

EVENT REPORT

Konrad-Adenauer-Stiftung e.V.

SOUTH AFRICA

KATHARINA VAN DER WALT
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Collective Bargaining and Labour Relations in South Africa

Mail&Guardian Critical Thinking Forum

The question **“What needs to change to create jobs and prosperity for all?”** was the focus of the Mail and Guardian Critical Thinking Forum on Wednesday, 3 December, organized in collaboration with KAS.

Jobs, labour relations and collective bargaining have been in the South African spotlight since the tragedy of Marikana. Persisting tensions experienced between employers and labour unions, observable through the high incidence and duration of protests throughout the economy need to be urgently addressed so that mutually beneficial outcomes can be achieved.

A panel consisting of five industry experts was selected for the evening's discussion which followed a keynote address by John Brand, dispute resolution specialist at Bowman Gilfillan and director of Conflict Dynamics. Other representatives on the panel included Gerhard Papenfus, founder and Chief Executive of the National Employers' Association of South Africa (NEASA); Ian Macun, Director of collective bargaining in the Department of Labour; Success Mataitsane, General Secretary of the National Union of Public and Allied Workers (NUPSAW); and Piet du Plooy, General Secretary of the Confederation of South African Workers' Unions. The panel was expertly moderated by award-winning journalist, Iman Rappetti.

John Brand stressed the fact that there have been appeals for radical change in the approach to collective bargaining in South Africa, pertaining to the length of strikes and consideration of compulsory arbitration and curtailment of collective bargaining. Noting that **collective bargaining is a central pillar of the free market economy** and that related rights are enshrined in the constitution, he maintained that the problem lies with the way in which rights are exercised and regulated. Instead of curtailing collective bargaining, Brand argued that it should be deepened and strengthened.

Furthermore, Brand emphasized the irrationality of strike outcomes: **most of the prolonged protests result in net losses to workers, rather than gains**. The violent nature of the South African protests and intimidations directed at non-striking workers make **South Africa the country with the most violent protests in the world, in addition to it exhibiting the highest amount of working days lost during protests**. Brand also noted that nearly half of all protests are not compliant with the Labour Relations Act (LRA). Brand concluded that the structural problems of collective bargaining and shortcomings of the LRA need to be addressed, and that it is high time the country's legislation be brought in line with international best practice. This would include that unions must compete democratically for the status of multi-collective bargaining; that bargaining councils or an independent institute educate the social partners about economics and their rights and obligations in terms of the Bill of Rights and international con-

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ventions; that social partners engage with the purpose of achieving mutual gain through good faith negotiations; that a specialized industrial action protection unit be created so as to protect the rights of non-strikers to work; that unions take reasonable steps to make sure that members comply with law; and that decentralization of bargaining councils would be more effective and efficient than the current centralized industry level bargaining. However, it was emphasized that even without legislative intervention, much can be done.

A rich discussion ensued, in which convergent and opposing arguments were raised and views expressed. Gerhard Papenfus emphasized that the power play in unions is translating into counterproductive strike action and outcomes, undermining the potential for mutually beneficial agreements reached through collective bargaining. The point on power play within unions was supported by Piet du Plooy. Another issue that was raised was that unions do not come well prepared to the bargaining table in terms of economic literacy, which speaks to John Brand's earlier point on the need for education for social partners on economics, rights and responsibilities. A member of the audience voiced frustration about the state of protests in South Africa, saying that there is no point in coming to an agreement in one year, when it is guaranteed that there will be renewed strikes in the following year.

Ian Macun spoke to the methodology of collective bargaining, taking up the issue of balloting, and what form this should take to be most successful. However, Success Mataitsane

retorted that the ballot was tedious, and that the LRA in its inception promoted voluntary, as opposed to compulsory bargaining. It was added that labour is currently structured so as to favour politics, not social welfare, whereas in the US, collective bargaining was structured around combatting the depression. Disappointment was voiced at the failure of NEDLAC to address such issues, leaving it up to the government to deliver the needed changes. Mataitsane emphasized that the proposed decentralization of bargaining councils was not an option, since centralization is the only way of protecting the most vulnerable workers, and that it does not imply there should be no negotiation at the company level. Brand responded that this perception results from a fundamental misunderstanding of the LRA and the Basic Conditions of Employment Act (BCEA). We have neglected to consider that collective bargaining and big union agreements fix wages above what small employers can pay, contributing to their going out of business, leading to increased concentration by big market players.

Further issues that came up were the LRA stipulation that if industry players that represent the majority of workers come to an agreement, this agreement must be extended by the minister to all players in that industry, regardless of size and cost structure. To this Gerhard Papenfus added that problematically, the body supposed to extend the agreement does not exist. **An ideological split between advocates of socialism and those for social democracy was raised as a further challenge which is blurring the South Afri-**

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can developmental agenda. The National Minimum Wage debate was brought to the fore as a possible way of addressing the needs of vulnerable workers as opposed to doing this through centralized bargaining. Another drawback of the current state of centralized bargaining is the lack of accountability for workers when protests get out of hand and violent, and when intimidation of non-striking workers occurs.

The evening was rounded off with closing remarks by Dr. Holger Dix., who compared the current situation in South Africa to **a similar economic depression experienced in Germany in the early 2000s**. At the time, Germany experienced high unemployment levels, protests, budget stress and low growth rates. Fellow European countries called Germany the 'ill-men of Europe'. One problem was that the ideological split between the social democrats and the Christian democrats inhibited agreements to be reached for the benefit of the whole of Germany. Dr. Dix mentioned that the solution to the German economic crisis was centered around **leaving behind conflicting ideologies and rather concentrating on what works best**. Perhaps such an approach would prove to be equally fruitful in South Africa.