

# **Dispute resolution at the Commission for Conciliation Mediation and Arbitration: a social justice perspective**

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## **ABSTRACT**

The purpose of the mini-dissertation is to analyse and evaluate the degree to which the CCMA upholds social justice. The manner in which the application of the constitution and labour law affects society, more specifically dispute resolution at the CCMA, will also be evaluated. The CCMA was brought to life by post-apartheid legislation and what is of essence is that the CCMA must in the execution of their services, promote social justice. Various aspects of the CCMA, such as access and representation will be researched. Focus will be on the effect of conclusion of settlement agreements, all with the actualization of social justice in the background. The focus will be on how the conclusion of settlement agreements serves justice and subsequently promote social justice. In other words, giving each person what he or she deserves, which is equal enjoyment of all rights, irrespective of diversity or historical injustices.

It will then be considered whether the CCMA is succeeding or failing in its attempt to achieve social justice in labour relations.

The desktop research methodology will be utilised for the research in this mini-dissertation. Reference will be given to case law, newspaper articles, the internet, labour laws as well as international instruments and some selective CCMA policies and regulations.

## **KEYWORDS**

CCMA, Social Justice, Conciliation, Labour

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## **LIST OF ABBREVIATIONS**

|       |                                                        |
|-------|--------------------------------------------------------|
| BCEA  | Basic Conditions of Employment Act                     |
| CC    | Constitutional Court                                   |
| CCMA  | Commission for Conciliation, Mediation and Arbitration |
| COVID | Corona Virus Disease                                   |
| EEA   | Employment Equity Act                                  |
| ILO   | International Labour Organisation                      |
| LC    | Labour Court                                           |
| LRA   | Labour Relations Act                                   |
| SAHRC | South African Human Rights Commission                  |
| SAPS  | South African Police Service                           |
| SAMLJ | South African Mercantile Law Journal                   |
| TSAR  | Tydskrif vir die Suid-Afrikaanse Reg                   |

# CHAPTER 1 INTRODUCTION

## 1.1 Background

The Nelson Mandela Foundation has defined this concept of social justice as the principle of everyone deserving the same rights in respect of social, political, and economic rights and opportunities.<sup>1</sup>

The characteristics of social justice can be enumerated as the citizenry's access to equality as enunciated in the Constitution of the Republic of South Africa<sup>2</sup> (hereinafter the Constitution). There should be equality on an economic, political and social level. This equality<sup>3</sup> can always be extended to labour matters since the same equality is provided for in labour legislation.

The Labour Relations Act gave birth to the Commission for Conciliation, Mediation and Arbitration, hereinafter referred to as the CCMA. The statutory function of the CCMA is to provide a forum for qualitative, innovative, and cost-effective dispute resolution.

The International Labour Organisation (hereinafter the ILO) is a specialised organisation that believes that labour peace is essential to prosperity. It submitted that the attainment of social justice is of utmost importance, specifically in a world that has traits of inequality.<sup>4</sup> The ILO is also of the view that the yearning for social justice, is as great currently as it was a century ago.<sup>5</sup>

From the sentiments expressed by the Nelson Mandela Foundation and the ILO, it appears that social justice is a phenomenon covering all the facets of life, including labour. It then becomes critical for scholars to research social justice from a labour law point of view. The Nelson Mandela furthermore submits that the elements of

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<sup>1</sup> Nelson Mandela Foundation 2021 *About Dialogue for Justice* <https://www.nelsonmandela.org>.

<sup>2</sup> Constitution of the Republic of South Africa, 1996.

<sup>3</sup> Section 9 of the *Constitution of the Republic of South Africa*, 1996; Examples of labour legislation is the *Labour Relations Act*, 66 of 1995, *Basic Conditions of Employment Act*, 75 of 1997.

<sup>4</sup> According to the World Bank, 10 percent of people in South Africa owns more than 80% of the wealth.

<sup>5</sup> International Labour Organisation 2022 *Introduction to international labour standards* <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/need-for-social-justice/lang--en/index.htm>.



social justice access are resources, equity, participation, diversity, and human rights.<sup>6</sup>

South Africa has distinct features of amongst others inequality, unemployment, poverty and racial exclusions. It appears that apartheid's legacy is so deeply ingrained in South Africa that in the almost 30 years of democracy, it is difficult to extinguish and remains visible and tangible.<sup>7</sup> In actual fact, South Africa identifies as the country with the most dissimilar society in the globe.<sup>8</sup> Statistics illustrate the reality of inequality in South Africa, specifically that racism is still present. It shows that the African population group earn much less than white people in the majority of the different employment sectors. The Minister of Labour's report in 2021, reported that approximately two thirds of people under the age of 25, where the majority of them is black, is still unemployed.<sup>9</sup> According to Stats SA,<sup>10</sup> the employment industry in South Africa remains biased in respect of gender and racism.

This should not be the case where the Constitution<sup>11</sup> is regarded as 'the most admirable constitution in the world'<sup>12</sup> and almost thirty years of democracy. The commitment to social justice and the rights ingrained in the Constitution ought to improve the livelihood of the poor and marginalised. The preamble to the Constitution<sup>13</sup> is very specific in stating its aim. It is to 'heal the divisions of the past and, establish a society based on democratic values, social justice and fundamental human rights'.<sup>14</sup> To be treated as equals before the law, is what the Constitution makes provision for.<sup>15</sup>

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<sup>6</sup> Nelson Mandela Foundation 2021 *About Dialogue for Justice* <https://www.nelsonmandela.org>.

<sup>7</sup> <https://www.aljazeera.com/news/2022/3/10/south-africa-most-unequal-country-in-the-world-report#:~:text=South%20Africa%20is%20the%20most,World%20Bank%20report%20has%20said.>

<sup>8</sup> The World Bank 2022 New World Bank Report Assesses Sources of Inequality in Five Countries in Southern Africa <https://www.worldbank.org>.

<sup>9</sup> Ministry of Labour 2021 Report.

<sup>10</sup> Statistics South Africa 2020 *How unequal is South Africa* 67.

<sup>11</sup> *Constitution of the Republic of South Africa*, 1996.

<sup>12</sup> Sunstein *Designing Democracy: What Constitutions Do* 261.

<sup>13</sup> *Constitution of the Republic of South Africa*, 1996.

<sup>14</sup> *Constitution of the Republic of South Africa*, 1996.

<sup>15</sup> Section 9 of the *Constitution of the Republic of South Africa*, 1996.

## **1.2 Motivation**

### *1.2.1 Labour and social justice in South Africa*

South Africa has moved from an apartheid dispensation into a democratic society. The Constitution<sup>16</sup> paved the way for equality<sup>17</sup> before the law, eradicating discrimination,<sup>18</sup> and induced promotion of social justice.<sup>19</sup> Social justice, being equal access and distribution of resources, diversity, human rights, and equal opportunities, is also not a new concept. It finds its origin in early philosophers like Plato and Aristotle to whom justice meant goodness and willingness to obey and respect the laws.<sup>20</sup> Social justice thus becomes one of the main themes of this proposed research, but from a labour perspective.

South Africa is still a developing country whose economy is mostly based on mining and agriculture. Benjamin stated that majority of the workforce of these industries falls within the lower levels in terms of salaries and wages.<sup>21</sup> An estimation has been given that over a third of the South African workforce can be categorised into a low-income bracket.<sup>22</sup> Most people employed in the mining sectors, hail from rural areas. Should they be dismissed, they return to their rural homesteads. Benjamin argues that the fact that they return to their homesteads almost immediately, makes access to the Commission for Conciliation, Mediation and Arbitration (hereinafter the CCMA) almost impossible, because the offices are not available in remote, rural areas. It has been submitted that this challenge does not only affect the approximate 9 million employees that are employed in the formal sector.<sup>23</sup> It has been estimated that another 4 million in the informal sector is also affected.<sup>24</sup> Where the dismissed workers are not able to access this forum, then the notion of equality as propounded

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<sup>16</sup> *Constitution of the Republic of South Africa*, 1996.

<sup>17</sup> Section 9(1) of the *Constitution of the Republic of South Africa*, 1996.

<sup>18</sup> Section 9(3) of the *Constitution of the Republic of South Africa*, 1996.

<sup>19</sup> Preamble of the *Constitution of the Republic of South Africa*, 1996.

<sup>20</sup> Hamadi *The Concept of Justice In Greek Philosophy (Plato and Aristotle)* <https://www.researchgate.net>

<sup>21</sup> Benjamin 2013 *International Labour Office Geneva* 2.

<sup>22</sup> Benjamin 2013 *International Labour Office Geneva* 47; The low-income bracket is between R 55 000 and R 150 000 per annum.

<sup>23</sup> Benjamin 2013 *International Labour Office Geneva* 2..

<sup>24</sup> Benjamin 2013 *International Labour Office Geneva* 2.

by social justice is defeated. The legal problem then becomes the failure by the CCMA to fulfil its purpose in the promotion of social justice as dictated by the Labour Relations Act (hereinafter the LRA).<sup>25</sup> If the CCMA cannot be accessed due to location, it serves no purpose to the employee. In that sense the CCMA has failed to make available to all employees the services as undertaken in their vision to promote social justice.

It then becomes prudent for any labour law practitioner to consider whether the labour dispute resolution process in South Africa, meets the aim of the legislator, which is to promote social justice at conciliation and arbitration. The CCMA becomes the focal point. It came into being for the sole purpose of dispute resolution. The CCMA is a statutory body established in terms of Section 112 of the LRA derives its powers from there<sup>26</sup>, whose purpose it is to promote social justice<sup>27</sup> and efficiently resolve labour disputes as set out in section 1 of the LRA.<sup>28</sup>

This discussion will consider the success and or failure of the CCMA in its mission to uphold social justice, the process of the CCMA before the CCMA, during the proceedings and after the proceedings, inclusive of all stages of the proceedings. The classic example for now is the question of settlement agreements. It has been argued that currently the CCMA is overburdened.<sup>29</sup> If the CCMA is really overburdened, it is possible that it might be a tempting option to opt into entering settlement agreement negotiations, because the process is much shorter. It is also worthy to mention that the CCMA 2020/2021 report states that 70% of the referred matters have been settled, and that it is in line with the target settlement rate set.<sup>30</sup> It is submitted that the settlement target is too high in that such a high rate means that the actual merits of the matter might not be properly dealt with because a settlement agreement finalises a dispute before or without delving into the merits. One may regard this as a travesty of justice, without placing the *bona fides* of the

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<sup>25</sup> *Labour Relations Act* 66 of 1995.

<sup>26</sup> 66 of 1995.

<sup>27</sup> Section 1 of the LRA.

<sup>28</sup> Section 1(d)(iv) of the LRA

<sup>29</sup> Havenga 2021 *CCMA can't do 43% of cases due to budget cuts* <https://www.untu.co.za>.

<sup>30</sup> CCMA Annual Report 2020/2021 31.

commissioner on the proverbial altar of speedily disposing of the matter. Bosch and Steenkamp<sup>31</sup> argues that the commissioners may have an interest in the amount of matters they settle because this is indicative of the commissioner's ability to settle matters. This factor is considered when commissioner's contracts are up for renewal. For this reason, it is submitted that the parties may be unduly influenced by the commissioner to reach settlement where a referral to arbitration may have been more appropriate.

Morajane, the Director of the CCMA, announced during March 2021 that the CCMA can no longer afford to make use of part-time contract workers.<sup>32</sup> The result of this, according to Lynford Dor from the Casual Workers Advice Office, a movement to assist employees, is that many aggrieved employees may now be subtly intimidated by commissioners by means of unduly coercing, to sign away their rights in settlement agreements, because commissioners are being compelled to expedite the conciliation process.<sup>33</sup> This confirms the narrative that there is a trend with CCMA commissioners to expeditiously enter into settlement agreements, even at the peril of the aggrieved employee and in layman's term, just make the problem go away post haste.<sup>34</sup> This throws a spanner in the works of the CCMA to bring social justice. This mini-dissertation will thus dwell on this and other examples where the CCMA is failing to bring social justice in its conciliation processes.

### *1.2.2 Labour and social justice in international law*

The Constitution states that South African legislation must be interpreted in accordance with the requirements set by international law.<sup>35</sup>

South Africa is a member state of the ILO and for this reason obliged to put the organisations recommendations into practice, even though it is only the conventions

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<sup>31</sup> Steenkamp and Bosch *Labour Dispute Resolution under the 1995 LRA: Problems, pitfalls and potential* 124.

<sup>32</sup> Havenga 2021 CCMA can't do 43% of cases due to budget cuts <https://www.untu.co.za>.

<sup>33</sup> Human 2021 *Massive CCMA budget will hurt workers* <https://www.news24.com>.

<sup>34</sup> Human 2021 *Massive CCMA budget will hurt workers* <https://www.news24.com>; Benjamin 2013 *International Labour Office Geneva* 17.

<sup>35</sup> Section 233 of the *Constitution of the Republic of South Africa*, 1996.

that are ratified. According to the ILO, the ILO's Declaration of Philadelphia of 1944 was assimilated into the ILO's Constitution, with one of the core objectives being the promotion of social justice.<sup>36</sup> The ILO opines that social justice must form the basis for peace to be attained.<sup>37</sup> Each signatory to the ILO mandate, including South Africa, must make strides and commit to the ILO's Constitution in the promotion of the provisions of its Constitution. This automatically pushes members, including South Africa, to strive to acknowledge and further social justice. ILO signatory members are urged to promote social justice by acknowledging freedom of association, employee welfare, regulating working hours and the principle of compensation for work done.<sup>38</sup> To this end, the ILO will be used as a yardstick to measure to what extent the CCMA is upholding the obligation of social justice.

### ***1.3 Research***

#### *1.3.1 Research Question*

To what extent does the CCMA fulfil its social justice mandate during dispute resolution processes to observe and promote social justice by the LRA and ILO?

#### *1.3.2 Aims and objectives*

##### *1.3.2.1 Aims*

The main aim of this study is to analyse and evaluate the extent to which the CCMA upholds the notion of social justice.

##### *1.3.2.2 Objectives*

The objective is to juxtapose the CCMA's conduct and determine whether they are at par with the requirements of the LRA as far as social justice is concerned.

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<sup>36</sup> Preamble of the Constitution of the ILO.

<sup>37</sup> Preamble of the Constitution of the ILO.

<sup>38</sup> Preamble of the Constitution of the ILO.

### *1.3.3 Research Methodology*

The desktop research methodology will be utilised for the purposes of this research. Reference will be given to case law, newspaper articles, the internet, labour laws as well as international instruments and some selective CCMA policies and regulations.

### *1.3.4 Framework of dissertation*

Chapter One provides an introduction to the research. This chapter contains the problem statement, research question, scope and limitations of the study, rationale and justifications of the research, aims and objectives of the study, research methodology, and literature review.

Chapter Two will analyse South Africa's legal framework on social justice. The labour laws will be explored as well as the Constitution of 1996.<sup>34</sup> This chapter will also explore the definition and characteristics of social justice as well its historical development. A brief historical background of South Africa's labour laws will be discussed in order to put the concept of social justice into its proper context.

Chapter Three will analyse the current labour dispute resolution mechanisms, with particular emphasis on the CCMA and determine whether it is doing enough in the promotion of social justice.

Chapter Four will consider the successes and failures of the CCMA's mission to attain social justice.

Chapter Five will draw conclusions as to whether the current South African labour legal framework promotes social justice or not. Further conclusions will be drawn on whether, at the conciliation level, the CCMA is indeed promoting social justice. Lastly recommendations will be given on any areas that need to be strengthened.

## **1.4 Conclusion**

The purpose of this mini-dissertation is to establish whether social justice is promoted during the dispute resolution process. Since legislation makes provision for the promotion thereof, it ought to be applied. The legislation making provision

for the promotion of social justice will be discussed. Then it will be evaluated by exploring accessibility to the CCMA, legal representation at the CCMA and the way commissioners may have an influence at settlement negotiations.

The achievements will be evaluated and recommendations will be addressed specially with reference to settlement rates, referral processes and representation.

## CHAPTER 2 THE LEGAL FRAMEWORK ON SOCIAL JUSTICE OF SOUTH AFRICA

### *2.1 Introduction*

This chapter will explore the history of social justice in the South African legal framework. Various definitions and theories for the concept of social justice will be discussed below. In general, social justice refers to the equal dissemination of wealth, privileges, and opportunities within a society.<sup>39</sup> There are a myriad of literature on social justice and regrettably not much agreement on what the central feature is.<sup>40</sup> To delimit the mini-dissertation, the research will be limited to social justice in relation to South African labour law legislation. The focus of the research will be on whether social justice is achieved at dispute resolution.

Placing this discussion into its proper context, reference will be made to the Constitution,<sup>41</sup> the LRA<sup>42</sup> as well as the EEA.<sup>43</sup> This mini-dissertation argues the view that social justice during dispute resolution, is central to the respect of employees' rights, both within the Constitution and within the legislative framework. Social justice in labour would mean that the rights of employees as envisaged in the LRA, is realised.<sup>44</sup> The values as entrenched in Chapter 2,<sup>45</sup> which are the right to human

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<sup>39</sup> [https://en.wikipedia.org/wiki/Social\\_justice](https://en.wikipedia.org/wiki/Social_justice).

<sup>40</sup> <https://www.dailymaverick.co.za/article/2020-02-23-social-justice-and-economic-inclusion-where-to-south-africa/>.

<sup>41</sup> *Constitution of the Republic of South Africa*, 1996.

<sup>42</sup> 66 of 1995.

<sup>43</sup> *Employment Equity Act* 55 of 1998.

<sup>44</sup> Matlou D 2016 *SAMLJ* 545.

<sup>45</sup> *Constitution of the Republic of South Africa*, 1996.



dignity<sup>46</sup>, equality,<sup>47</sup> protection against forced labour,<sup>48</sup> the freedom to choose a profession,<sup>49</sup> and fair labour practices,<sup>50</sup> are inherent to social justice.<sup>51</sup>

## **2.2 Social justice: a definition**

The term 'social justice' was originally a religious concept within the circles in which it originated.<sup>52</sup> Luigi Taparelli d'Azeglio,<sup>53</sup> a Sicilian priest, was the first to use the term in 1843.<sup>54</sup> At first, the term social justice was considered a formal concept. A formal concept is a theory that must meet certain rigid criteria, a specific set of rules. According to Burke, the concept morphed into a material concept from the 1940's. The effect of this is that the term now involves the morality of a society. According to Taparelli, social justice encompass justice between individuals based on equality in a society, since man is equalized by nature.<sup>55</sup>

Plato equated justice with human well-being.<sup>56</sup> He regarded class distinctions as essential for the functioning of society. For this reason, equality was not included in his belief. He argued that unequal should be treated unequally. Social justice would be achieved by a person receiving what is due to him in relation with his stance in the social order. The result of this is that the person would also remain in a specific position as the social order dictates what he is entitled to. This would mean that there is no movement towards transformation in a society. Instead, it is rather an attempt to guarantee existing structures.<sup>57</sup>

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<sup>46</sup> Section 10 of the *Constitution of the Republic of South Africa*, 1996.

<sup>47</sup> Section 9 of the *Constitution of the Republic of South Africa*, 1996.

<sup>48</sup> Section 13 of the *Constitution of the Republic of South Africa*, 1996.

<sup>49</sup> Section 22 of the *Constitution of the Republic of South Africa*, 1996.

<sup>50</sup> Section 23 of the *Constitution of the Republic of South Africa*, 1996.

<sup>51</sup> Preamble of the *Constitution of the Republic of South Africa*, 1996.

<sup>52</sup> Burke 2014 <https://isi.org/intercollegiate-review/the-origins-of-social-justice-taparelli-dazeglio/>.

<sup>53</sup> He was an Italian Jesuit scholar of the Society of Jesus and counter revolutionary.

<sup>54</sup> Sharma 2012 <https://articles.manupatra.com/article-details/Social-Justice>.

<sup>55</sup> Burke 2014 <https://isi.org/intercollegiate-review/the-origins-of-social-justice-taparelli-dazeglio/>.

<sup>56</sup> Reisch M *Defining Social Justice in a Socially Unjust World* 343.

<sup>57</sup> Reisch M *Defining Social Justice in a Socially Unjust World* 343.

John Stuart Mill, an English philosopher and one of the most influential thinkers in the history of classical liberalism, said on *Utilitarianism*<sup>58</sup>:

Society should treat all equally well who have deserved equally well of it, that is, who have deserved equally well absolutely. This is the highest abstract standard of social and distributive justice; towards which all institutions, and the efforts of all virtuous citizens, should be made in the utmost degree to converge.<sup>59</sup>

This theory means that every person who deserves to be treated well, should be treated in that manner. It is determined by the *boni mores* of a society, which is a combination of the codified law and the morality of a society. And if all people embrace this theory, it will become a norm amongst civilisations.

John Rawls<sup>60</sup> relies on a social contract approach. Such an approach finds its origin in the principle that a society will be maintained and protected if they are subordinate to the authority of the society.<sup>61</sup>

Hayek, a legal theorist, and philosopher is critical about the term. He argues that this meaningless term has no place in a modern society. To provide a clearer comprehension of the concept, Hayek states that social justice would not survive a command economy<sup>62</sup> where individuals are dictated to by governmental authorities. He states that to attain social justice, the Government has to treat people differently to make the unequal, equal. The Constitution states that every person is equal and should be treated as such. This causes a problem to pass laws that allows government to treat people differently.<sup>63</sup>

South African labour legislation doesn't provide a formal definition for social justice either. It is submitted by Hlalele that it generally refers to promotion of workplace justice, correcting past injustices and assisting vulnerable employees.<sup>64</sup> Hlalele

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<sup>58</sup> Utilitarianism is the idea to promote happiness and to oppose actions that cause unhappiness.

<sup>59</sup> Mill JS 1863 *Utilitarianism* 60.

<sup>60</sup> John Rawls is an American philosopher and the author of *A Theory of Justice*.

<sup>61</sup> Reisch M *Defining Social Justice in a Socially Unjust World* 343.

<sup>62</sup> A command economy is where government dictates production quotas and prices.

<sup>63</sup> Miltimore 2018 <https://fee.org/articles/hayek-social-justice-demands-the-unequal-treatment-of-individuals/>.

<sup>64</sup> Hlalele 2012 *JNGS* 64.

states that the term social justice is not defined and even more complex to implement.<sup>65</sup> Hlalele argues that social justice is equal justice and should not only be justice to be witnessed in the South African courts.<sup>66</sup> It should be applied throughout all aspects in society. The foundation on which social justice is built, includes care, recognition, empathy, and respect.<sup>67</sup>

Hlalele mentions various authors opinions on social justice to illustrate the complexity. According to Tzanoff, justice derives from *suum cuique* meaning one receiving their just due.<sup>68</sup> Hlalele also states that Coates<sup>69</sup> gives another form of distributive justice where everyone receives fair treatment socially, politically, and economically.

United Nations provides a definition of social justice as equal distribution of wealth within a society.<sup>70</sup> Within this context, society includes, but is not limited to, employees of all genders, races, ages, and economic backgrounds. The term justice can be construed as the principle of fairness in that alike matters must be dealt with in the same fashion. Justice includes abiding to prescribed law and accepted principles by society. However, the definition of social justice remains clouded in obscurity because there is no precise and absolute definition for the concept. Hayek states that "it becomes an instrument of ideological intimidation, for the purpose of gaining the power of legal coercion."<sup>71</sup> Hayek is of the view that although there are various books and treatises written about social justice, no proper definition has been given. Michael Novak, in agreement with Hayek, states that the phrase social justice, is problematic.<sup>72</sup> Social justice has also been defined as:

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<sup>65</sup> Hlalele 2012 *JNGS* 64.

<sup>66</sup> Hlalele 2012 *JNGS* 64.

<sup>67</sup> Hlalele 2012 *JNGS* 64.

<sup>68</sup> Tzanoff 1956 The University of Chicago Press Journals 12.

<sup>69</sup> Coates 2007 *American Behavioural Scientist* 581.

<sup>70</sup> San Diego Foundation 2016 <https://www.sdfoundation.org/news-events/sdf-news/what-is-social-justice/>.

<sup>71</sup> Novak 2000 <https://www.catholiceducation.org/en/culture/catholic-contributions/defining-social-justice.html>.

<sup>72</sup> Novak 2000 <https://www.catholiceducation.org/en/culture/catholic-contributions/defining-social-justice.html>.

The fair and proper administration of laws conforming to the natural law that all persons, irrespective of ethnic origin, gender, possessions, race, religion, etc. are to be treated equally and without prejudice.<sup>73</sup>

The presidency in its report on Social Cohesion and Social Justice in South Africa has defined social justice as:

An extension of principles, enshrined in the Constitution, of human dignity, equity, and freedom to participate in all the political, socio-economic and cultural spheres of society.<sup>74</sup>

Professor Ismail Serageldin said that social justice is the foundation of the modern South Africa.<sup>75</sup> He furthermore quoted John Rawls who stated that justice should be defined as fairness and added that it includes equality, freedom, and social interaction.

From the above, the characteristics of social justice can be enumerated as everyone to be equal before the law as enunciated in the Constitution.<sup>76</sup> It is proposed that social justice in this mini dissertation is described as the equal and fair enjoyment of freedom and rights in the workplace.<sup>77</sup> Everyone must be treated similarly before the law, irrespective of their circumstances.<sup>78</sup>

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<sup>73</sup> <https://archive.unescwa.org/social-justice#:~:text=Definition%20English%3A,treated%20equally%20and%20without%20prejudice.>

<sup>74</sup> A Report prepared for the Department Arts and Culture: by the Social Cohesion and Integration Research Programme Human Sciences Research Council *Social Cohesion and Social Justice in South Africa* i.

<sup>75</sup> Anon 2011 <https://www.nelsonmandela.org/news/entry/ninth-nelson-mandela-annual-lecture-professor-ismail-serageldin-speaks-on-s.>

<sup>76</sup> Section 9 of the *Constitution of the Republic of South Africa*, 1996.

<sup>77</sup> Section 9(2) *Constitution of the Republic of South Africa*, 1996.

<sup>78</sup> Van Niekerk *et al Law@Work* 122.

### **2.3 Social justice and South African labour law**

Apartheid is a system of racial segregation and oppression of African people in South Africa, prior to 1994. This era was known for its draconian legislation<sup>79</sup> *inter alia* restricting the mobility of black South African labourers.

A further feature of the South African apartheid was the ill treatment of African workers as cheap labour and using oppressive practises in the workplace.<sup>80</sup> Prior to the enactment of the LRA and the Constitution, employees didn't receive the same protection as they do now. The employment relationship, where an employee provides a service for remuneration from the employer, was first governed by the *Master and Servants Act* 15 of 1856.<sup>81</sup> Simons and Simons stated that the *Master and Servants Act*,<sup>82</sup> was designed 'to enforce discipline on ex-slaves, peasants, pastoralists, and a rural proletariat'.<sup>83</sup> O Malley opined that the *Mine and Works Act* that was passed in 1911 created even further segregation between Africans and whites in that certain jobs were reserved for whites only.<sup>84</sup>

It was during 1948, that the National Party took over the reins.<sup>85</sup> African workers were suppressed even further, and the political situation became turbulent.<sup>86</sup> The Wiehann<sup>87</sup> commission was established to launch an investigation into the labour situation in South Africa. A need for equality and fair labour laws for all workers to

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<sup>79</sup> *Population Registration Act* No 30 of 1950; *Group Areas Act* of 1950; *Riotous Assemblies and Suppression of Communism Amendment Act* No 15 of 1954; *Native Labour (Settlement of Disputes) Act*, 1953; *Black Labour Relations Regulation Act*.

<sup>80</sup> In terms of the *Native Labour Settlement of Disputes Act* No 48, African people could not strike.

<sup>81</sup> *Master and Servants Act* 15 of 1856.

<sup>82</sup> 18 of 1856.

<sup>83</sup> Simons and Simons *Class and Colour in South Africa* 1850-1950 23.

<sup>84</sup> Anon Date Unknown  
<https://omalley.nelsonmandela.org/omalley/index.php/site/q/03lv02424/04lv02730/05lv03188/06lv03210.htm>.

<sup>85</sup> Anon Date Unknown  
<https://omalley.nelsonmandela.org/omalley/index.php/site/q/03lv02424/04lv02730/05lv03188/06lv03210.htm>.

<sup>86</sup> After 1949 the strikes that occurred was national political strikes opposed to industrial strikes; The African National Congress was declared illegal after 1959 but continued with their meetings. Illegal meetings were met with violent police action. One such incident is the Sharpeville Massacre in 1961.

<sup>87</sup> The Wiehahn Commission formed to investigate industrial relations during the 1970's.

enjoy the same protection was identified by the commission.<sup>88</sup> The Wiehann commission was the catalyst for African workers to be given the opportunity to enjoy the protection of the Labour Relations Act of 1956. As democracy was developing in South Africa, it became evident that the Labour Relations Act of 1956 no longer conformed to the Constitution.

The Bill of Rights,<sup>89</sup> had the greatest impact on South Africa as it is the foundation of democracy.

### *2.3.1 The Constitution of the Republic of South Africa, of 1996*

The Preamble to the Constitution provides that South Africa was founded on the values of 'human dignity, equality, advancement of human rights and freedoms, and non-racialism and non-sexism'.<sup>90</sup> The principle of social justice is access to resources, equity, diversity, participation, and human rights.<sup>91</sup> The values are inherent as to what is perceived as social justice. These values are also in congruence with the ILO's key founding principle, which states that 'lasting peace can exist only in an environment where social justice can prevail'.<sup>92</sup> The Constitution came into being as a departure from the apartheid legacy and sought to heal the divisions of the apartheid era. New laws were designed to formulate a society based on fundamental rights, democratic values, and specifically social justice.<sup>93</sup> There is a devotion of rights that are guaranteed by the Constitution that has a direct bearing on the question of social justice. Section 9(1) provides for everyone to be equal before the law and at the same time enjoy equal benefit and protection.<sup>94</sup> Section 9(3) guarantees the protection of everyone against unfair discrimination.<sup>95</sup> Section

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<sup>88</sup> Visser 2011 *Journal for Contemporary History* 2.

<sup>89</sup> *Constitution of the Republic of South Africa*, 1996.

<sup>90</sup> Preamble of the *Constitution of the Republic of South Africa*, 1996.

<sup>91</sup> Kent State University 2020 <https://onlinedegrees.kent.edu/political-science/master-of-public-administration/community/five-principles-of-social-justice>.

<sup>92</sup> Anon 2015 <https://www.everycrsreport.com/reports/R44165.html>.

<sup>93</sup> Preamble to the *Constitution of the Republic of South Africa*, 1996; 66 of 1995, 75 of 1997.

<sup>94</sup> *Constitution of the Republic of South Africa*, 1996.

<sup>95</sup> *Constitution of the Republic of South Africa*, 1996.

34 provides that everyone has the right to be heard and to approach a court.<sup>96</sup> It is submitted that these rights must be enjoyed by everyone. This is not negotiable.

Both the Constitution<sup>97</sup> and the Constitution of the ILO, of which South Africa is a member, are committed to social justice. A year after a country ratified a convention, it will come into force. The ratifying country then must ensure adherence to the ILO convention. The preamble to the Constitution<sup>98</sup> regards social justice as necessary for the preservation of peace and justice. In the same vein, the preamble to the ILO Constitution regards social justice as part and parcel of social cohesion. The Bill of Rights<sup>99</sup> has a similar basis to the conventions of the ILO.<sup>100</sup> In terms of section 39<sup>101</sup> a Court and tribunal must take international law into consideration when the Bill of Rights are interpreted. As a result, South Africa is obliged to interpret the provisions of the Constitution<sup>102</sup> in relation to the above Conventions. In *SA National Defence Union v Minister of Defence and another* (1999) 20 ILJ 2265 (CC)<sup>103</sup> the Constitutional Court qualified section 39 of the Constitution<sup>104</sup> and the importance of the ILO.<sup>105</sup> These Conventions became the yardstick by which the successes and/or failures of South Africa to attain social justice can be measured.

Before 1994, South African labour legislation was generally discriminatory and divided along racial lines.<sup>106</sup> The EEA<sup>107</sup> was thus promulgated to further the promotion of the constitutionally protected right to equality, elimination of unfair discrimination in the workplace, and to promote diversification of the workforce and uphold the country's obligations as a member of the ILO.<sup>108</sup>

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<sup>96</sup> *Constitution of the Republic of South Africa*, 1996.

<sup>97</sup> *Constitution of the Republic of South Africa*, 1996.

<sup>98</sup> *Constitution of the Republic of South Africa*, 1996.

<sup>99</sup> Chapter 2 of the *Constitution of the Republic of South Africa*, 1996.

<sup>100</sup> ILO Convention 98 *Right to Organise and Collective Bargaining Convention* (1949).

<sup>101</sup> *Constitution of the Republic of South Africa*, 1996.

<sup>102</sup> *Constitution of the Republic of South Africa*, 1996.

<sup>103</sup> *SA National Defence Union v Minister of Defence and another* (1999) 20 ILJ 2265 (CC).

<sup>104</sup> *Constitution of the Republic of South Africa*, 1996.

<sup>105</sup> *SA National Defence Union v Minister of Defence and another* (1999) 20 ILJ 2265 (CC) para 25.

<sup>106</sup> *Native Pass Laws and Regulations of 1952*.

<sup>107</sup> 55 of 1998.

<sup>108</sup> Preamble to the LRA.

### 2.3.2 The Employment Equity Act 55 of 1998

The central purpose of EEA<sup>109</sup> is to foster

'equity in the workplace through the promotion of equal opportunity and fair treatment via the elimination of unfair discrimination.'<sup>110</sup>

South Africa ratified the *ILO: Discrimination (Employment and Occupation) Convention* 11 of 1958.<sup>111</sup> This convention calls for signatory states to design municipal policies that would promote equality and eliminate discrimination in the workplace. It can thus be argued that EEA<sup>112</sup> endeavours to promote social justice in the workplace because of promotion of equality and elimination of discrimination. Social justice can only be attained through the promotion of equal opportunity and fair treatment through the removal of unfair discrimination and the adoption of affirmative action measures to resolve the historical injustices inflicted on disadvantaged groups.<sup>113</sup>

The Labour Court in *Ntsabo v Real Security* (2003) 24 ILJ 2341 (LC)<sup>114</sup> illustrated the promotion of social justice through the application of the EEA.<sup>115</sup> A female guard had been sexually victimised by her supervisor. Instead of confronting the perpetrator, the Respondent transferred the complainant to a different site after she had reported the harassment. The Labour Court decided that this transfer was made to punish the complainant.<sup>116</sup> The Respondent was therefore found liable and ordered to compensate the complainant. Section 6 of the EEA<sup>117</sup> guards against discrimination. It is obvious that the conduct of the Respondent in this matter was tantamount to discrimination on the ground of gender. The case further illustrates the toxic work environment that women are exposed to and the desperate need for

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<sup>109</sup> 55 of 1998.

<sup>110</sup> Section 2 of the EEA.

<sup>111</sup> ILO Convention 11 *Discrimination (Employment and Occupation) Convention* (1958).

<sup>112</sup> 55 of 1998.

<sup>113</sup> Section 2(a) and (b) of the EEA.

<sup>114</sup> *Ntsabo v Real Security* (2003) 24 ILJ 2341 (LC) at page 74, 75, 79.

<sup>115</sup> 55 of 1998.

<sup>116</sup> *Ntsabo v Real Security* (2003) 24 ILJ 2341 (LC) at page 58.

<sup>117</sup> 55 of 1998.



transformation thereof. The eradication of unfair discrimination and unfair labour practices will promote the pursuit of social justice.

Section 6 of the EEA found further application in *Harmse v City of Cape Town* (2003) 24 ILJ 1130 (LC).<sup>118</sup> In this case, Harmse has been shortlisted for a position, but only white males were appointed despite Harmse being suitably qualified. Harmse then approached the courts, claiming that he was being unfairly discriminated against. He submitted that section 15(2)(a)(d) of the EEA<sup>119</sup> calls for employers to remove all barriers to employment that could be construed as unfair discrimination and have a negative effect on designated groups. Harmse was successful in that the Labour Court confirmed that he was discriminated against unfairly.<sup>120</sup>

The above exposure has illustrated the EEA<sup>121</sup> as a vehicle to pursue the attainment of social justice. However, the question remains as to whether this piece of legislation responds adequately to the social challenges of poverty, inequality, gender and unemployment that cripple our country. It is no secret that drastic developments have transpired in the country's employment demographics since the start of democracy.<sup>122</sup> The South African Government reports that after 24 years of EEA<sup>123</sup> legislation in force, compliance levels still remain low.<sup>124</sup> The Commission for Employment Equity reports annually on the six occupational levels as well as gender, race and disability. African and Coloured population groups remain under-represented.<sup>125</sup> The EEA<sup>126</sup> covers certain designated groups such as men, women, and people with disabilities. In an Annual Equality Report by the SAHRC, it is stated that the definition for a designated group is rigid in that it doesn't include indigenous

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<sup>118</sup> *Harmse v City of Cape Town* (2003) 24 ILJ 1130 (LC).

<sup>119</sup> 55 of 1998.

<sup>120</sup> *Harmse v City of Cape Town* (2003) 24 ILJ 1130 (LC) para 47.

<sup>121</sup> 55 of 1998.

<sup>122</sup> Statssa 2022 <https://www.statssa.gov.za/?p=15685>.

<sup>123</sup> 55 of 1998.

<sup>124</sup> South African Government 2022 <https://www.gov.za/speeches/employment-and-labour-twenty-four-years-employment-equity-act-%E2%80%93-inequity-south-african>.

<sup>125</sup> South African Government 2022 <https://www.gov.za/speeches/employment-and-labour-twenty-four-years-employment-equity-act-%E2%80%93-inequity-south-african>.

<sup>126</sup> 55 of 1998.

people born from example from mixed marriages.<sup>127</sup> It appears as though the EEA<sup>128</sup> fails to provide adequate protection to individuals. Considering this, the people excluded does not enjoy social justice as other population groups, because they remain excluded from the term designated groups.

The Constitutional Court in *SAPS v Barnard* (CCT 01/14) [2014] ZACC<sup>129</sup> held that an employer may not promote a white woman if females are over-represented in the workplace, even though women resort under the designated group. This is known as the Barnard-Principle. Subsequently, the same Court found in *Solidarity and others v Department of Correctional Services* (CCT 78/15) [2016] ZACC<sup>130</sup> that the principle in the Barnard case is applicable to African, coloured, and Indian women, including all genders.

The SAHRC Report<sup>131</sup> argues that this Barnard principle can become problematic. If a certain employment sector is over-represented, for example with African females, it will then be acceptable for a white heterosexual man, to receive preferential treatment over an African homosexual woman. This is in direct conflict with the EEA<sup>132</sup>, that the EEA<sup>133</sup> protects an individuals' needs within a designated group. This clearly illustrates that there are still some social challenges that the EEA<sup>134</sup> must overcome.

### 2.3.3 The Labour Relations Act 66 of 1995

Section 1 of the LRA<sup>135</sup> seeks to promote social justice and to comply with the obligations as a member state of the ILO. It is indicative of the legislature's intention

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<sup>127</sup> Annual Equality Report for the period 2017/2018 SAHRC.

<sup>128</sup> 55 of 1998.

<sup>129</sup> *South African Police Service v Solidarity obo Barnard* (CCT 01/14) [2014] ZACC para 23.

<sup>130</sup> *Solidarity and Others v Department of Correctional Services and Others* (CCT 78/15) [2016] ZACC para 18.

<sup>131</sup> Annual Equality Report for the period 2017/2018 SAHRC.

<sup>132</sup> 55 of 1998.

<sup>133</sup> 55 of 1998.

<sup>134</sup> 55 of 1998.

<sup>135</sup> 66 of 1995.

to proceed beyond stipulating the rights which must be enjoyed and enforced.<sup>136</sup> Grogan has summarised the aims of section 1 of the LRA<sup>137</sup> as:

The professed aims disclose rather that the LRA is intended to be an instrument of social change aimed, in particular, at purging the labour dispensation of past inequalities and injustices and extending democracy into the economic sector. It is in that spirit that the specific provisions of the LRA must be read.<sup>138</sup>

It can thus be argued that the LRA<sup>139</sup> was promulgated to advance economic development, social justice, labour peace, and the democratisation of the workplace.<sup>140</sup> The LRA<sup>141</sup> seeks to promote social justice through exercising the rights entrenched in section 23 of the Constitution.<sup>142</sup> Section 23<sup>143</sup> provides for the right of workers to enjoy fair labour practices, right to union membership, and the right to strike. These rights constitute the concepts of social justice, to have equal rights, equal opportunity, and equal treatment. Further, chapter 2 of the LRA<sup>144</sup> provides the freedom of association and general protection of the worker.

The obligations were conferred by the adoption of the ILO's Freedom of Association and Protection of the Rights to Organise Convention 87 of 1948.<sup>145</sup> South Africa became party to this instrument in 1996. These conventions are the subject of two of ILO's core conventions and is a central pillar of the ILO. After the 1994 elections, South Africa resumed its ILO membership. The ILO assisted South Africa with the development of their labour legislation to be compliant with international standards. Being a member state requires that South Africa fulfils its undertaking to respect and uphold the conventions after ratification.

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<sup>136</sup> Section 23 of the *Constitution of the Republic of South Africa*, 1996.

<sup>137</sup> 66 of 1995.

<sup>138</sup> Grogan *Collective Labour Law* 16.

<sup>139</sup> 66 of 1995.

<sup>140</sup> Section 1 of the LRA.

<sup>141</sup> 66 of 1995.

<sup>142</sup> Section 23 of the *Constitution of the Republic of South Africa*, 1996.

<sup>143</sup> *Constitution of the Republic of South Africa*, 1996.

<sup>144</sup> 66 of 1995.

<sup>145</sup> ILO Convention 87 *Freedom of Association and Protection of Rights to Organise* (1948).

Chapter 3 of the LRA<sup>146</sup> is in congruency with the Right to Organise and Collective Bargaining Convention 98 of 1949 which South Africa ratified in 1996.

In *National Union of Metal Workers of South Africa v Bader Bop*,<sup>147</sup> the Constitutional Court emphasised the importance of South Africa's international obligations in terms of the ILO. It is the court's duty to consider the International Labour Organisation as a global law when interpreting application. Van Staden states that:

The body of work of the organisation (ILO) must therefore inform the South African understanding of social justice, as its strategic objectives are the facilitation of social justice, which is also the organisation's fundamental aim. In short, social justice is not just a South African but rather a shared concern'.<sup>148</sup>

The Court<sup>149</sup> referred to the ILO having established supervisory structures that formulated their verdict on the interpretations of certain conventions, by the supervisory body.<sup>150</sup>

In *S v Makwanyane* 1995 (3) SA 391 (CC),<sup>151</sup> the Constitutional Court affirmed that instruments that are binding on South Africa as well as instruments that are not, must both be used as tools of interpretation. In *Avril Elizabeth Home for the Mentally Handicapped v Commission for Conciliation Mediation and Arbitration and Others* (JR782/05) [2006] ZALC 44,<sup>152</sup> Van Niekerk AJ invoked the ILO Convention 158, although it was under no obligation to implement the unratified international pact. The Court however argued that implementation of the convention is crucial in the application and interpretation of the LRA.<sup>153</sup>

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<sup>146</sup> 66 of 1995.

<sup>147</sup> *National Union of Metal Workers of South Africa v Bader Bop* 2003 (3) SA 513 (CC) para 26.

<sup>148</sup> Van Staden 2012 TSAR 92.

<sup>149</sup> *National Union of Metal Workers of South Africa v Bader Bop* 2003 (3) SA 513 (CC) para 29.

<sup>150</sup> Van Niekerk *et al* Law@Work 34.

<sup>151</sup> *S v Makwanyane* 1995 (3) SA 391 (CC) para 35.

<sup>152</sup> *Avril Elizabeth Home for the Mentally Handicapped v Commission for Conciliation Mediation and Arbitration and Others* (JR782/05) [2006] ZALC para 44.

<sup>153</sup> 66 of 1995.

## **2.4 Conclusion**

This chapter introduced social justice with specific reference to the Constitution of 1996, the LRA<sup>154</sup> and the EEA.<sup>155</sup>

The ILO was instrumental in facilitating the formation of the legislation for a democratic country. The aim is to achieve social justice through this legislation, albeit that there is no specific definition for social justice.

The formulation of South Africa's employment laws is guided by the obligations imposed on the government by virtue of its membership to the ILO. Since South Africa resumed membership at the ILO, it embarked on a campaign ratifying the core ILO conventions, which created obligations as a result. The Bill of Rights<sup>156</sup> was structured to make it obligatory for South Africa to consider international law, being the ILO. South Africa is therefore under constant scrutiny to meet its obligations, which includes the promotion of social justice.

Employment laws such as the EEA,<sup>157</sup> the BCEA,<sup>158</sup> and National Minimum Wage Act<sup>159</sup> were promulgated to form the cornerstone of the New Workplace Order of South Africa.

This chapter has argued that social justice in labour dispute resolution is central to the respect of employees' rights. Social justice in South Africa will vary from jurisdiction to jurisdiction because of the different challenges bedevilling different societies. There are vast inequalities between resourced urban areas and neglected rural areas. In the South African context, affirmative action as defined by the EEA<sup>160</sup> is the relevant remedy to overcome the social challenges faced by South Africa today as a result of the apartheid legacy.

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<sup>154</sup> 66 of 1995.

<sup>155</sup> 55 of 1998.

<sup>156</sup> Chapter 2 of the *Constitution of the Republic of South Africa*, 1996.

<sup>157</sup> 55 of 1998.

<sup>158</sup> 78 of 1997.

<sup>159</sup> 9 of 2018.

<sup>160</sup> 55 of 1998.

## CHAPTER 3 DISPUTE RESOLUTION AT THE CCMA AND THE ADVANCEMENT OF SOCIAL JUSTICE

### *3.1 Introduction*

During the 1990s, the Interim and Final Constitution brought about new legislation which carries the values of equality, fair labour practices, and affirmative action. The BCEA<sup>161</sup>, EEA<sup>162</sup> and most importantly the LRA<sup>163</sup> as amended in 1995 brought about the new democratic dispensation.

Chapter 7 of the LRA<sup>164</sup> creates a dispute resolution process and more specifically gave birth to the CCMA. Section 112 of the LRA<sup>165</sup> established this body as it draws its legislative mandate from section 23 of the Constitution.<sup>166</sup> Because the LRA<sup>167</sup> specifically promotes social justice in section 1 of the LRA,<sup>168</sup> it automatically follows that the dispute resolution made provision for in chapter 7 of the LRA<sup>169</sup> should advance social justice.

This chapter will explore the development of the CCMA and its attempts to promote the social justice aspect in the dispute resolution process.

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<sup>161</sup> 75 of 1997.

<sup>162</sup> 55 of 1998.

<sup>163</sup> 66 of 1995.

<sup>164</sup> 66 of 1995.

<sup>165</sup> 66 of 1995.

<sup>166</sup> CCMA Annual Report 2020/2021  
content/uploads/2022/09/CCMA-202122-Annual-Report.pdf.

[https://www.ccma.org.za/wp-](https://www.ccma.org.za/wp-content/uploads/2022/09/CCMA-202122-Annual-Report.pdf)

<sup>167</sup> 66 of 1995.

<sup>168</sup> 66 of 1995.

<sup>169</sup> 66 of 1995.

## **3.2 The CCMA**

### *3.2.1 Establishment of the CCMA*

There has always been a need in our labour system for an easily accessible and affordable process to assist employees who are allegedly being exploited by their employers.<sup>170</sup>

The Constitution answered the call for justice and commenced a process of enforcing the democratically accepted principles that every employee or worker is entitled to, amongst others fair labour practises. The nett result was the implementation of the CCMA.<sup>171</sup>

Society, in the post-apartheid era, required a forum to resolve disputes efficiently, cost effectively, and with the least amount of formalities as an alternative to the Conciliation Boards and Labour Courts<sup>172</sup> to efficiently resolve labour disputes.

The CCMA is an independent and apolitical institution which is financed by the South African government and has national jurisdiction.<sup>173</sup>

Conciliation of disputes is one of the core functions of the CCMA. Should conciliation not be successful, the matter will then be referred to arbitration. The CCMA also facilitates in the formation of workplace forums. The compilation and publishing of statistics about their activities, is a further core function of the CCMA, which is to promote social justice.<sup>174</sup>

Benjamin states that the CCMA is an innovative structure specifically designed for the South African post-apartheid dispute resolution arena.<sup>175</sup> According to Benjamin, the organisation's purpose is to provide access to social justice for all employees. It was envisaged as an inexpensive, easily accessible, expeditious, non-technical

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<sup>170</sup> Benjamin 2013 *International Labour Office Geneva* 1.

<sup>171</sup> Benjamin 2013 *International Labour Office Geneva* 2.

<sup>172</sup> Forums to resolve disputes between employers and employees.

<sup>173</sup> Section 114(1) of the LRA; There are CCMA offices in every province in South Africa; Benjamin 2013 *International Labour Office Geneva* 6.

<sup>174</sup> Section 115 of the LRA.

<sup>175</sup> Benjamin 2013 *International Labour Office Geneva* 46.

forum to resolve disputes. Benjamin is of the view that if one compares the CCMA to normal civil courts, it proves to be highly successful.<sup>176</sup> It is submitted that although the rules make provision for speedy resolution by allowing only 30 days for referral opposed to the three years in a civil matter, in reality the enormous caseload of the CCMA may jeopardize the ideals of the CCMA.

The Governing body of the CCMA have established a set of rules, which complies with the LRA.<sup>177</sup> These rules make provision for the way the CCMA will be dealing with a matter.<sup>178</sup>

The CCMA<sup>179</sup> must cater to everyone irrespective of economic, social, or racial background to realise the organisation's objectives and to be an effective forum. It must promote social justice and endeavour towards dispute resolution.<sup>180</sup>

### *3.2.2 The functioning of the CCMA: Commissioners and their responsibility to further social justice*

To oversee the functioning, management and operations of the CCMA, a Governing Body is appointed by the Minister of Labour. The Governing Body then appoints commissioners who conduct the arbitrations and conciliations.<sup>181</sup> Both full-time and contract commissioners receive rigorous training in dispute resolution. Contract commissioners are appointed on a renewable three-year fixed term contract. Part time commissioners draw the services of experienced conciliators and arbitrators to the CCMA, that perhaps do not wish to be permanently bound to the CCMA. Benjamin argues that this brings both experienced practitioners to the organisation, while at the same time providing an opportunity for younger practitioners to gain experience.<sup>182</sup>

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<sup>176</sup> Benjamin 2013 *International Labour Office Geneva* 45.

<sup>177</sup> 66 of 1995.

<sup>178</sup> GNR1448 in GG 25515 dated 10 October 2003.

<sup>179</sup> <https://www.ccma.org.za/about-us/>

<sup>180</sup> See CCMA's vision.

<sup>181</sup> Benjamin 2013 *International Labour Office Geneva* 10.

<sup>182</sup> Benjamin 2013 *International Labour Office Geneva* 12.



Social justice requires commissioners to be mindful of their mandate when executing their duties to successfully promote social justice.<sup>183</sup> They must conduct themselves with integrity and impartiality in line with the stated goals of promotion of social justice in section 1 of the LRA.<sup>184</sup> Commissioners must accept responsibility in their roles to further social justice in the dispute resolution process.

In *AG's Distributors v CCMA* (2009) 30 ILJ 1810 (LC)<sup>185</sup> the Labour Court emphasised the importance of the courts accepting their responsibility to realise social justice by giving effect to the values enshrined in the Constitution.<sup>186</sup> In this matter, employees were dismissed after they consulted the employer about an assault that took place on a co-worker by a security company. The matter was still unresolved after twenty months. On review, the Labour Court frowned upon the fact that the commissioner neglected to investigate the incident of assault. The Court stated that the judiciary can't evade their responsibilities in securing a smooth operation of the law and should take the blame for failing the vulnerable groups.<sup>187</sup>

It is argued that the labour court's view is correct in that it ought to have done more. The judicial officer is instrumental in the attainment of social justice and that there is a duty on the judicial officer to give effect to the Constitutions' values. It is submitted that it should not be limited to the courts but extended to the workplaces. Workers should be made aware of their rights and become part of their day-to-day practise.

### *3.2.3 CCMA's vision and mission in the furtherance of social justice*

The CCMA is mandated to promote social justice throughout its processes which is derived from the purpose of section 1 of the LRA.<sup>188</sup> In *Government of the Republic of South Africa v Grootboom* 2001(1) SA 46 (CC)<sup>189</sup> the Constitutional Court stated

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<sup>183</sup> Matlou D 2016 *SAMLJ* 546.

<sup>184</sup> 66 of 1995.

<sup>185</sup> *AG's Distributors v CCMA* (2009) 30 ILJ 1810 (LC).

<sup>186</sup> *AG's Distributors v CCMA* (2009) 30 ILJ 1810 (LC) para 22.

<sup>187</sup> Matlou D 2016 *SAMLJ* 546.

<sup>188</sup> See paragraph 3.1 above.

<sup>189</sup> *Government of the Republic of South Africa v Grootboom* 2001(1) SA 46 (CC).

that social justice is a key requirement in terms of the Constitution.<sup>190</sup> The Constitutional Court stated that in order to realise social justice, the duty is on the government to make use of legislation and other measures within the country's available resources. During a CCMA seminar in 2006, Yacoob J said the following:

...with each dispute which we ensure is appropriately managed, appropriately handled, with each case with which we treat both sides with respect and care, ... we make a contribution to the very survival of our society.<sup>191</sup>

### *3.2.4 The CCMA values and its relation to social justice*

The CCMA strives to be a world class institution that promotes social justice. In the CCMA's Annual Report of 2020/21<sup>192</sup> it stipulates six important values underlying their operations. These values can be enumerated as:

#### *3.2.4.1 Integrity<sup>193</sup>*

The CCMA acts impartially without fear, favour or prejudice. They undertake to be ethical and honest, objectively balance the diverse needs of social partners and be transparent. Integrity is having strong moral and ethical values.<sup>194</sup> It must be seen that the CCMA acts consistently and uncompromisingly, in line with the Constitution and relevant labour legislation.

#### *3.2.4.2 Diversity<sup>195</sup>*

The CCMA respects, embraces, and celebrates the differences of our people. Social justice can only be achieved with the inclusion of all diverse groups in respect of

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<sup>190</sup> *Government of the Republic of South Africa v Grootboom* 2001(1) SA 46 (CC) at para 53.

<sup>191</sup> Justice Yacoob at the CCMA CPD Seminar in December 2006.

<sup>192</sup> CCMA Annual Report 2020/2021 <https://www.ccma.org.za/wp-content/uploads/2022/09/CCMA-202122-Annual-Report.pdf>.

<sup>193</sup> CCMA Annual Report 2020/2021 <https://www.ccma.org.za/wp-content/uploads/2022/09/CCMA-202122-Annual-Report.pdf>.

<sup>194</sup> CCMA Annual Report 2020/2021 <https://www.ccma.org.za/wp-content/uploads/2022/09/CCMA-202122-Annual-Report.pdf>.

<sup>195</sup> CCMA Annual Report 2020/2021 <https://www.ccma.org.za/wp-content/uploads/2022/09/CCMA-202122-Annual-Report.pdf>.

racial and ethnic, socioeconomic, geographic, and academic/professional backgrounds. Everyone is equal before the law.<sup>196</sup>

#### 3.2.4.3 Transparency<sup>197</sup>

The CCMA is transparent in their dealings as they are guided by statutory obligations and commitments.

#### 3.2.4.4 Excellence<sup>198</sup>

The CCMA undertakes to constantly strive and endeavour to excel on their directive to serve the community and to execute their duties professionally and expeditiously. Such excellence also includes aiming for social justice in its processes.

#### 3.2.4.5 Respect<sup>199</sup>

The CCMA undertakes to always treat their clients, colleagues and social partners with the utmost respect. The CCMA ought to appreciate people's differences and treat them with respect, human dignity, and fairness.<sup>200</sup>

#### 3.2.4.6 Accountability<sup>201</sup>

The CCMA takes responsibility the way they execute their duties. With being accountable, they execute their duties with care as they are responsible for the outcome of their work. As a result, they are committed to each other. The CCMA constantly measures itself against their commitment to pursue social justice and to hold itself accountable for the outcomes of its work and actions.

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<sup>196</sup> Section 9 of the *Constitution of the Republic of South Africa*, 1996.

<sup>197</sup> CCMA Annual Report 2020/2021 <https://www.ccma.org.za/wp-content/uploads/2022/09/CCMA-202122-Annual-Report.pdf>.

<sup>198</sup> CCMA Annual Report 2020/2021 <https://www.ccma.org.za/wp-content/uploads/2022/09/CCMA-202122-Annual-Report.pdf>.

<sup>199</sup> CCMA Annual Report 2020/2021 <https://www.ccma.org.za/wp-content/uploads/2022/09/CCMA-202122-Annual-Report.pdf>.

<sup>200</sup> Section 10 of the *Constitution of the Republic of South Africa*, 1996.

<sup>201</sup> CCMA Annual Report 2020/2021 <https://www.ccma.org.za/wp-content/uploads/2022/09/CCMA-202122-Annual-Report.pdf>.

### 3.2.5 Access to the dispute resolution process

The purpose of the CCMA is to resolve disputes between an employer and employee party in the workplace. The LRA<sup>202</sup> doesn't specifically define conciliation. Conciliation is an intervention by a third party, the commissioner, in a dispute between an employer and employee.<sup>203</sup> Conciliation proceedings are always characterised by privacy, confidentiality and on a without prejudice basis.<sup>204</sup> Du Toit, defines conciliation as two opposing parties in a dispute, being brought together in an attempt to reconcile.<sup>205</sup> Bendix has referred to conciliation as 'the act of procuring goodwill or inducing a friendly feeling'.<sup>206</sup>

There are various methods available to the commissioner in dealing with a dispute. Although no prescribed manner exists, the LRA provides commissioners with the framework and latitude to determine the process to be undertaken.

Firstly, at conciliation the commissioner attempts to settle the dispute on a without prejudice basis and without delving into the merits.<sup>207</sup> Conciliation forms an integral part of the dispute resolution process, perhaps even a pre-requisite. In *National Union of Mineworkers of SA v Intervale PTY(Ltd)*<sup>208</sup> the Constitutional Court affirmed that the Labour Court has no jurisdiction if a matter was not referred to conciliation.

This affirmation promotes social justice in that it forces an employee to start at the forum that is available to everyone. Everyone is treated the same. There is no party that can be excluded from assistance because it for example, can't afford access to the Labour Court.

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<sup>202</sup> 66 of 1995.

<sup>203</sup> Van Niekerk *et al* *Law@Work* 486.

<sup>204</sup> Rule 16 of the CCMA Rules.

<sup>205</sup> Du Toit *et al* *Labour Relations Law* 102.

<sup>206</sup> Bendix 2001 *Industrial relations in South Africa* 556.

<sup>207</sup> Owen M Fiss *Against Settlement* 93 YALE LJ at page 1073.

<sup>208</sup> *National Union of Mineworkers of SA v Intervale PTY(Ltd)* 2015 (2) BCLR 182 (CC) at 194.

If conciliation is unsuccessful, the commissioner makes an advisory arbitration award.

#### 3.2.5.1 Settlement agreements during conciliation

Settlement agreements are a form of conciliation that will bring a dispute to an end. Owen Fiss, a British scholar, questioned the utilization of alternative dispute resolution forums. He argued that when parties only want to make peace, justice doesn't reach its full potential.<sup>209</sup> He proceeded to state that out of court settlements are a 'capitulation to the conditions of mass society and should neither be encouraged nor praised'.<sup>210</sup> Peace and justice are important values which adjudication attains; conciliation only attains peace. The question arises whether settlement agreements promote social justice if the process of conciliation is only to attain peace.

A settlement through conciliation involves the settlement of the dispute and the issuing of a certificate of settlement by the commissioner as proof of the parties' agreement or disagreement.<sup>211</sup> If unresolved, this certificate allows a party to proceed to arbitration.<sup>212</sup>

The CCMA sets itself an annual target of settling disputes. The CCMA Annual Report of 2020/2021<sup>213</sup> reports that for the financial year the CCMA settled 70% of the disputes referred to the CCMA.<sup>214</sup> Benjamin states that measuring the efficacy of the conciliation process has been controversial. He supports his argument by stating that these measurements are not accurate because disputes that have been settled between the parties, with the assistance of a commissioner or disputes that have been withdrawn, are all classified as 'settled'.<sup>215</sup>

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<sup>209</sup> Owen M Fiss *Against Settlement* 93 YALE LJ at page 1085

<sup>210</sup> Owen M Fiss *Against Settlement* 93 YALE LJ at page 1085.

<sup>211</sup> Section 135(5)(a) of the LRA.

<sup>212</sup> Section 136(1)(a) of the LRA.

<sup>213</sup> CCMA Annual Report 2020/2021  
content/uploads/2022/09/CCMA-202122-Annual-Report.pdf.

[https://www.ccma.org.za/wp-](https://www.ccma.org.za/wp-content/uploads/2022/09/CCMA-202122-Annual-Report.pdf)

<sup>214</sup> CCMA Annual Report 2020/2021  
content/uploads/2022/09/CCMA-202122-Annual-Report.pdf.

[https://www.ccma.org.za/wp-](https://www.ccma.org.za/wp-content/uploads/2022/09/CCMA-202122-Annual-Report.pdf)

<sup>215</sup> Benjamin 2013 *International Labour Office Geneva* 17.

As already alluded to, the number of disputes settled by the commissioner settle is used as a performance indicator when considering renewing commissioners' contracts.<sup>216</sup> If the commissioner doesn't achieve a satisfactory settlement rate, the chances of his contract being renewed are slim. This in my opinion might have a negative effect on the pursuit of social justice as the priority is to get matters settled and not the interest to be protected and promoted of the involved parties.

Bosch and Steenkamp have argued that because of the settlement rate being a performance indicator in the securing of commissioners' employment contracts, the commissioners may encourage an employee to settle a matter, although it would have been justifiable to be referred to arbitration.<sup>217</sup> This may force parties into

'hasty settling of disputes and possibly also superficial settlements which fail to address the underlying causes of conflict or the real needs of the parties'.<sup>218</sup>

In essence the future prospect of a commissioner's contract to be renewed, depends on the amount of matters he settles.<sup>219</sup> Considering these factors as well as the case load and time limitations, an unrepresented employee could easily be coerced into a settlement.

A further concern is the time allocated to spend on the disputes. The ILO did a report in 1999 where they mentioned the of short periods of time being allocated. It is impossible to canvass the merits of a matter when time is restricted. The commissioner then tries to persuade an employee to consider a sum of money as a settlement to bring an end to the dispute. The fact that arbitration is an inconvenience, and of course the outcome is uncertain, are used to persuade the employee into settlement.

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<sup>216</sup> Benjamin 2013 *International Labour Office Geneva* 17.

<sup>217</sup> Bosch 2012 *Acta Juridica* 124.

<sup>218</sup> Bhorat *et al* 2009 *Development Policy Research Unit* 7.

<sup>219</sup> Bhorat *et al* 2009 *Development Policy Research Unit* 7.

What is also of importance is to know that legal representation at conciliation, is not allowed.<sup>220</sup>

### 3.2.5.2 Legal Representation and social justice

Often so, the parties to proceedings at the CCMA, specifically the employee, is a lay person and indigent.<sup>221</sup> David Matlou argues that social justice, an objective of the CCMA,<sup>222</sup> would naturally demand that the commissioner is aware of a party's ability to sufficiently deal with their case on their own.<sup>223</sup>

Parties at the CCMA are not automatically entailed to have a legal representative represent them at the CCMA.<sup>224</sup> A legal representative is defined as 'any person admitted to practice as an attorney or advocate in the Republic.'<sup>225</sup> The subject of legal representation has been debated over the past few years since the CCMA limits a party's constitutional rights to fair labour practice as entrenched in the Constitution.<sup>226</sup> The spirit of the CCMA in the post-apartheid dispensation is to keep processes not over-legalistic, non-technical, and cost effective. The resolution process that was used during apartheid was technical, complex, and lengthy, which made it inaccessible for everyone.<sup>227</sup>

Rule 25 provides for a party to acquire legal representation.<sup>228</sup> It may be agreed to between the parties; alternatively, a party can make application to the commissioner to make use of legal representation.<sup>229</sup>

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<sup>220</sup> Rule 25(1)(a) of the CCMA Rules.

<sup>221</sup> Grogan *Labour Legislation and Dispute Resolution* 180.

<sup>222</sup> CCMA Annual Report 2020/2021 <https://www.ccma.org.za/wp-content/uploads/2022/09/CCMA-202122-Annual-Report.pdf>.

<sup>223</sup> Matlou D 2016 *SAMLJ* 546.

<sup>224</sup> Rule 25(1)(c) of the CCMA Rules.

<sup>225</sup> Section 213 of the LRA.

<sup>226</sup> Section 23(1), 33(1) of the *Constitution of the Republic of South Africa*, 1996.

<sup>227</sup> Brand 2000 *ILJ* 77, 78.

<sup>228</sup> Rule 25 of the CCMA Rules.

<sup>229</sup> Rule 25(1)(c) of the CCMA Rules.

A commissioner must carefully consider a party's request for legal representation.<sup>230</sup> A request must not be handled lightly and hastily because it could severely prejudice a party.<sup>231</sup>

The Employer is usually a skilled worker, with human resources and legal knowledge, alternatively represented by an employer's organisation. This automatically places the employer in a superior position and could make the employee feel intimidated. The scale might be tipped into the employer's favour, which is grossly unfair.<sup>232</sup>

Potentially feeling intimidated and uncomfortable, it might seem to the employee that the employer is better equipped to present its case, with not much hope for the employee for success. The employee might feel that justice is elusive which is an important component of social justice. It is crucial not only for justice to be done, but it must also be seen to be done.<sup>233</sup> An employee will feel that he or she a fighting chance with representation that adequately presents their case. When an employee is allowed legal representation, it sends a message that the CCMA is indeed promoting social justice.

Careful consideration must be given to the parties' circumstances. The commissioner must consider the complexity of the matter, the question raised in law, and whether it is in the interest of the public. A very important factor to consider is to compare the respective abilities of the parties<sup>234</sup> to act against each other.<sup>235</sup>

The commissioners form a critical part in the promotion of social justice by considering both parties' abilities. The commissioner should proactively assist the employee without necessarily entering the arena, especially where a party is unrepresented.<sup>236</sup>

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<sup>230</sup> Rule 25(2) of the CCMA Rules.

<sup>231</sup> Matlou D 2016 *SAMLJ* 551.

<sup>232</sup> Benjamin 2009 *ILJ* 35.

<sup>233</sup> Objectives of the CCMA.

<sup>234</sup> Employer and employee.

<sup>235</sup> Rule 25(6)(1) of the CCMA Rules.

<sup>236</sup> Matlou D 2016 *SAMLJ* 550.



The commissioner must always remain unbiased. In *Mutual and Federal Insurance Co. Ltd v The Commission for Mediation and Conciliation and Arbitration and Others* (1997] 12 BLLR 1610 (LC),<sup>237</sup> the Labour Court said that biasness doesn't necessarily have to be proven. It is sufficient for a matter to be taken on review if the commissioner created the suspicion or idea that he is bias, especially in the eyes of an employee that has no experience in litigation.

The promotion of social justice in legal representation and defeating the purpose of the CCMA for expeditious and affordable relief, must be compared to each other and a midway must be reached. Brand argues that although the presence of legal representation is frustrating and dilatory, their presence has in fact had a positive effect in arbitration.<sup>238</sup>

### 3.2.5.3 Accessibility to the CCMA

Access to justice is also the right to be heard and responded to, and not only in respect of where it is located.<sup>239</sup> Many challenges as a result of past social injustices,<sup>240</sup> one of which is poverty, continues to haunt South Africa.<sup>241</sup> Dugard states that courts must have more regard to the impact of poverty on a society and how that influences the effective exercising of the law. Having compassion for and accommodating the poor will contribute to material change, socio-economic justice<sup>242</sup>, and consolidation of democracy in South Africa.

The CCMA has offices across the Republic's nine provinces. Conciliation proceedings therefore takes place within any offices of the province. The CCMA rules stipulate that a labour dispute must be deliberated in the province where the cause of action arises.<sup>243</sup> The CCMA does not give any of the parties the privilege to object to the

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<sup>237</sup> *Mutual and Federal Insurance Co. Ltd v The Commission for Mediation and Conciliation and Arbitration and Others* (1997) 12 BLLR 1610 (LC).

<sup>238</sup> Brand 2000 *ILJ* 95.

<sup>239</sup> Dugard *Constitutionalism of the Global South - Courts Dugard* (2014) and *Structural Poverty in South Africa* (2014)

<sup>240</sup> Matlou D 2016 *SAMLJ* 546.

<sup>241</sup> Noko Legal Representation at the Commission for Conciliation, Mediation and Arbitration 43

<sup>242</sup> Economic justice is about equal money. Social justice is about equal rights.

<sup>243</sup> Rule 24 (1) of the CCMA Rules.

venue of the adjudication. This may be a hindering factor for an employee to attend because of lack of financial resources to travel to the CCMA venue. This can be construed as an affront to the concept of social justice as poverty causes limited access to the forum.

The case manager at the office of the CCMA where the dispute is referred to, must take the employee's place of residence into account when determining a possible venue for the conciliation meeting. If the applicant earns minimum wage, the venue requires even more careful consideration.<sup>244</sup> It is feasible that the low-income earning employee might not be able to afford the transport money to attend at the venue. The CCMA has been trying its best to make strides in promoting social justice. Not only does the CCMA schedule hearings in the applicant's region or province, but these hearings are also attended in the area where the dispute took place. It is reported that Case Disbursement expenditure for the year 2020 exceeded the budget by R986 000 (0.7%). These costs include venue hire and travel costs that were incurred by the commissioners to conduct cases in the remote areas.<sup>245</sup> This is a clear illustration of the promotion of social justice by making it accessible for everyone.

However, it might not always be viable for an employee to move from another province to attend a hearing in a place where the labour dispute took place. Instead of regarding the area where the dispute took place as a venue, it is prudent for the commission to look at the employee's residential area and consider consulting with both parties to agree to a venue. Alternatively, the commissioner may make use of teleconferencing to mediate between the parties to resolve the dispute.<sup>246</sup> The COVID-pandemic illustrated the feasibility of using online platforms such as Zoom and Teams for meetings to limit exposure to the virus. Access to the necessary technology may still be problematic in the poverty stricken, remote areas, where data and computers are not readily available.

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<sup>244</sup> GN 45882 in GG 1732 dated 7<sup>th</sup> February 2022.

<sup>245</sup> CCMA Annual Report 2020/2021  
content/uploads/2022/09/CCMA-202122-Annual-Report.pdf.

<https://www.ccma.org.za/wp-content/uploads/2022/09/CCMA-202122-Annual-Report.pdf>.

<sup>246</sup> Rule 12 of the CCMA Rules.

Social justice extends beyond courts, labour forums, and the accessibility of venues. It is imperative that employees are informed of their rights.<sup>247</sup> Information about the CCMA and methods on how to refer matters should be easily accessible.

In promoting social justice, the CCMA has initiated programmes to ensure increased and effective access to the CCMA services in vulnerable areas and groups.<sup>248</sup> The Advocacy Campaign Plan was implemented through the eight (8) Provincial offices in South Africa to raise awareness and implement outreach facilities by way of radio talk-shows, distribution of pamphlets and promotional items.<sup>249</sup>

In June 2020, the CCMA launched an online platform which is available on the CCMA's website.<sup>250</sup> The application forms and referral forms<sup>251</sup> are easily accessible on this forum. According to CCMA director Cameron Morajane this platform was created to give users access to the forum without having to physically travel to the CCMA office. Although it was to prevent the spread of the COVID 19 virus, it also promotes social justice in making it possible for the poorer employees to access the CCMA.<sup>252</sup>

### ***3.3 The courts' interpretation of CCMA's mandate of promotion of social justice***

In the case *NUMWSA V Alec Wainwright N.O.* 2015 ZALCJHB 48,<sup>253</sup> the applicant made application to have an arbitration award reviewed.<sup>254</sup>

In this case, two disputes were before the bargaining council where the commissioner allegedly acted grossly unfair in proceeding with the case in the absence of the employee's representative.

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<sup>247</sup> Matlou D 2016 *SAMLJ* 546.

<sup>248</sup> Annual Report 2020 p32.

<sup>249</sup> Annual Report 2020 p32.

<sup>250</sup> <https://cmsonline.ccma.org.za/>

<sup>251</sup> A form to be completed by an employee to refer a matter to the CCMA.

<sup>252</sup> <https://solidariteit.co.za/en/ccma-introduces-new-online-platform/>

<sup>253</sup> *NUMWSA V Alec Wainwright NO* 2015 ZALCJHB para 48.

<sup>254</sup> Section 127 of the LRA.

The Labour Court believed CCMA commissioners were expected to fulfil their duties as legislation prescribes.<sup>255</sup> The provision seeks to promote and uphold the CCMA's vision and mission statement<sup>256</sup>, which states that:

In terms of section 138(1) of the LRA, a commissioner may conduct the arbitration in a manner the commissioner considers appropriate in order to determine the dispute fairly and quickly. The requirements of fairness and expedition must be balanced so as not to infringe or deprive any party of their rights, the right to a fair hearing being paramount.<sup>257</sup>

According to the Labour Court, social justice was constitutional value enshrined in the Constitution. It also equated the concept of social justice with that of ubuntu<sup>258</sup> and gave reference to *S v Makwanyane*.<sup>259</sup> The Labour Court referred to the CCMA's Siyaphambili "*Moving Forward*" Strategy 2010 – 2015 which aims to remove social justice blockages. It furthermore stated:

In the context of the CCMA and bargaining councils' social justice is achieved by treating all the users equally with dignity and respect and being accessible to the public in a language of choice and in a non-intimidating environment.<sup>260</sup>

A commissioner must conduct him or herself with integrity and impartiality, and always make the employer and employee feel welcome, comfortable and not as if they are a burden. A commissioner should remain unbiased, and objective and this must be the experience of both parties.<sup>261</sup>

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<sup>255</sup> Section 138(1) of the LRA.

<sup>256</sup> This statement of the CCMA provides that "The purpose of the CCMA is to promote social justice and economic development in the world of work and to be the best dispute management and dispute resolution organisation trusted by our social partners."

<sup>257</sup> *NUMWSA V Alec Wainwright NO 2015 ZALCJHB* para 33.

<sup>258</sup> Humanity to others.

<sup>259</sup> *S v Makwanyane* 1995 (3) SA 391 (CC) at para 308.

<sup>260</sup> *NUMWSA V Alec Wainwright NO 2015 ZALCJHB* para 46.

<sup>261</sup> *NUMWSA V Alec Wainwright NO 2015 ZALCJHB* para 47.

Further reference was made to the case of *Country Fair Foods (Pty) Ltd v Theron NO* (2000) 21 ILJ 2649 (LC)<sup>262</sup> where the Labour Court state that section 138(1) limits commissioners digress from the principles of natural justice.<sup>263</sup> A basic principle of natural justice is that both parties must be given a fair opportunity to present their case at a hearing and it must be heard in an impartial manner.

The concept of natural justice runs parallel to social justice. The Labour Court illustrated that any aggrieved employee has the inherent right to be heard before the CCMA, which promotes social justice.

The Labour Court found that the commissioner committed gross irregularities during arbitration, which denied the employee a fair hearing.

### **3.4 Conclusion**

This chapter discussed the CCMA's values that forms the foundations of social justice.

It is an objective of the LRA<sup>264</sup> to promote social justice. The establishment of the CCMA was discussed. The LRA<sup>265</sup> that created the CCMA, which in turn means that promotion of social justice is also one of the main aims of the CCMA.

Furthermore, this chapter delved into the different roll-players in the promotion of social justice. From workplace level up to including commissioners should be responsible in realising social justice.

The CCMA's vision, mission and values were discussed as well as access to the dispute resolution process. Settlement agreements during conciliation, legal representation, and accessibility issues as deterrents to the promotion of social justice were also discussed in this chapter. Various forms of accessibility were

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<sup>262</sup> *Country Fair Foods (Pty) Ltd v Theron NO* (2000) 21 ILJ 2649 (LC).

<sup>263</sup> *Country Fair Foods (Pty) Ltd v Theron NO* (2000) 21 ILJ 2649 (LC) para 34.

<sup>264</sup> 66 of 1995.

<sup>265</sup> 66 of 1995.

discussed. There is a large majority of workers that are low-income and the CCMA must accommodate such challenges.

## **CHAPTER 4 ANALYSIS OF THE SUCCESS OR FAILURE OF THE CCMA'S MISSION TO ACHIEVE SOCIAL JUSTICE IN LABOUR RELATIONS**

### ***4.1 Introduction***

It has been seventeen years since the CCMA was established. Prior to its enactment, the labour dispute system was lengthy and expensive. It is only fair that one considers whether the introduction of the CCMA has or is living up to its vision and mission by being easily accessible, expedient, inexpensive, and successful in promoting social justice as it intended.

This chapter will consider the effectiveness of the CCMA as a labour dispute resolution body as envisaged by the LRA.<sup>266</sup> The discussion will be undertaken at the backdrop of the concept social justice. The basic characteristics will be considered to put the discussion in its proper context. Only the dispute resolution process, specifically the conclusion of settlement agreements, accessibility, and legal representation, will be discussed. Efficiency, accessibility, and Quality, efficiency and accessibility are all concerns that led to the establishment of the CCMA and shall be used as focus points in this discussion.

The discussion will evaluate the successes and failures, of the CCMA with data collected from their annual performance reports and various literature. The discussion will close with a final verdict on the performance of the CCMA on its mission to achieve social justice in labour relations.

It is prudent to recap that the LRA is the most important legislation that regulated labour relations in the Republic.<sup>267</sup> Chapter 7 of the LRA gives reference to dispute resolution. The focus of this chapter is to establish and maintain a dispute resolution system that is effective, and expedient as stipulated in the LRA.<sup>268</sup>

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<sup>266</sup> 66 of 1995.

<sup>267</sup> Mphahlele *The Labour Relations Disputes Resolutions system: Is it effective?* 21.

<sup>268</sup> Sections 112-179 of the LRA.

The purpose of the CCMA is to resolve labour disputes through conciliation and arbitration whilst promoting social justice. Social justice as a normative term, is characterised by the extension of principles enshrined in the Constitution, which includes human dignity, equality, and the freedom to participate in all political, socio-economic, and cultural spheres of life.<sup>269</sup>

In summary, this discussion will critique the CCMA's performance regarding access to labour justice, equality, participation, the respect for diversity, and the realisation of human rights.

## ***4.2 Evaluation of the CCMA's mission to achieve social justice in labour relations***

This chapter explores the successes of the CCMA's mission to achieve social justice in labour relations. Statistical evidence will be coupled with labour jurisprudence and case law to establish whether there had been gains at the CCMA in respect of furthering social justice.

### ***4.2.1 Upholding of human dignity of employees***

It has been submitted that "it is undisputed that the CCMA upholds the democratic value of social justice and human dignity of employees; more importantly, those who are dismissed."<sup>270</sup>

Human dignity and social justice are closely linked. In fact, human dignity is a characteristic of social justice.

Social justice preaches the gospel of an equal society. Part of this is guaranteeing that employees are treated with dignity and respect by the employers, also the main objective of human rights.<sup>271</sup>

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<sup>269</sup> Mphahlele *The Labour Relations Disputes Resolutions system: Is it effective?* 22.

<sup>270</sup> Benjamin 2009 *ILJ* 26.

<sup>271</sup> Human rights are principles concerned with equality and fairness.



Dismissal can be justified, but it must be done in fair and dignified manner. Where such a dismissal is both substantively and procedurally unfair, it is the duty of the CCMA to intervene to ensure that the dignity of the unfairly dismissed employee is restored and in doing so, promote social justice.<sup>272</sup> The question that arises is whether that is accomplished when a matter is resolved at conciliation by way of settlement agreements.

It is submitted that when a person is dismissed and left without an income, they are often unable to support themselves and their dependants. For such a change in one's personal circumstances to be caused by an action that was unfair—be it procedural or substantive—is a massive infringement on a person's human rights and dignity. The CCMA exists to rectify such infringements, but whether it provides a short-term resolution or uphold social justice is the question I'd like to evaluate here.

#### *4.2.2 Accessibility to the CCMA*

Accessibility to a dispute resolution system is an important consideration of the system.<sup>273</sup> Budd and Colvin stated that the number of matters settled in the shortest possible period of time, are the qualities of an efficient, expeditious resolution system.<sup>274</sup>

##### *4.2.2.1 The CCMA services are free of charge*

The CCMA offers its services free of charge.<sup>275</sup> This implies that employees do not incur any costs in accessing this forum. There is no justice without easy access to forums that administer justice. The fact that it is free means that it should be highly accessible and interested parties are not put off by the prospective cost of litigation.

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<sup>272</sup><https://www.labour.gov.za/ccma1#:~:text=It%20is%20mandated%20to%20%E2%80%8B,and%20development%20and%20efficient%20administration;Section%201%20of%20the%20LRA.>

<sup>273</sup> Genn *et al* 2006 *Department for Constitutional Affairs* 323.

<sup>274</sup> Budd and Colvin 2008 [https://ecommons.cornell.edu/bitstream/handle/1813/75670/Colvin9\\_Improved\\_Metrics.pdf?sequence=1&isAllowed=y.](https://ecommons.cornell.edu/bitstream/handle/1813/75670/Colvin9_Improved_Metrics.pdf?sequence=1&isAllowed=y)

<sup>275</sup> InfoSheets CCMA FEES AND COSTS MAR 2002.

This may result in the referral of frivolous cases because there is no cost to the employee.<sup>276</sup> There should be no barriers between an employee and social justice obtained from the CCMA. For example, the level of education, economic means, or the location of centres should not be an issue. As a result, accessibility is simplified because there are not costs involved, the process is informal, and the service providers are widespread.

There is also no screening process at the time of referral of a case to the CCMA, because the duty is on the employer to show that a dismissal was fair, procedurally, and substantively.

It is submitted that, although it might be argued that the CCMA system is overburdened by meritless matters, it still provides recourse for employees who are treated unfairly.

In most cases, employees are left without an income, and desperate to find resolution in the cheapest, fastest manner. The fact that there are no costs to the employee, results in employees having unfettered access which clearly promotes the vision and mission of the CCMA. It is easily accessible, and everyone has the right to fair labour practice.<sup>277</sup>

#### 4.2.2.2 Referral Procedure

The purpose of discussing the referral process is to shed light on how easy it is to refer a matter. By making it easy, it promotes social justice, because it is accessible. The way disputes are referred to the CCMA is simple, informal, and much less compared to the formal pleadings in civil litigation.<sup>278</sup> In the case of an unfair dismissal dispute, the employee has thirty days from the date on which the dispute took place to open a case.<sup>279</sup> In discrimination cases, the employee has six months to lodge a complaint.

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<sup>276</sup> Noko VN *Legal Representation at the Commission for Conciliation, Mediation and Arbitration* 43.

<sup>277</sup> Section 23 of the *Constitution of the Republic of South Africa*, 1996.

<sup>278</sup> Twyman 2001 *Case Western Reserve Journal of International Law* 330.

<sup>279</sup> S191(1)(b)(i) of the LRA.

When lodging a dispute with the CCMA, the process is simple. A CCMA case referral form known as a LRA Form 7.11 must be completed.<sup>280</sup> It is sufficient for the dispute to be described in general terms. These forms are available, and easily accessible, from the CCMA offices across the country, Department of Labour offices, and the CCMA website.<sup>281</sup> The CCMA must now refer the matter online.

It is not required of an employee to return the referral form to the CCMA personally. It may be done via email or post. Again, this is indicative of how the CCMA is attempting to simplify the referral process, and then subsequently promoting social justice. After the form is received, the CCMA will inform both parties details of the first hearing of the dispute in question.<sup>282</sup>

It can be gleaned from the above that the CCMA has various simple methods of referring a matter. This means that the illiteracy and lack of skill in some employees are not necessarily barriers in referring a matter.

The CCMA is constantly researching and investigating manners in which to advance the efficiency of the CCMA. In the 2022/2023 CCMA Annual Report,<sup>283</sup> the five year strategy is discussed.<sup>284</sup> Included in this strategy plan is improving access to the CCMA. Evidently, the CCMA endeavours to move with the ever-changing technology.

#### 4.2.2.3 Speedy resolution

Access to the CCMA is free, which results in the referrals often being meritless and frivolous. Benjamin states that

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<sup>280</sup> Rule 10 of the CCMA Rules.

<sup>281</sup> Rule 7 of the CCMA Rules.

<sup>282</sup> Rule 11 of the CCMA Rules.

<sup>283</sup> CCMA Annual Performance Report 2022/2023 <https://www.ccma.org.za/wp-content/uploads/2022/07/CCMA-2022-23-APP.pdf>

<sup>284</sup> The Imvuselelo – The Revival, the 2020/21 - 2024/25 'Strategy, was developed after a review and consideration of the CCMA's legislated mandate and policy frameworks, as well as the current and projected global, regional and national factors facing the labour market, including opportunities and challenges presented by technological advancements.'

the number of referrals received by the CCMA exceeds the assumptions made during the establishment of the CCMA.<sup>285</sup>

It is argued that the CCMA never anticipated the influx of referrals it has received since its inception.

The CCMA receives a high number of referrals but does not necessarily possess the infrastructure to speedily dispose of the disputes. Bhorat *et al* observed that the CCMA has financial and human resources challenges that prevent them from resolving dispute as expeditiously as was anticipated.<sup>286</sup> Brand also stated that under-resourcing of the CCMA could ultimately nullify the important ideals it intends to achieve.<sup>287</sup> These factors place pressure on the CCMA and subsequently on the promotion of social justice since it can't function to their ideals.

During the 2020/2021 financial year, the CCMA received 154 143 referrals.<sup>288</sup> Compared to earlier reports, there has been a decrease in the last financial year, which has been attributed to the COVID Pandemic.<sup>289</sup> Walk-in offices were closed, which prevented the usual number of walk-in referrals. Previous years have shown a drastic increase in referrals, which could be attributed to South Africa's volatile economy and the effect thereof on the labour market. During the 2017/2018 financial year, the CCMA received 186 902 referrals.<sup>290</sup> In 2018/2019, 193 732 matters were referred and 2019/2020 it increased to 221 547.<sup>291</sup>

Constant high referral rates exert pressure on the CCMA and is a risk to the effectiveness of the CCMA. Caseloads of this magnitude, combined with a lack of resources on top of financial constraints, places a burden on the effective

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<sup>285</sup> Benjamin 2009 *ILJ* 28.

<sup>286</sup> Bhorat *et al* 2009 *Development Policy Research Unit* 6.

<sup>287</sup> Brand 2000 *ILJ* 77.

<sup>288</sup> CCMA Annual Performance Report 2022/2023 <https://www.ccma.org.za/wp-content/uploads/2022/07/CCMA-2022-23-APP.pdf>.

<sup>289</sup> CCMA Annual Performance Report 2022/2023 <https://www.ccma.org.za/wp-content/uploads/2022/07/CCMA-2022-23-APP.pdf>.

<sup>290</sup> CCMA-2019/2020-Annual-Report <https://www.ccma.org.za/wp-content/uploads/2022/01/CCMA-20192020-Annual-Report.pdf>.

<sup>291</sup> CCMA-2019/2020-Annual-Report <https://www.ccma.org.za/wp-content/uploads/2022/01/CCMA-20192020-Annual-Report.pdf>.

functioning of the CCMA. The CCMA sets settlement rate targets, which was 75% during the 2019/2020 financial year. This target was improved with 4% to reach 79%.<sup>292</sup> During the 2020/2021 financial year, the CCMA settled 70% of the total disputes referred.<sup>293</sup> The CCMA reports that the turnaround time in conducting conciliation per case is 23 days which is very reasonable when considering effectiveness.<sup>294</sup>

#### 4.2.3 *Settlement Agreements at Conciliation*

As alluded to in chapter 3, the rate at which disputes are settled, is indicative of the commissioners' abilities. This is a factor that is taken into consideration when their contracts are up for renewal. This compounds the concern that settlement agreements are reached in haste to dispose of a matter, which subsequently fails to address the underlying conflict. Failing to resolve underlying conflict means that the if peace is attained, justice is evaded. This argument corresponds with Owen Fiss' statement that the 'achievement of justice is minimized when parties only seek to attain peace.'<sup>295</sup>

It is also argued that the high settlement rate the CCMA reports to have achieved is misguided because of such rate being inclusive of matters settled *inter partes* as well as those that are withdrawn.<sup>296</sup>

In considering whether the high settlement rate should be praised as a success of the CCMA, one must simultaneously regard the organisation's fulfilment of their commitment to the promotion of social justice. It is after all the mission and vision of the CCMA to promote social justice as envisaged in the LRA through the execution of their duties and operations.<sup>297</sup>

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<sup>292</sup> CCMA-2019/2020-Annual-Report  
content/uploads/2022/01/CCMA-20192020-Annual-Report.pdf.

<https://www.ccma.org.za/wp-content/uploads/2022/01/CCMA-20192020-Annual-Report.pdf>.

<sup>293</sup> CCMA Annual Report 2020/2021  
content/uploads/2022/09/CCMA-202122-Annual-Report.pdf.

<https://www.ccma.org.za/wp-content/uploads/2022/09/CCMA-202122-Annual-Report.pdf>.

<sup>294</sup> CCMA Annual Report 2020/2021  
content/uploads/2022/09/CCMA-202122-Annual-Report.pdf.

<https://www.ccma.org.za/wp-content/uploads/2022/09/CCMA-202122-Annual-Report.pdf>.

<sup>295</sup> Owen M Fiss *Against Settlement* 93 YALE LJ page 1073

<sup>296</sup> Benjamin 2013 *International Labour Office Geneva* 17.

<sup>297</sup> Section 1 of the LRA.

It remains a question that can only be answered in each individual case, on its own merits. If the commissioner doesn't deal with the merits, and the employer is not made aware of and reprimanded about their conduct, and measures are put in place to prevent similar future conduct, can it be assumed that financial compensation to the employee promotes social justice?

A settlement agreement at conciliation does not restore the *status quo ante*. I argue that disposing of labour matters using pay-off money to cover up injustices done to an employee instead of effecting change to prevent a future repetition of the unfair treatment with the same or a different employee, is grossly unfair. It immediately brings an end to the dispute without resolving the problem, all in the name of expeditious dispute resolution. This most definitely does not promote social justice. Parties are not being treated equally and fairly.

Employees are often coerced or left in precarious positions, if they do not settle. Eventually, the employee will now be left unemployed. This is in a country, that is known for having a very high unemployment rate.<sup>298</sup>

Benjamin<sup>299</sup> reported that the CCMA implemented a structure whereby a Senior Mediator Commissioner assesses settlement agreements daily. The procedure attempts to ensure that it remains an effective measure of dispute resolution. It may seem like a plausible effort to ensure the process is fair, but alas, doesn't interrogate the rationale for settlement.

#### 4.2.4 Legal Representation at the CCMA

CCMA commissioners are aware of their mandate to resolve disputes speedily and effectively, which can only be achieved by avoiding conducting CCMA proceedings in a court-like manner.<sup>300</sup> A certain school of thought has submitted that there is a need to revise the Schedule 8 Guidelines to avert legalism at the CCMA. The CCMA

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<sup>298</sup> According to the ILO, South Africa's employment rate is 33% as of June 2022 Unemployment, total International Labour Organization, ILOSTAT database.

<sup>299</sup> Benjamin 2013 *International Labour Office Geneva* 18.

<sup>300</sup> Mphahlele *The Labour Relations Disputes Resolutions system: Is it effective?* 67.

dispute resolution approach can still meet the demands of the ILO standards without necessarily being too legalistic.<sup>301</sup> As much as there was some clarity where it was declared that the CCMA rule that limits legal representation is not abhorrent to the Constitution,<sup>302</sup> the CCMA still needs to be reminded that it is an alternative dispute resolution forum and not a court of law.

It is unfortunate that legal representation is not allowed in conciliation proceedings.<sup>303</sup> The Labour Court has concluded that even where the parties to a dispute allow for legal representation, the Commissioner may not exercise any discretion on whether or not legal representation should be allowed.<sup>304</sup> As discussed above, legal presentation is mostly allowed in arbitration proceedings, but not where the dispute is about misconduct or capacity.<sup>305</sup> In such case, legal representation is allowed only where the parties mutually agree to it or where application is made by either party and the commissioner considers it.<sup>306</sup> This research study argues that the distinction between conciliation and arbitration, and the application of legal representation is highly unwarranted. In fact, unfair dismissal matters can be fairly complex considering a vulnerable employee's circumstances, as one should in a matter where social justice is of the essence.

Even though legal representatives are barred at the CCMA in certain instances, specifically to make the procedures less technical and more speedily resolved, there is a massive backlog.

It can be argued that legal representation for an employee at conciliation would be beneficial because employees can receive assistance from legal representatives to frame their claims properly. Legal representatives would insist on reaching good, and enforceable settlements on behalf of the employees. It is common for parties to bring *mala fide* matters that lack merit to the CCMA. This puts unnecessary

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<sup>301</sup> *Avril Elizabeth Home for the Mentally Handicapped v CCMA* 2006 9 BLLR (LC).

<sup>302</sup> *CCMA v Law Society of Northern Provinces* (005/13) 2013 ZASCA 118.

<sup>303</sup> Rule 25(1) of the CCMA rules.

<sup>304</sup> *Mavundla v Vulpine Investments* 2000 9 BLLR 1234 (LC).

<sup>305</sup> Rule 25(3)(c) of the CCMA rules.

<sup>306</sup> Rule 25(3)(c) of the CCMA rules.

pressure on an already constrained system. It has been submitted by authority that because the dispute process is free of charge, meritless disputes are being referred to the CCMA.<sup>307</sup> The first step in eliminating frivolous cases could be for a legal practitioner to have a cost order made against them should they bring forth a case without good prospects of success.<sup>308</sup>

Legal Representatives have been harshly criticised for transforming the forum into a court, for example raising points *in limine*, thus causing unnecessary postponements.<sup>309</sup> On top of that, labour lawyers tend to be legalistic, and they tend to have full diaries that can delay justice of the affected parties. These factors go against the tenets of social justice as the unfortunate circumstances that an employee might find himself or herself in, are exacerbated.<sup>310</sup>

#### ***4.3 Overall verdict on CCMA efforts in achieving social justice in labour relations***

There is no cut and dry method for deciding whether or not social justice was served in a matter.

Viewing it from a perspective on accessibility to the CCMA, lack of literacy, skill, or funds causes no barriers in access. There is no differentiation between the employees, in respect of costs and referral procedure. The process is equal for everyone.

Although there might still be challenges with access from remote locations, the CCMA is proactive in always trying to identify challenges and finding a solution. It is clear from the most recent CCMA report that they have a strategy and a plan in motion.

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<sup>307</sup> Levy and Venter *The Dispute Resolution Digest 2012 Tokiso Dispute Settlement* 2012 23.

<sup>308</sup> Noko VN *Legal Representation at the Commission for Conciliation, Mediation and Arbitration* 22,23.

<sup>309</sup> Mphahlele *The Labour Relations Disputes Resolutions system: Is it effective?* 20.

<sup>310</sup> Borat *et al* 2009 *Development Policy Research Unit* 48.



In keeping the dispute resolution process informal, and without the technicalities of formal court, the CCMA is more accessible to everyone. I however submit that it causes an increase in matters being referred, and as a result bloating the caseload of the CCMA. In the 2018/2019 financial year the caseload increased by almost 30 000 cases.<sup>311</sup>

An employee's satisfaction with a dispute resolution process depends largely on the perceived fairness of its outcome.<sup>312</sup> Where there are two considerations in conflict, the commissioner must promote the requirements of fairness to promote justice. Brand also argues that efficiency or expedition doesn't mean that commissioners must rush through proceedings and ignore the actual needs and interests of the parties in the name of achieving a high settlement rate. The question arising is whether the settlement of a matter promotes the purpose of the CCMA, specifically social justice for the purposes of this discussion. I tend to opine that employees are subtly coerced into reaching agreements due to the pressure of high caseloads; that, and the fact that settlement rates are performance indicators at the cost of social justice and change.

On this basis I submit that although the access and speedy resolution of matters does promote the concept of social justice, I do not agree with the aspect of rushing resolutions to achieve high settlement rates. Once an agreement is reached, the dispute resolution process ends without addressing the actual cause and merits of the matter. Financial settlement does not equate to social justice.

#### **4.4 Conclusion**

It is submitted that by summarising this chapter and submit that the CCMA indeed exists to provide accessible, efficient, and quality dispute resolution to each and every person irrespective of status, gender, and race, to name but a few. The literacy discussed in this chapter specifically considered each factor that could affect the promotion of social justice. Undeniably, the CCMA contributes significantly to

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<sup>311</sup> CCMA Annual Report 2018/2019 <https://www.ccma.org.za/wp-content/uploads/2022/01/Annual-Report-201819.pdf>.

<sup>312</sup> Ury *et al* *Three approaches to resolving disputes: interests, rights and power* 6.

the promotion of social justice in terms of access to services; but there is still room for improvement to truly address injustices in the workplace at the root, and to truly effect change in the lives of employees.

## **CHAPTER 5 RECOMMENATIONS AND CONCLUSIONS**

### ***5.1 Introduction***

The mini dissertation discussed various aspect of the CCMA and how it relates or furthers social justice. This chapter will make recommendations for the CCMA, with the main objective being to promote social justice.

### ***5.2 Achievements***

Based on past trends, the CCMA's caseload will continue to increase every year as has been evident over the past few years' annual reports. From its inception on 11<sup>th</sup> November 1996, the CCMA has received a total of 3, 566, 370 case referrals.<sup>313</sup> The referral load has been on an upward trajectory since the start but also continued to maintain a high settlement rate.

There has been a proud achievement with the job-saving strategy where almost 59, 000 jobs were saved from possible retrenchments.<sup>314</sup>

Currently the CCMA has 36 accredited councils and 6 private agencies to expand its reach. Without a doubt the CCMA has been successful in their mandate to be easily accessible to employee.

One way of measuring the CCMA's success is by the rate at which they settle matters in dispute. To properly measure success, there must be a true reflection of the settlement rate.

### ***5.3 Recommendations***

#### ***5.3.1 Settlement Rate***

As alluded to above, the settlement rate includes withdrawn cases and those that were settled before appearing before a commissioner. This is not a true reflection

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<sup>313</sup> <https://www.ccma.org.za/news/ccma-commemorates-its-25th-anniversary-media-advisory/>.

<sup>314</sup> <https://www.ccma.org.za/news/ccma-commemorates-its-25th-anniversary-media-advisory/>.

of the cases physically handled by or settled with the assistance of a commissioner. Benjamin stated that once the withdrawals and cases rejected for lack of jurisdiction are separated from the actual settlements, the settlement rate drops to 50%.<sup>315</sup> This seems like a more reasonable target for settlement rates for matters at the CCMA. Once the rate truly reflects the performance of the CCMA, one would also have a more informed view of whether social justice is achieved at conciliation.

It is submitted that if the settlement rate is too high, and say it is a true settlement rate, it means that such a high percentage of matters have gone without both parties telling their sides of the story. The merits of the matter have not been dealt with. In this way, it cannot be said that social justice is achieved through a high settlement rate. The process can be seen as a vicious circle. The CCMA is affordable and easily accessible for employees. Social justice is promoted in that everyone has the right to approach the CCMA and can in fact approach the CCMA. The CCMA is then inundated with referrals, with matters often lacking merits of prospects of success. The caseload is then very high, and the commissioners are pressurised to finalise matters, firstly to relief the caseload and secondly also as a performance indicator. The pressure could cause the commissioner to promote settlement, which often can be to the detriment of an employee. Could it then be argued that the dispute resolution process promotes social justice? It is argued that to a certain extent it does, but then fails on the latter part of the process. The CCMA must reconsider the appointment criteria of commissioners as well as find a process to filter meritless matters.

*5.3.2 For a matter to be considered, it must be referred to the CCMA by a referral process. The number of matters received are very high and it should be eliminated at the referral process. Referral process*

One recommendation would be for a more vigorous screening process is introduced at the referral stage.<sup>316</sup> Firstly, an employee's case must be properly assessed to

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<sup>315</sup> Benjamin 2013 *International Labour Office Geneva* 16

<sup>316</sup> Kwakala A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration 106.

determine whether there are merits in referring the matter. The fact that the CCMA is free and easily accessible results in many meritless matters being reported. A more stringent test should be implemented at the initial referral to increase productivity and allocate more time and available resources to bona fide cases where social justice can impact society greatly.

Judge President Wagley spoke at the CCMA's Annual Labour Conference<sup>317</sup> held in September 2022. His statement echoed the same shortcomings illustrated in this dissertation:

What we see today is dispute resolution institutions and labour court system clogged with unnecessary disputes which lack merit and could have easily been resolved at floor level in the workplace.

Wagley went further to state that there should be consequences for those who refer frivolous matter with no merit. Looking at the trend of referrals, I am of the view that referring a dismissal to the CCMA, is almost a kneejerk reaction when dismissed. The employees ought to be held responsible if a meritless matter is referred the CCMA. Could one argue then that social justice is not promoted if there are stricter referral procedures? I believe that it would not necessarily have a negative effect. On the contrary, if the CCMA briefly considers the merits of a matter is at referral stage, it will lessen the caseload.

It is recommended that highly trained staff, perhaps even lawyers, are appointed by the CCMA, to access these referrals to eliminate meritless matters. This will promote the social justice aspect in the dispute resolution process.

### *5.3.3 Representation*

Lawyers often act under the guise of employers' organisations, which immediately results in an unfair playing field.<sup>318</sup> It is recommended that the employer party or employer organisation must be identified in a stringent identification process. The

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<sup>317</sup> <https://www.labour.gov.za/ccma%E2%80%99s-annual-labour-conference-2022>.

<sup>318</sup> Kwakala *A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration* 106.

employer party often introduce technicalities and attempt to formalise the process, much to the intimidation of the employee. The employer party or employer organisation should also be assessed on the way their case is being presented at the CCMA.

There are instances where it is to the advantage of the CCMA to have a lawyer represent an employee. If the lawyers are held liable for the costs of pursuing meritless matters, it could reduce the number of referrals. In that sense it supports my argument to rather have a lawyer appointed by the CCMA to assess and consider the merits of the matter at the time of referral. This doesn't deny the employee access to the system or hinder the promotion of social justice. In fact, this could assist the continued successful operation of an already overburdened system by limiting frivolous and meritless matters. In doing so, it will allow for social justice to be promoted throughout the whole dispute resolution process.

#### ***5.4 Conclusion***

In response to the question whether social justice is achieved at the dispute resolution process, it is argued that there is no simple yes or no answer.

Social justice should not be restricted to only the CCMA or our Courts. Awareness must be created at workplace level to achieve social justice. Once the principle is ingrained in the minds of employers as well, a whole new work order will be established

Minister Nxesi had the following to say about the CCMA operations over the past 25 years:

My assessment would be that the CCMA has delivered on its mandate over the years; strengthening workers' rights and supporting social justice<sup>319</sup>

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<sup>319</sup> <https://www.ccma.org.za/wp-content/uploads/2022/09/CCMA-INTOUCH-NEWSLETTER-Q2-SEPTEMBER-2022.pdf>.

It is argued that the CCMA has indeed and is continuing to deliver on their mandate. With specific reference to promotion of social justice there are room for improvement.

In closing, the Department of Employment and Labour's Director of Communication, Teboho Thejane, recently in a newspaper article published on 7<sup>th</sup> November 2022, stated that there is a general consensus under people in power, that the CCMA should revert to its initial foundational principles.<sup>320</sup> Simple, accessible and inexpensive. These are the principles that forms the foundation of social justice. It should be non-technical, accessible to everyone and affordable, in order for everyone to enjoy what is provided for in South African labour legislation.

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<sup>320</sup> Post-apartheid labour law intended for labour disputes to be resolved expeditiously with simple, accessible, and inexpensive procedures.

## BIBLIOGRAPHY

### *Literature*

A Report prepared for the Department Arts and Culture: by the Social Cohesion and Integration Research Programme Human Sciences Research Council *Social Cohesion and Social Justice in South Africa*

A Report prepared for the Department Arts and Culture: by the Social Cohesion and Integration Research Programme Human Sciences Research Council *Social Cohesion and Social Justice in South Africa* (2004) available at <https://www.thepresidency.gov.za/content/social-cohesion-and-social-justice-south-africa> accessed on

Bendix 2001 Industrial relations in South Africa

Bendix S 2001 Industrial relations in South Africa 4<sup>th</sup> ed (Cape Town Juta)

Benjamin P 2009 ILJ

Benjamin P "Conciliation, Arbitration and Enforcement: The CCMA's Achievements and Challenges" 2009 Industrial Law Journal 26-48.

Benjamin 2013 Working Paper

Benjamin P "Assessing South Africa's Commission for Conciliation, Mediation and Arbitration (CCMA)" 2013 International Labour Office Geneva

Bhorat et al 2009 Development Policy Research Unit

Bhorat H, Pauw K and Mncube L 2009 "Understanding the Efficiency and Effectiveness of the Dispute Resolution System in South Africa: An Analysis of CCMA Data" Development Policy Research Unit

Bosch 2012 Acta Juridica

Bosch C and Steenkamp A 2012 "Labour dispute resolution under the 1995 LRA: Problems, pitfalls and potential" Acta Juridica 120-147

Brand 2000 ILJ



Brand J 2000 "CCMA: Achievements and Challenges- Lessons from the First Three Years" ILJ 77-97

Budd and Colvin 2008 Improved Metrics for Workplace Dispute Resolution Procedures: Efficiency, Equity, and Voice. Industrial Relations

Budd J and Colvin A (2008). Improved Metrics for Workplace Dispute Resolution Procedures: Efficiency, Equity, and Voice. Industrial Relations 460-479 at [https://ecommons.cornell.edu/bitstream/handle/1813/75670/Colvin9\\_Improved\\_Metrics.pdf?sequence=1&isAllowed=y](https://ecommons.cornell.edu/bitstream/handle/1813/75670/Colvin9_Improved_Metrics.pdf?sequence=1&isAllowed=y) accessed on

Coates 2007 American Behavioural Scientist

Coates RD "Social Justice and Pedagogy" 2007 American Behavioural Scientist Miami University 579-591

Genn et al 2016 Department for Constitutional Affairs

Genn et al (2006) Tribunals for diverse users Research report DCA Research Series London: Department for Constitutional Affairs

Grogan *Collective Labour Law*

Grogan *Collective Labour Law* 3<sup>rd</sup> ed (Juta Cape Town 2019)

Grogan *Labour Legislation and Dispute Resolution*

Grogan Labour Legislation and Dispute Resolution 2<sup>nd</sup> ed (Juta Cape Town 2014)

Hlalele 2012 *JNGS*

Hlalele "Social Justice and Rural Education in South Africa" 2012 *JNGS* 64-76

Kwakala A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration

Kwakala BOK A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration (LLM-dissertation University of Stellenbosch 2010)

Levy and Venter 2012 JUTA

Levy A and Venter T "The Dispute Resolution Digest 2012 Tokiso Dispute Settlement" 2012 Juta Cape Town

Matlou D 2016 *SAMLJ*

Matlou D "Understanding Workplace Social Justice within the Constitutional Framework" 2016 SAMLJ 544-561

Mill JS 1863 Utilitarianism

Mills JS "Utilitarianism" 1863 (Batochi Books Canada)

Mphahlele The Labour Relations Disputes Resolutions system: Is it effective?

Mphahlele WK The Labour Relations Disputes Resolutions system: Is it effective? (LLM-dissertation University of Pretoria 2016)

Noko VN Legal Representation at the Commission for Conciliation, Mediation and Arbitration

Noko Legal Representation at the Commission for Conciliation, Mediation and Arbitration (LLM-dissertation University of Pretoria 2017)

Reisch M *Defining Social Justice in a Socially Unjust World*

Reisch M Defining Social Justice in a Socially Unjust World (2002) available at  
[https://www.researchgate.net/publication/273366488\\_Defining\\_Social\\_Justice\\_in\\_a\\_Socially\\_Unjust\\_World/link/56b89c6608ae3c1b79b2e1f2/download](https://www.researchgate.net/publication/273366488_Defining_Social_Justice_in_a_Socially_Unjust_World/link/56b89c6608ae3c1b79b2e1f2/download)  
accessed on

Simons and Simons *Class and Colour in South Africa 1850-1950*

Simons HJ and Simons RE *Class and Colour in South Africa 1850-1950* 1<sup>st</sup> ed  
(Penguin Books Ltd England 1969)

Sunstein *Designing Democracy: What Constitutions Do*

Sunstein C *What Constitutions do* (Oxford University Press 2001)

Tsanoff 1956 The University of Chicago press Journals

Tsanoff "Social Morality and the Principle of Justice" 1956 The University of  
Chicago Press Journals 12-16

Twyman 2001 Case Western Reserve Journal of International Law

Twyman "Finding Justice in South African Labor Law: The Use of Arbitration  
to Evaluate Affirmative Action" 2001 Case Western Reserve Journal of  
International Law 307-342

Ury et al Three approaches to resolving disputes: interests, rights and power

Ury et al Three approaches to resolving disputes: interests, rights and power.  
in Lewicki et al Negotiation: readings, exercises and cases. (5th ed. Boston:  
McGraw-Hill/Irwin 2007) 1-13

Van Niekerk *et al Law@Work*

Van Niekerk *et al Law@Work* 5<sup>th</sup> ed (Lexis Nexis Durban 2019)

Van Staden 2012 TSAR

Van Staden "Towards a South African understanding of social Justice: The  
International Labour Organisation perspective" 2012 TSAR 91-105

Visser 2011 Journal for Contemporary History

Visser "The Wiehahn Commission and the Miners' Strike of 1979: White  
Labour and the Beginning of the end of Apartheid in South Africa" 2011  
*Journal for Contemporary History* 50-64

## ***Case law***

*Country Fair Foods (Pty) Ltd v Theron NO* (2000) 21 ILJ 2649 (LC)

*Edgars stores (Pty) Ltd v SACCAWU* [1998] 5 BLLR 447 (LAC)

*Government of the Republic of South Africa v Grootboom* 2001(1) SA 46 (CC)

*Harmse v City of Cape Town* (2003) 24 ILJ 1130 (LC).

*Mavundla v Vulpine Investments* 2000 9 BLLR 1234 (LC)

*Mutual and Federal Insurance Co. Ltd v The Commission for Mediation and Conciliation and Arbitration and Others* (1997] 12 BLLR 1610 (LC).

*National Union of Metal Workers of South Africa v Bader Bop 2003 (3) SA 513 (CC)*

*Native Pass Laws and Regulations of 1952*

*Ntsabo v Real Security* (2003) 24 ILJ 2341 (LC)

*S v Makwanyane* 1995 (3) SA 391 (CC)

*SA National Defence Union v Minister of Defence and another* (1999) 20 ILJ 2265 (CC)

*Solidarity and Others v Department of Correctional Services and Others* (CCT 78/15) [2016]

*South African Police Service v Solidarity obo Barnard* (CCT 01/14) [2014] ZACC

### ***Legislation***

*Basic Conditions of Employment Act*

*Constitution of the Republic of South Africa, 1996*

*Employment Equity Act* 55 of 1998

*Labour Relations Act* 66 of 1995

*National Minimum Wage Act* 9 of 2018

### ***International instruments***

*ILO Convention 11 Discrimination Employment and Occupation* 1958

*ILO Convention 87 Freedom of Association and Protection of Rights to Organise*  
1948

*ILO Convention 98 Right to Organise and Collective Bargaining Convention* 1949

### ***Government publications***

GNR1448 in GG 25515 dated 10 October 2003

GN 45882 in GG 1732 dated 7th February 2022

### ***Internet sources***

Anon Date Unknown <https://www.cesj.org/learn/definitions/defining-economic-justice-and-social-justice/>

*Anon Date Unknown Defining Economic Justice and Social Justice*  
<https://www.sdfoundation.org/news-events/sdf-news/what-is-social-justice/>. accessed on 24 October 2022

Anon 2015 <https://www.everycrsreport.com/reports/R44165.html>

Anon 2015 <https://www.everycrsreport.com/reports/R44165.html> accessed on 1 November 2022

|                                                                                                                                                                                                                             |      |         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|---------|
| Anon                                                                                                                                                                                                                        | Date | Unknown |
| <a href="https://omalley.nelsonmandela.org/omalley/index.php/site/q/03lv02424/04lv02730/05lv03188/06lv03210.htm">https://omalley.nelsonmandela.org/omalley/index.php/site/q/03lv02424/04lv02730/05lv03188/06lv03210.htm</a> |      |         |

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|----------------|
| <i>Anon</i>                                                                                                                                                                                                                                                    | <i>Date</i> | <i>Unknown</i> |
| <i><a href="https://omalley.nelsonmandela.org/omalley/index.php/site/q/03lv02424/04lv02730/05lv03188/06lv03210.htm">https://omalley.nelsonmandela.org/omalley/index.php/site/q/03lv02424/04lv02730/05lv03188/06lv03210.htm</a> accessed on 31 October 2022</i> |             |                |

Anon 2011 <https://www.nelsonmandela.org/news/entry/ninth-nelson-mandela-annual-lecture-professor-ismail-serageldin-speaks-on-s>

*Anon 2011 Ninth Nelson Mandela Annual Lecture: Professor Ismail Serageldin speaks on social justice* <https://www.nelsonmandela.org/news/entry/ninth-nelson-mandela-annual-lecture-professor-ismail-serageldin-speaks-on-s>  
saccessed on 18 November 2022

Burke 2014 <https://isi.org/intercollegiate-review/the-origins-of-social-justice-taparelli-dazeglio/>

Burke TP 2014 The Origins of Social Justice: Taparelli D’Azeglio  
<https://isi.org/intercollegiate-review/the-origins-of-social-justice-taparelli-dazeglio/> date accessed on 24 October 2022

CCMA Annual Performance Report 2022/2023 <https://www.ccma.org.za/wp-content/uploads/2022/07/CCMA-2022-23-APP.pdf>

CCMA Annual Performance Report 2022/2023 <https://www.ccma.org.za/wp-content/uploads/2022/07/CCMA-2022-23-APP.pdf> accessed on 11 November 2022

CCMA-2019/2020-Annual-Report <https://www.ccma.org.za/wp-content/uploads/2022/01/CCMA-20192020-Annual-Report.pdf>

CCMA-2019/2020-Annual-Report <https://www.ccma.org.za/wp-content/uploads/2022/01/CCMA-20192020-Annual-Report.pdf> accessed on 11 November 2022

CCMA Annual Report 2018/2019 <https://www.ccma.org.za/wp-content/uploads/2022/01/Annual-Report-201819.pdf>

CCMA Annual Report 2018/2019 <https://www.ccma.org.za/wp-content/uploads/2022/01/Annual-Report-201819.pdf> accessed on 11 November 2022

CCMA Report 2020/2021 <https://www.ccma.org.za/wp-content/uploads/2022/09/CCMA-202122-Annual-Report.pdf>

<https://www.ccma.org.za/wp-content/uploads/2022/09/CCMA-202122-Annual-Report.pdf> accessed on 11 November 2022

CCMA <https://www.ccma.org.za/wp-content/uploads/2022/09/CCMA-INTOUCH-NEWSLETTER-Q2-SEPTEMBER-2022.pdf>

CCMA <https://www.ccma.org.za/wp-content/uploads/2022/09/CCMA-INTOUCH-NEWSLETTER-Q2-SEPTEMBER-2022.pdf> accessed on 27 October 2022

Havenga 2021 <https://www.untu.co.za/media/>

Havenga M CCMA can't do 43% of cases due to budget cuts 2021 <https://www.untu.co.za/media/ccma-cant-do-43-of-cases-due-to-budget-cuts/> accessed 18 March 2022

International Labour Organisation 2022 *Introduction to international labour standards* <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/need-for-social-justice/lang--en/index.htm>

International Labour Organisation 2022 *Introduction to international labour standards* <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/need-for-social-justice/lang--en/index.htm> accessed 23 May 2022

Kent State University 2020 <https://onlinedegrees.kent.edu/political-science/master-of-public-administration/community/five-principles-of-social-justice>

Kent State University 2020 <https://onlinedegrees.kent.edu/political-science/master-of-public-administration/community/five-principles-of-social-justice> accessed on 2 November 2022

Miltimore 2018 <https://fee.org/articles/hayek-social-justice-demands-the-unequal-treatment-of-individuals/>

Miltimore 2018 <https://fee.org/articles/hayek-social-justice-demands-the-unequal-treatment-of-individuals/> accessed on 25 November 2022

Nelson Mandela Foundation 2021 *About Dialogue for Justice* <https://www.nelsonmandela.org>

Nelson Mandela Foundation 2021 *About Dialogue for Justice*  
<https://www.nelsonmandela.org/content/page/about-the-dialogue-programme> accessed on 19 November 2022

Novak 2000 <https://www.catholiceducation.org/en/culture/catholic-contributions/defining-social-justice.html>

Novak M 2000 Defining Social Justice  
<https://www.catholiceducation.org/en/culture/catholic-contributions/defining-social-justice.html> accessed on 20 May 2022

San Diego Foundation 2016 <https://www.sdfoundation.org/news-events/sdf-news/what-is-social-justice/>

San Diego Foundation 2016 <https://www.sdfoundation.org/news-events/sdf-news/what-is-social-justice/>. accessed on 25 September 2022

Sharma 2012 <https://articles.manupatra.com/article-details/Social-Justice>

Sharma T and Misra R Social 2012 Justice  
<https://articles.manupatra.com/article-details/Social-Justice> date accessed on 3 November 2022

South African Government 2022 <https://www.gov.za/speeches/employment-and-labour-twenty-four-years-employment-equity-act-%E2%80%93-inequity-south-african>

South African Government 2022 *Employment and labour on 24 years of Employment Equity Act – inequity in South African workplaces*  
<https://www.gov.za/speeches/employment-and-labour-twenty-four-years-employment-equity-act-%E2%80%93-inequity-south-african> date accessed on 20 November 2022

Statssa 2022 <https://www.statssa.gov.za/?p=15685>

Statssa 2022 *Quarterly Labour Force Survey (QLFS) Q2:2022*  
<https://www.statssa.gov.za/?p=15685> date accessed on 4 November 2022



The World Bank 2022 *New World Bank Report Assesses Sources of Inequality in Five Countries in Southern Africa* <https://www.worldbank.org>

The World Bank 2022 *New World Bank Report Assesses Sources of Inequality in Five Countries in Southern Africa*  
<https://www.worldbank.org/en/news/press-release/2022/03/09/new-world-bank-report-assesses-sources-of-inequality-in-five-countries-in-southern-africa> accessed 20 May 2022