are by consensus, meaning that a vote will be a last resort mechanism. Thirdly, the significance of providers’ participation is not about voting, but their expertise in training programmes and accreditation. Apart from the fact that they would not be voting, they have the same status as other stakeholders. We therefore propose the following amendment to section 6 of the Bill:
Delete “voting” in section 6(2)(e) and replace with “non-voting.”

Demarcation of sectors for establishment of SETAs

In our view Nedlac should confirm the demarcation of sectors before ratification by the NSA. Nedlac is currently discussing sector demarcation for purpose of collective bargaining and it is imperative that demarcation for purpose of SETAs is informed by this process. We therefore propose the following amendment to section 9 of the Bill:

Insert new subsection 3 to read “before the Minister establishes sector education and training authority, the Minister shall refer the proposed constitution to Nedlac for review of the proposed sectoral determination.” Renumber existing subsection 3 to 4.

Community representation and participation

The Bill does not provide for community participation and representation on SETAs. This is a serious oversight and should be corrected. In our view the chambers of a SETA may invite the community constituency to have a seat to ensure that issues affecting communities are taken on board. We therefore propose the following amendment to section 10 (1) of the Bill:

Insert new subsection (k) to read as follows: “provide mechanisms for inviting community involvement in SETA deliberations, which may include appointment of representatives of the community to sectoral chambers in terms of section 12 of this Act; and”. Renumber existing (k) to (l).

4. Conclusion

In conclusion, COSATU again wishes to thank the portfolio committee for the opportunity to participate in the public hearings. We commend the Department of Labour for developing this Bill. We hope that the proposals we have put forward will be taken on board. The Skills Bill is an important element of the Department of Labour's five-year plan to transform the labour market and we are aware that a daunting task lies ahead. We urge the committee to ignore those opposed to the transformation of the apartheid labour market including those who are opposed to this Bill. We believe that this Bill coupled with other measures will go a long way in improving the life of ordinary South Africans, as well as contribute towards economic development.

5. Annexure A: Summary of Amendments

1. Employment Services

After "providers", insert "at such locations and employing such means as are appropriate in order to serve all areas of the Republic, giving priority to improvement of services to rural communities"

2. Financing Skills Development

We propose the amendment of section 30 to include local government. The section would then read as follows:

30. Each public service employer in the national, provincial and local spheres of government –
- (a) must budget for at least one per cent of its payroll for the training and education of their employees; and
 - (b) may contribute funds to a SETA.

3. Status of provider on the NSA

We propose the following amendment to section 6 of the Bill:

Delete "voting" in section 6(1)(a) and replace with "non-voting".

Delete "voting" in section 6(2)(e) and replace with "non-voting."

4. Demarcation of Sectors

Inset new subsection 3 to read "before the Minister establishes sector education and training authority, the Minister shall refer the proposed constitution to Nedlac for review of the proposed sectoral determination." Renumber existing subsection 3 to 4.

5. Community Participation

Insert new subsection (k) to read as follows: "provide mechanisms for inviting community involvement in SETA deliberations, which may include appointment of representatives of the community to sectoral chambers in terms of section 12 of this Act; and". Renumber existing (k) to (l).