



CCMA LABOUR CONFERENCE 2024

14 AND 15 MARCH 2024

ONLINE (HYBRID)



THEME:

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



PLENARY 2:

MAINSTREAMING SOUTH AFRICA'S LABOUR POLICIES AND LEGISLATION

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Date: 14 March 2024

PRESENTATION OUTLINE



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1. Visions, challenges and struggles

2. Phases, topics and positions

3. Coverage and scope

4. Security of employment

5. Transitions, changes and shocks

Visions of the labour market – what is the balance?

- LRA vision – “regulated flexibility”
- ILO vision - “flexibility with security”
- NPC – “responsive labour market”
- Regulation of labour market transitions
- “Just transition” to green economy
- Enforced self-regulation (EEA)
- Incentive-driven regulation (BBBEE)

Labour market stressors – new challenges, ongoing struggles

- Rising unemployment, particularly among youth
- Rising informalisation (three phases)
- Rising (and changing) inequality
- Limitations of skills model
- Covid pandemic (as a laboratory) = lessons of the TERS
- Resurgence of remote work
- Climate change and the just transition to green economy

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Phases of labour legislation post-1994

- First Parliament – LRA, BCEA, EEA and SDA elected between 1995 and 1998 new
- First Revision – 2002 to 2004
- Second revision – 2010 to 2014
- Employment Services Act, 2014
- NMWA and BCEA Amendment, 2018
- LRA Amendments and revised Code responding to greater conflict post-Marikana)
- EEA amendments, 2022 – sectoral targets and greater incentives/enforcement
- Third revision – ongoing at NEDLAC, since 2022

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Key subordinate legislation

- Dismissal CGOP currently under review
- CCMA rules – regular change
- Labour Court rules – revisions/ delays
- CGOPs – new Codes –
 - Prevention of Harassment under EEA
 - Sectoral target regulations
- Possible areas – remote work



Stakeholder positions

- Labour – resist any reduction of rights
 - Support extension of categories of rights and right-bearers
 - Emphasizes impact of inequality on working class
- Business – great flexibility, particularly for SMEs
 - Big business supports overall framework
 - Reduction of protection to promote employment
- Government – seeking balance between job creation and protection
- Are trade-offs achievable in one Act or across Acts?
- A social compact on labour law?

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Scope of employment (1)

- Who is covered and who is not?
- Rise of “non-standard work” from 1990s
 - Presumption; regulation of TEs and fixed term contracts and part-time work;
 - NMWA applies to workers
- Rise of platform work
 - Employing entities treat workers as non-employees irrespective of reality
 - ideological view with workers carrying high risks
 - May or may not be employees – test-case or legislation?
- Informal economy remains excluded
- Is traditional divide between employee and independent contractor FFP?

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Scope of employment (2) – way forward

- Expanded definition - is one possible?
- Purposive interpretation of different statutes
- Revise presumptions (ABC test)
- New concepts – dependant contractor
- Considerations –
 - use of “worker” in labour rights sec 23 of Constitution
 - ILO Conv 87 (binding on SA as a core Convention) extends freedom of association to all workers
- Obligation to extend collective labour law to “workers”
- Is the TU model in the LRA appropriate?
- Impact on CCMA and other labour institutions

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Employment Security

- Key labour right measured by referrals/ worker views
- Job security versus work security
- Critical issues
 - Qualifying period/ probation
 - Procedural fairness (public v private sector)
 - Exclusion/ limitations for SMEs
 - Guidance/ knowledge of law/ revision of Codes
 - Access versus manageable case-load
 - Views on retrenchment - businesses in trouble – who pays the benefit/ who carries the loss

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Impact on Institutions

- Ease of referral and simplicity of forms
- Cross-statue referrals
- High case load and increasing categories of justiciable disputes
- Should there be stricter requirements to specify dispute
- Has NMWA and BCEA 2018 amendments changed the nature of the CCMA?
- “No risk” referral results in resources being utilised on meritless cases (?)
 - Commissioner should be able to record views
 - Employees who reject settlement offers should be at greater jeopardy
- Resolution of enforcement issues
- Expanded rule-making powers (greater level of responsiveness)

Transitions and shocks – the role and limits of labour law

- Do we have the mechanisms to respond to change?
- History- 2008 Economic crisis
 - COVID
 - KZN riots and floods
- Mechanisms were developed to cushion the effect of loss of work
- In respect of 2008 crisis, initial TLS assisted in transitions.
- Existing resources were drawn on – the large surplus in the UIF enabled the TERS to provide benefits to laid-off workers



Transitions and shocks – the role and limits of labour law

- Remote work was always present but increased with pandemic
- Impact felt differently by different categories of employees
- Definitional lines blurred – what is a workplace?
- Impact on collective rights – lack of congregation
- Right to privacy
- Right to flexibility
- Right to switch off
- Is a COGP sufficient?



Just transition/ climate change (1)

- Two primary issues –
 - Impact of transition on employment/ communities/ work opportunities
 - Impact of climate change on work – OHS/ BCEA
- Transition from extractive to regenerative economy (move from coal as a blueprint)
- Key Documents
 - PCC Framework for Just Transition
 - JET- Investment Plan
 - Just Transition Blueprint for Workers (COSATU)

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First impacts and adequacy of existing instruments

- Lessons of Komati
 - Transition has unequal economic and social impacts per sector and region
 - Impact on Mpumalanga – 80 percent of coal-fired power stations
 - Identifying the opportunities
- Transition Instruments –
 - Social (and Labour) Plans/ TLS/ TERS/ Future Forums
 - Role of consultation and collective bargaining
 - Section 189A “beefed up” – role of CCMA in firms impacted/ early referral
 - Role of Active Labour Market Policies – skills development and employment services

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THANK YOU

ngiyathokoza!

ro livhuwa!

dankie! **ke a leboga!**

enkosi!

inkomvu!

thank you!

udo livhuwa!

ke a leboga!

ngiyabonga!

siyabonqa!