



# CCMA ANNUAL LABOUR CONFERENCE 2024

14 -15 MARCH 2024

ONLINE



**THEME:**

*THE IMPACT OF LABOUR MARKET DYNAMICS,  
TECHNOLOGY AND POLICY ON SOCIAL JUSTICE*



**PLENARY 1:**

**THE SOUTH AFRICAN LABOUR MARKET: ECONOMIC REALITIES, LEGAL CHALLENGES AND SENSIBLE SOLUTIONS**

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# PRESENTATION OUTLINE



**CCMA**

COMMISSION FOR CONCILIATION, MEDIATION & ARBITRATION

**1. Background**

**2. Introduction**

**3. Economic reality**

**4. Equality and associated challenges**

**5. Sensible solutions**

# Introduction

- Social justice: access and inclusion/ increased and increasing levels of (economic) equality
  - “democratic, universalistic, caring and **aspirationally egalitarian ethos**” (*Makwanyane*, echoed in *Mahlangu* – par 102: “compassionate and **truly egalitarian society**”)
  - For equality – read income equality – decent job with decent wage
- Facts and figures (describing the labour market) and equality
  - Caveat: 2 crises bookending state capture (different levels)
  - The four (interrelated) E’s:
    - Exclusion, Equality, Education, Evolution
  - Of these: (in)equality permeates everything –
    - the search for a ‘fair’/ ‘moral’ economy; but at the same time
    - the economy is the ‘real constitution’ (property, monetary stability, profit)
- This means there are constraints in our search for sensible solutions:
  - The labour market (employment) holds the key, but can never be considered in isolation (‘labour market fatigue’ and ‘equality fatigue’);
  - Underlying conceptual/ ideological approach – esp role of the state and role of the private sector.
  - Re-regulation

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# The labour market: Facts and figures

- **Exclusion**

- **Stagnant economy** (before 2021 the last time we saw growth exceeding 2% was 2013); just avoided a 'technical recession' (by 0,1%):
  - Population of working age: 2014 – 35 410 000; 2020 – 39 093 000; Dec 2023 – 41 022 000 (LMD/QLFS)
  - Employed in formal sector: 2014 - **10 822 000**; 2020 - **10 537 000**; Dec 2023 – **11 488 000** (LMD/QLFS)
  - Mining more or less steady, manufacturing declining, small proportion
  - Social grants: 1997: 7% of population; 2020 already 31% of population (18,2 million)(DSD)
- **As rough measure of prosperity - per capita GDP basically the same as in 2000's in nominal terms (WB)**
- **Very high structural unemployment** (see also next slide)
  - Dec 2023 – 32,1% - Has not been under 20% for thirty years; for only six of those years under 25% (Greece (2010-2015));
  - 32.1% = 8 million people;
  - Bulk is long-term unemployment;
  - Dec 2023: Unemployment rate of graduates – 9,6%;
  - Public service 'elite'; labour brokers;
  - One study (PWC): we need 4% growth per year just to get unemployment under 30% by 2030 (otherwise probably heading for 40%)



# The labour market: Facts and figures (cont'd)

- Equality
  - Still the **most unequal society in the world** (IMF: increasing and high; and out of sync with other EMC's – lower and declining)
  - The high structural **unemployment has a clear discriminatory dimension**:
    - **Unemployment by sex** (Dec 2023): W – 34,4%, M 30,1% (but intersectionality (2020) – BW 41%; WW – 8,2%; IW – 22,4%; CW – 29,9%)
    - **Unemployment by race** (Dec 2023): Black – 36,1%; Coloured 21,7%; Indian – 11,7%; White - 8,5% (QLFS)
    - **Youth unemployment (Dec 2023)**: 15-24 year olds: 59,4%; 25-34 year olds 39 % (QLFS)
  - **Distribution of jobs** still skewed
    - “Managers and professionals”:
      - 2014 – 2 173 000; 2019 – 2 381 000; Dec 2023 – 2 822 000 (LMD - QLFS),
      - **Women**: 2014 – 36,4%; 2019 – 39,1% (LMD-QLFS); Dec 2023 - 43,01%: ‘Managers’ (W=34,9%) more disparate than ‘professionals’ (W=51,9%) in case of sex
      - **Race** - CEE (2022) – “Top, senior management, professionally qualified” - WM (50,2%; 33,6%; 17,8%); WF (13%; 17,7%; 13,6%) – **but only 8,8% of EAP; disparity basically all in private sector**

# Labour Market: Facts and figures (cont'd)

- **Education: basic education poor; levels low; getting worse**
  - Massive undertaking: 12 684 886 learners; 22 589 schools and 405 626 educators (2022)
  - Many challenges: legislative environment, competency of management, school governance, the qualifications, commitment and conduct of educators, infrastructure, transport, safety at schools, the availability of educational materials, the socio-economic background of learners and the education level of parents.
  - Clearest link with economic performance (Gustaffson)
  - 'only societal equalizer' - link with equality (opportunity) through link with jobs but:
    - 2021 PIRLS: 81% of grade 4 learners in South Africa cannot read for meaning in any of the eleven official languages (last out of 57 participating countries). Worse than 2016.
    - 2019 – ("TIMSS") - Grade 5 learners ranked third last (out of 58 countries) in the TIMSS Study for mathematics (we beat Pakistan and Philippines); grade 9 learners 2<sup>nd</sup> last (we beat Morocco); in case of science (grade 5) also third last; grade 9 last.
    - Drop-out rate pre-matric 40%: Adults with less than matric: B = 53%; C = 56%; I = 31%; W = 17% (Census 2022)
    - PSETM: 2010: persons in age group 25-64 with degree: 4,8%; 2020 - 6% (but B 4,1%; C 4,3%; I 15,4%; W 23,4%) - unemployment of graduates 9,6%

# Labour Market: Facts and figures (cont'd)

- Evolution (Gig economy/ 4IR)
  - Change in demand for labour
    - platform work;
    - demise of “routine specialised intelligence” (never mind plain knowledge) - numeracy and literacy just basic survival tools
  - Keys to success (WDR):
    - *High order cognitive skills* (complex problem solving);
    - *Socio-behavioural skills* (teamwork);
    - *Skills predictive of adaptability* – reasoning/ self-efficacy
  - Technology has always created more jobs than it destroyed – so not necessarily fewer jobs – but different jobs, different skills, agile skills
  - Graduate unemployment rising (skills mismatch increasing?)
  - Risk of rising inequality (if juxtaposed with previous slides)
  - Collaboration and communication – at societal and at firm level - new “social contracts”

# Economists and economic inequality

- **Not all inequality is bad** – as long as it consists of appropriate incentives (individuals getting ahead; innovation and entrepreneurship) – but not **rents** (eg discrimination, corruption)
- **But more equality is better**
  - As a matter of dignity
  - As a matter of social justice
  - **As a matter of economics: inequality creates big risk for economic growth; macroeconomic stability and the ability of growth to reduce poverty**



# ‘Equality fatigue’ and ‘labour market fatigue’ in our search for solutions

- The promise of section 9 of the Constitution, but against the past:
  - Has to deliver individual and group justice;
  - Has to deliver justice between groups, within groups (intra-sectional) and across groups (intersectional);
  - Has to deliver on an ex tempore basis and on an intergenerational basis;
  - Has to deliver this across all spheres of society (economic, civil, social);
  - Enforcement – litigation
- And if the key to equality is jobs, perhaps disproportionate focus on labour market policy as operationalised through labour legislation:
  - Especially the EEA (and especially as amended over time);
  - This despite the ‘panoply of rights’ in labour legislation;
  - It is time to give back to the labour market.

# Influences on economy and inequality

- Drivers of economic (in)equality:
  - Over many of them we do not have much control: eg technology, trade globalisation, financial globalisation.
  - But over some we do:
    - Thinking straight about the State and the private sector
    - Labour legislation

# Economic inequality: Thinking straight

- Division of responsibility – state and private sector (still the big bad wolf after all these years?)
- There are only two ways for government to contribute:
  - Progressive tax system and then
    - either fiscal contribution to create effective opportunity (1<sup>st</sup> prize), or
    - direct transfer (2<sup>nd</sup> prize, but may be necessary baseline)
- Effective creation of opportunity:
  - In first instance responsibility of government is not to hand out jobs (tempting – 665 institutions; ETI, EPWP);
  - but to create environment conducive to investment and growth (and job creation):
    - the twelve pillars of competitiveness.
    - Failing at the first hurdles: **broader institutional framework (eg safety), infrastructure (eg Eskom, Transnet, water(!) and other SOE's - 'shells of extraction'), skills – this is where the real contribution should be; giving back to economy, giving back to labour market.**
    - Essential services and trade unionism in the public sector.

# Labour legislation

## **Economic effect of labour market institutions (read ‘labour law’): ongoing debate:**

‘It is not surprising that the policy outcome of this debate is locked up in an oxymoron – regulated flexibility..... In a world of scientific uncertainty, where stakes are high and we find ourselves in a fiercely contested and ideologically informed space, the danger is that perception and speculation flourish, rent-seeking is encouraged and power alone is rewarded.’

**Growing consensus:** no rule of labour law economically neutral, directly/ indirectly increases cost, redistributive;

‘efficiency economics’ turned on its head (only through productivity gains);

labour law = reaction to economic events; but also precondition for/ part of sensible development

## **Effect on equality:**

Greater flexibility worsens

Weak unions worsens (but RSA?)

Casualization worsens (but only more advanced countries?)

Rigidity in hiring and firing (with weak income protection/ safety nets) - informality and deepening inequality? (Bhorat – hiring)

But, in general, minimum wage, unionisation, social security – positive effect.

# Labour legislation (cont'd)

- Full regulation?
- Even so, there are many things that occupy us on a daily basis - labour market fatigue and a sense of “full regulation” does not mean there is no scope for better regulation, or “re-regulation”:
  - Individual labour law;
  - Collective labour law;
  - Dispute resolution.



# Individual labour law

- Coverage;
- the BCEA threshold;
- the NMW;
- ‘hiring laws’ (eg AA, three-month time limits (ss 198A and B LRA));
- ‘size of the employer’ exceptions;
- room for greater certainty – Codes of Good Practice (haphazard);
- the ‘abuse’ of equality law;
- elevating procedure above substance;
- S 189A (and competition law);
- public service employment.

# Collective labour law

- Constructive unionism, destructive unionism and consequence management.
  - 3 IR's ago
  - Shift away from “1995 model” (voluntarism, majoritarianism, sectoral union - based centralisation).
    - multi-locational employers, minority unions (esp special interest), multi-sectoral unions
    - Minority unions: hierarchy based on dimensions of FoA? Def of “workplace”?
  - Essential services (relationship with ILO prescripts, also secondary strikes);
  - Abuse of the right to strike (unprotected, essential services, violence);
  - Consequence management (and some strange views from the CC – sterile view of workplaces, individualising collective action, costs orders);
  - Co-operation.

# Dispute resolution

- The amount of work the CCMA and LC's get through in a year simply amazing;
- Not so much a legal problem as one of budgets;
- Quality of CCMA awards and reviews (bulk of LC work):
  - Constitution gave us substantive review
  - In recent times, Anton Myburgh made compelling arguments about streamlining the process, the rise of 'correctness', and in support of greater consistency (if not 'appeals');
    - Precedent already there (discrimination);
    - Irrelevance of reasons – the serendipitous commissioner;
    - Tell us what went wrong (if anything) and what the outcome should be.

# THANK YOU

**ngiyathokoza!**

**ro livhuwa!**

**dankie!** **ke a leboga!**

**enkosi!**

**inkomu!**

**thank you!**

**udo livhuwa!**

**ke a leboga!**

**ngiyabonga!**

**siyabonqa!**