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An evaluation of the CCMA with the aim of enhancement and improvement

by

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ABSTRACT

The Labour Relations Act established the Commission for Conciliation, Mediation and Arbitration (CCMA) as a statutory institution for labour dispute resolution. This dissertation draws on CCMA data and case analysis to provide a comprehensive analysis of the CCMA's role in resolving labour disputes. The CCMA was created with the intention of providing inexpensive, accessible and effective dispute resolution through conciliation and arbitration.

Although there is no specific mandate in relation to lessening poverty, reducing unemployment and inequality, the CCMA still plays an active role in the reduction of these socio-economic issues. This dissertation highlights the CCMA's efforts to provide marginalized populations with a framework for equal access to justice, emphasizing its role in expanding access to justice. The research highlights the CCMA's ability to grant awards for Basic Conditions of Employment Act and National Minimum Wage Act referrals and the role this plays in combating non-compliance with the national minimum wage, to continue the fight against poverty and inequality. The CCMA combats unemployment through its job-saving strategy that ensures all prospective job-saving measures are considered as soon as possible to prevent as many layoffs as possible. Despite the difficulties presented, the CCMA persists in attempting to contribute to the labour market in a meaningful way.

The CCMA's ability to resolve disputes within the stipulated timeframes and maintain a high settlement rate year after year contributes to the effectiveness of the institution. The costs involved in these proceedings in comparison to that of litigation contributes to the accessibility of the CCMA, this is further highlighted by the continuous increase in the case referrals annually. This positively contributes to the CCMA's effectiveness. The research findings of this dissertation indicates that non-compliance with court orders ultimately undermine the effectiveness and efficiency of the CCMA. Furthermore, the elucidations of this research indicate a need for an accurate representation of the user experience and satisfaction in the form of quantitative data such as sample questionnaires, to ensure that the quality of dispute resolution is preserved. This potential

quantitative data will provide the CCMA with the opportunity to evaluate its performance and assist the CCMA in providing effective dispute resolution.

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An evaluation of the CCMA with the aim of enhancement and improvement

Chapter 1: Introduction

This dissertation aims to provide a nuanced analysis of the CCMA's performance and identify areas for improvement. There is a need for the CCMA's annual performance plan to appropriately reflect the experiences of its users, and settlement rates must be computed without taking into account cases that were "withdrawn or" resolved between the parties, hence the withdrawal aspect needs to be explained because not all withdrawals presupposes settlement.[1] This research also intends to encourage commissioners to adopt a wellness-focused mindset in order to continuously deliver high-quality dispute resolution services. The findings support the CCMA's ongoing growth and reinforcement in its capacity to advance social justice and settle labour disputes in South Africa.[2] Finally, through enhancing the CCMA's role in settling disputes and advancing social justice, which aims to support continuing initiatives to establish a fair and just society in South Africa.

1. Background

In South Africa, conflict resolution procedures have a rich historical and cultural background that can be traced to traditional African dispute resolution procedures.[3] Rather than just punishing wrongdoers, these procedures emphasised the significance of restoring peace and upholding connections between parties.[4] Colonialism disrupted the traditional form of alternative dispute resolution that relied on "consensual outcomes".[5] Instead, it introduced a Western preference for adjudicative dispute resolution, which emphasised legal processes and decisions rather than reaching a mutually acceptable agreement.[6] This approach contributed to the racial and social inequalities that

[1] P Benjamin 'Conciliation, Arbitration and Enforcement: The CCMA's achievements and challenges' (2009) 30 *Industrial Law Journal* 34.
[2] TG Tiemeni & A Blackett 'Regulatory innovation in the governance of decent work for domestic workers in South Africa: Access to justice and the commission on conciliation, mediation and arbitration' (2018) 34(2) *International Journal of Comparative Labour Law and Industrial Relations* 31.
[3] DP Rantsane 'The origin of arbitration law in South Africa.' (2020) 23(1) *Potchefstroom Electronic Law Journal* 3.
[4] Rantsane (n 3 above) 3.
[5] Rantsane (n 3 above) 4.
[6] Rantsane (n 3 above) 4.

characterized South African society during apartheid.[7] After apartheid ended in 1994, South Africa adopted a new constitution that contains provisions for the creation of organisations offering alternative dispute resolution processes.[8]

Under South Africa's colonial and apartheid legal system, labour practices were overseen by the Labour Relations Act 28 of 1956,[9] that was largely rendered obsolete by the country's new constitutional democracy.[10] The objectives of the new and present Labour Relations Act 66 of 1995 (hereinafter 'LRA') are to promote social fairness, "labour peace, and" workplace democracy.[11] The LRA achieves these objectives "by giving effect to the" Constitution of the Republic of South Africa's (hereinafter 'The Constitution') fundamental rights and South Africa's obligations as an International Labour Organization (hereinafter 'ILO') South Africa re-joined the ILO in 1994 and is a member state,[12] all of which contributed to the new constitutional era.[13] As a result, the 1956 LRA became unworkable in the new South African context, which emphasized the importance of protecting workers' rights and ensuring fair labour practices.[14] The background of this study is rooted in the history of South Africa's labour relations and access to justice. Until apartheid ended in 1994, racial and economic inequality characterized South African labour relations, with historically marginalized employees experiencing systemic discrimination and having limited access to justice.[15] As a result of its previous experiences, South Africa emphasizes access to justice in order to advance social justice, equality, and human rights.[16] The Constitution recognises access to justice as a fundamental right as seen in section 34 of the Constitution which guarantees the right of access to courts and tribunals for the resolution of disputes and provides that these proceedings must be fair, equitable,

[7] DD Woodrooffe 'When Visions of the Rainbow Nation Are Not Enough: Effect of Post-Apartheid Higher Education Reform on Social Cohesion in South Africa' (2011) 86(2) *Peabody Journal of Education* 171.
[8] H Klug 'Accountability and the Role of independent Constitutional Institutions in South Africa's Post-Apartheid Constitutions' (2015) 60 *New York Law School Review* 173.
[9] N Botha & C Mischke 'A new labour dispensation for South Africa' (1997) 41(1) *Journal of African law* 134.
[10] Botha & Mischke (n 9 above) 135.
[11] Botha & Mischke (n 9 above) 135.
[12] Botha & Mischke (n 9 above) 135.
[13] Botha & Mischke (n 9 above) 135.
[14] Botha & Mischke (n 9 above) 135.
[15] J Seekings & N Nattrass *Class, Race, and Inequality in South Africa* (2008) 30.
[16] E Durojaye *et al* 'Legal Empowerment as a tool for engendering access to justice in South Africa' (2020) 20(4) *International Journal of Discrimination and the Law* 234.

and transparent.[17] In addition to the Constitution, the LRA also plays a key role in ensuring access to justice for workers as observed through its purpose as giving "effect to section 27 of the Constitution",[18] which affords everyone with the right to access to justice.[19]

The establishment of the CCMA in 1995 was a key milestone in promoting access to justice for all workers and employers in South Africa.[20] Section 112 of the LRA provides for the establishment of the Commission for Conciliation, Mediation, and Arbitration (hereinafter 'CCMA'),[21] which is responsible for resolving disputes between employers and employees through conciliation, mediation, and arbitration in terms of section 115(1)(a) of the LRA.[22] One of the primary objectives of the LRA is the promotion of effective dispute resolution and the CCMA was seen to be a pillar of this dispute resolution dispensation.[23] The Constitution and the creation of the CCMA under the LRA play a crucial role in safeguarding workers' access to justice and advancing just and equitable labour practices in South Africa.[24] The CCMA's procedures were seen as a way to deal with the effects of apartheid while promoting harmony and social cohesion and improving "poor and disadvantaged" people's access to justice.[25] The characterisation of the Constitution as "social, redistributive, and caring", and its recognition of "multiculturalism and historical" context, underscores its mission to establish a democratic and inclusive society.[26] Furthermore, the incorporation of alternative dispute-resolution mechanisms in labour dispute resolution is seen as a crucial factor in promoting access to justice for all citizens, especially those who had been historically disadvantaged.[27]

[17] The Constitution of the Republic of South Africa, 1996.
[18] Act 66 of 1995.
[19] The Constitution of the Republic of South Africa, 1996.
[20] JK Gathongo & A Van der Walt 'Towards an effective Kenyan Labour Dispute Resolution System: A comparison with the South African Labour Dispute Resolution System' (2018) 39(2) *Obiter* 468.
[21] Act 66 of 1995.
[22] Act 66 of 1995.
[23] H Bendeman 'An analysis of the Problems of the Labour Dispute Resolution System in South Africa' (2006) 6(1) *African journal on conflict resolution* 82.
[24] Tiemeni & Blackett (n 2 above) 25.
[25] O Animashaun *et al* 'Impact and Issues of Alternative Dispute Resolution in South Africa with Emphasis on Workplace Dispute' (2014) 5(16) *Mediterranean Journal of Social Sciences* 678.
[26] S Scott 'Knowledge production and transmission in a changing society: challenges facing law lecturers in a distance education environment in South Africa' (2006) 20(5) *South African Journal of Higher Education* 731.
[27] S Araujo *et al* 'Comparative Report on Labour conflicts and access to justice: the impact of alternative despite resolution' (2020) 3.

2. Overview of study

The CCMA plays a crucial role in promoting peaceful and constructive industrial relations between employers and employees, thereby contributing to the stability of the labour market.[28] To provide a comprehensive understanding of the CCMA's role in resolving disputes, this dissertation adopts a two-pronged approach. Firstly, it seeks to examine the structure and operations of the CCMA, including its mandate and processes. This will help to contextualize the CCMA's role as a dispute resolution mechanism and identify any challenges that may impact its effectiveness. Secondly, the dissertation aims to explore the CCMA's contribution to enhancing access to justice in the workplace and assess the effectiveness of its dispute resolution mechanisms. By taking this approach, a thorough and nuanced analysis of the CCMA's role in promoting peaceful and constructive labour relations in South Africa.

To comprehensively evaluate the role of the CCMA in resolving disputes as prescribed by the LRA, it is imperative to have a grasp of the framework for resolving disputes as set out by the LRA and understand the reason for the establishment of the CCMA. The establishment of the CCMA as a "primary dispute resolution mechanism under the LRA"[29] illustrates the pivotal role of the organisation. The LRA aimed to create a framework for resolving labour disputes through procedures such as conciliation and arbitration.[30] This led to the establishment of an independent statutory body, the CCMA, which possesses legal personality and jurisdiction throughout all nine provinces of South Africa.[31] The primary objective of the LRA, as outlined in Section 1, is to facilitate the efficient resolution of labour disputes.[32] It is worth noting that Section 3 of the LRA specifies that the Act must be interpreted in accordance with its primary objectives.[33] As a result, the CCMA's

[28] GM Ferreira 'State involvement in the conduct of and conditions pertaining to the labour relationship' (2012) 20(2) *Administratio Publica* 140.
[29] BOK Kwakwala 'A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration (CCMA)' Master of Commerce, University of Stellenbosch, 2010 14.
[30] M Rapatsa 'The Commission for Conciliation, Mediation and Arbitration (CCMA) and Alternative Dispute Resolution (ADR) in labour relations in South Africa: an appraisal of efficacy and challenges' (2018) 8 *Juridical Tribune* 204.
[31] BOK Kwakwala 'A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration (CCMA)' Master of Commerce, University of Stellenbosch, 2010 14.
[32] Act 66 of 1995.
[33] Act 66 of 1995.

creation was critical to providing independent and accredited dispute resolution services.[34] Furthermore, since the CCMA is established under the LRA, it only exercises "functions and powers conferred by the LRA."[35] This research draws attention to the primary functions of the CCMA in respect of resolving disputes by conciliation and arbitration, as stated in section 115(1) of the LRA.[36]

After establishing and examining the fundamental purpose of the CCMA, this dissertation subsequently evaluates the structure and functioning of the CCMA. The dissertation utilises the LRA to depict the organizational structure of the CCMA, which is outlined in Section 116 of the Act.[37] According to this section, the CCMA is overseen by a governing body comprising "a chairperson and nine other members nominated by" the National Economic Development and Labour Council (hereinafter 'NEDLAC').[38] The governing body's primary responsibility is to appoint as many commissioners as deemed necessary to carry out the duties of commissioners under the LRA or any other relevant law as determined in section 117 of the LRA.[39]

Along with the Constitution, the LRA serves a crucial role in guaranteeing workers' access to justice.[40] This is evident in the LRA's aim to give effect to section 27 of the Constitution, which grants every individual the right of access to justice.[41] The CCMA's role in promoting access to justice is critical, and its efforts towards reducing poverty, inequality, and unemployment are equally important.[42] Specifically, this research will analyse the CCMA's performance indicators related to cases referred to them during the 2020/21 and 2021/22 financial years, using the performance indicators, planned targets, and actual achievements outlined in the annual performance reports of the CCMA.[43] By doing so,

[34] H Bhorat 'Understanding the Efficiency and Effectiveness of the Dispute Resolution System in South Africa: An Analysis of CCMA Data' (2009) *Development Policy Research Unit DPRU Working Paper* 09/137 5.
[35] Act 66 of 1995.
[36] M Machete 'Legal Analysis of the Effectiveness of Arbitration Process in Unfair Dismissal Dispute: South African Perspective' Master of Laws, University of Limpopo, 2022 16.
[37] Act 66 of 1995.
[38] Rapatsa (n 30 above) 206.
[39] Act 66 of 1995.
[40] H Cheadle 'Regulated Flexibility: Revisiting the LRA and the BCEA' (2006) 27 *Industrial Law Journal* 672.
[41] The Constitution of the Republic of South Africa, 1996.
[42] 'Annual Reports' https://www.ccma.org.za/categories/annual-reports/ (accessed 03 April 2023).
[43] 'Annual Reports' https://www.ccma.org.za/categories/annual-reports/ (accessed 03 April 2023).

the research identifies any deviations from the planned targets and actual achievements. The research assesses the proportion of conciliation cases that are heard within 30 days of referral and the proportion of arbitration rulings that are submitted to parties within 14 days of the conclusion of the arbitration process.[44] The research evaluates the CCMA's role in advancing employment and decreasing poverty, inequality, and unemployment by investigating the CCMA's estimation of the number of individuals potentially facing retrenchment and the number of jobs that were preserved during the two financial years.[45] The dissertation provides insights into the CCMA's impact on the labour market and its efforts towards promoting access to justice for all parties involved in labour disputes.

This dissertation seeks to evaluate the CCMA's capability in resolving disputes effectively. The evaluation will be based on how well the CCMA accomplishes its objectives and accomplishes its mandate while offering the relevant parties efficient dispute resolution services**.** The effectiveness of the CCMA can be gauged by factors such as its success rate in resolving disputes,[46] the satisfaction levels reported by the parties,[47] its capacity to resolve disputes in a timely manner,[48] and the degree of adherence to the CCMA's decisions.[49] Using this data provided in the annual performance report of the two financial years, which would contribute to this dissertation in illustrating the effectiveness of the CCMA in resolving disputes. The intention of the research is to examine the settlement rate's inclusion of cases that are "withdrawn or" resolved between the parties.[50] This research suggests that the CCMA includes a description of the procedure utilised to determine the settlement rate in their annual performance plan because this reflects an inaccurate measurement of the CCMA's performance.

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[44] 'Annual Reports' https://www.ccma.org.za/categories/annual-reports/ (accessed 03 April 2023).
[45] 'Annual Reports' https://www.ccma.org.za/categories/annual-reports/ (accessed 03 April 2023).
[46] Ury *et al* 'Three approaches to resolving disputes: interests, rights and power' (1988) *New York, Ny: Jossey-Bass* in BOK Kwakwala 'A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration (CCMA)' Master of Commerce, University of Stellenbosch, 2010 42.
[47] BOK Kwakwala 'A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration (CCMA)' Master of Commerce, University of Stellenbosch, 2010 48.
[48] Ury *et al* 'Three approaches to resolving disputes: interests, rights and power' (1988) *New York, Ny: Jossey-Bass* in BOK Kwakwala 'A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration (CCMA)' Master of Commerce, University of Stellenbosch, 2010 42.
[49] BOK Kwakwala 'A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration (CCMA)' Master of Commerce, University of Stellenbosch, 2010 102.
[50] Benjamin (n 1 above) 34.

The CCMA considers variables such as number of resolved cases against number of case referrals in terms of conciliation and arbitration, adherence to arbitration rulings, and the quantity of jobs saved as indicators of consumer satisfaction.[51] Evaluating the CCMA's performance using these measures can provide valuable insights into whether the CCMA is effectively embodying its objectives and providing efficient and effective dispute resolution services to employers and employees, as required by the LRA.[52] These measures, such as success rate in resolving disputes, level of satisfaction reported by parties, time to resolution, and compliance with CCMA decisions, provide a comprehensive and multi-faceted assessment of the CCMA's effectiveness.

3. Research Statement

An assessment of the CCMA as a body and structure to resolve labour disputes competently through cases, reports, literature and empirical statistics published by the CCMA.

4. Research Questions

4.1 How do the annual reports address the effective operations of the CCMA from case load and successful resolution of disputes?

4.2 What are the strengths, weaknesses and gaps from case studies of matters heard before the CCMA?

4.3 How does the CCMA address access to justice in relation to procedural and restorative justice measures?

5. Research Objectives

5.1 The first objective of this dissertation is to assess the CCMA's role in resolving disputes in the South African workplace. This evaluation will entail a comprehensive analysis of the CCMA's structure and operations, as stipulated in the Labour Relations Act, and how these aspects may impact the CCMA's effectiveness in achieving its objectives. To achieve this objective, the dissertation

[51] 'Annual Reports' https://www.ccma.org.za/categories/annual-reports/ (accessed 03 April 2023).
[52] Act 66 of 1995.

intends to assess the CCMA's role in resolving labour disputes, as well as how its operations and structure affect the efficiency of dispute resolution in order to accomplish the objectives stipulated in the LRA.

5.2 The objective of the research is to thoroughly evaluate the efficiency of the CCMA in resolving disputes**.** This evaluation will specifically focus on the CCMA's performance for the 2020/21 and 2021/22 financial years.[53] This assessment takes into account several elements using a multi-pronged method. This research offers a thorough and comprehensive evaluation of the CCMA's performance in achieving its objectives and successfully serving employers and employees in need of labour dispute resolution services, taking into account these factors, the success rate of resolution, the parties' claimed satisfaction, and the timelines of the procedures.[54] This research will direct future development and improvement of CCMA's efficacy by identifying areas where CCMA excels and those that require improvement to continue promoting social justice and economic development in South Africa.

6. Research methodology and approach

This dissertation evaluates and assesses the structure and functioning of the CCMA through the interpretation of relevant legislation such as the BCEA, LRA, and the Constitution. In addition to this, the research involves examining statistical data provided by reports, and analysing and critiquing it to gain insights into the role of the CCMA in enhancing access to justice and resolving disputes effectively. The statistical data is interpreted through graphs and table figures in reports to provide a comprehensive understanding of the effectiveness of the CCMA.

7. Overview of chapters

Chapter 1: Introduction

This Chapter serves as a brief introduction to the study.

[53] 'Annual Reports' https://www.ccma.org.za/categories/annual-reports/ (accessed 03 April 2023).
[54] 'Annual Reports' https://www.ccma.org.za/categories/annual-reports/ (accessed 03 April 2023).

Chapter 2: Structure and Operations of the CCMA

In this section, a comprehensive analysis of the CCMA is presented, encompassing its organizational framework, the governing authority, the individuals responsible for its functioning, their contribution towards dispute resolution, and their role in establishing the CCMA. It examines the functions of the CCMA in relation to the dispute resolution mechanisms it offers, specifically conciliation and arbitration as outlined in the Labour Relations Act. This analysis delves into how each of these mechanisms operates and the processes involved.

Chapter 3: The CCMA in contributing to enhancing access to justice.

This chapter underscores the significance of the CCMA in fulfilling the purpose of the LRA, which is to give effect to Section 27 of the Constitution, granting every individual the right to access justice.[55] It further highlights the crucial role played by the CCMA in promoting access to justice, reducing poverty, inequality, and unemployment.[56] By conducting an evaluation, analysis, critique, and interpretation of the relevant legislation in conjunction with the CCMA's performance indicators related to cases referred to them during the 2020-2021 and 2021-2022 financial years, this chapter aims to provide a comprehensive explanation of the CCMA's role in enhancing access to justice. Based on the statistical data provided in terms of cases referred and the quality of the cases resolved, and parties' satisfaction demonstrates the role that the CCMA plays in enhancing access to justice by delivering great service that can be measured through cases referred and the quality of the cases resolved and parties' satisfaction.[57]

Chapter 4: The effectiveness of the CCMA Dispute Resolution Mechanisms

The importance of effective dispute resolution was emphasised as on of the four primary objectives of the LRA.[58] The analysis aims to determine if the CCMA is fulfilling its

[55] C Bosch 'Can Unauthorized Workers be Regarded as Employees for the Purposes of the Labour Relations Act' (2006) 27(7) *Industrial Law Journal* 1358.
[56] P Benjamin 'Beyond Dispute Resolution: The Evolving Role of the Commission for Conciliation, Mediation & Arbitration' (2014) 35 *Industrial Law Journal* 24.
[57] 'Annual Performance Plans' https://www.ccma.org.za/categories/annual-performance-plans/ (accessed 29 March 2023).
[58] Act 66 of 1995.

mandate as per the objectives set by the LRA by assessing the success rate in resolving disputes, parties' satisfaction levels, and the timeliness of resolutions.[59] During the 2020-2021 and 2021-2022 financial years the case referrals increased from 154 143 to 156 777 and managed to achieve a success rate of 17107/17552 in terms of conciliation within 30 days and 15 938/15949 in terms of arbitration within 14 days.[60] The CCMA also noticed an increase of 39% (24 215 to 33571) of referrals from the NMWA and BCEA.[61] The settlement rate measure used by the CCMA includes cases that are withdrawn, rejected, or settled by the parties themselves.[62] Therefore, it is recommended that the settlement rate be expressed explicitly in the yearly performance plan by the CCMA. This will ensure that the settlement rate accurately reflects the CCMA's performance.

Chapter 5: Conclusion

This research intends to evaluate whether the CCMA is meeting the objectives set out in the LRA. This research acknowledges the need for a truer reflection of the CCMA's success, beyond just the number of cases resolved, and prioritising the experiences of its users. To achieve this, this dissertation suggests delving into the actual experiences of the CCMA's users, not just relying on user satisfaction based on the number of cases resolved but rather including the actual experience of the CCMA users in the annual performance plan beyond just statistics. This chapter proposes exploring ways to measure user satisfaction anonymously or voluntarily to gain a better understanding of their experiences with the CCMA's processes. This chapter concludes the dissertation by highlighting the main objective being the importance of ongoing monitoring, evaluation, and evidence-based strategies in establishing a strong dispute resolution system that protects the rights of workers and employers, encourages positive workplace relationships, and promotes fairness and efficiency in the labour environment in South Africa.

[59] 'Annual Performance Plans' https://www.ccma.org.za/categories/annual-performance-plans/ (accessed 29 March 2023).
[60] 'Annual Reports' https://www.ccma.org.za/categories/annual-reports/ (accessed 01 May 2023).
[61] 'Annual Reports' https://www.ccma.org.za/categories/annual-reports/ (accessed 01 May 2023).
[62] Benjamin (n 56 above) 34.

Chapter 2: Structure and Operations of the CCMA

2.1 Introduction

The creation of the CCMA under the LRA sparked a change in the field of labour dispute resolution. This chapter briefly discusses the changes experienced as a result of the implementation of the LRA. The examination of the CCMA under the Labour Relations Act is necessary because the legislative framework directs the structure and operations of the CCMA. A discussion of conciliation and arbitration is pivotal to create a better understanding of the role that the CCMA plays in settling labour disputes. By first describing and comprehending the structure responsible for the CCMA's operation and then evaluating the CCMA's responsibility and role in resolving disputes through conciliation and or arbitration, to determine whether the CCMA is accomplishing the objectives that led to its creation.

2.2 The CCMA under the LRA

The dispute resolution environment in South Africa experienced significant changes with the implementation of the Labour Relations Act 66 of 1995.[63] Part of the purpose of the LRA is to provide a rapid, simple, and economical method of resolving employment issues in a place of work through conciliation and arbitration.[64] This objective is given effect to through the establishment of the CCMA as an "independent dispute resolution" body which was founded in 1995 under Section 112 of the LRA.[65] The creation of the CCMA intended for disputes to be resolved by means of "communication and agreement reaching", opposite to formal court proceedings.[66] The LRA further aims to ensure effective dispute resolution when carrying out these procedures.[67] The CCMA is able to pursue effective dispute resolution through arbitration and conciliation by virtue of the

[63] E Webster 'The promise and the possibility: South Africa's contested industrial relations path' (2013) 81(82) *Transformation* 209.
[64] E Taylor 'The History of Foreign Investment and Labor Law in South Africa and the Impact on Investment of the Labour Relations Act 66 of 1995' (1996) 9 *The Transnational Lawyer* 629.
[65] Taylor (n 64 above) 644.
[66] Rapatsa (n 30 above) 206.
[67] Bendeman (n 23 above) 82.

commissioners' duties and powers obtained by the LRA.[68] In the matter of *CUSA v Tao Ying Metal Industries*, the court held that in order to prevent egregious irregularity "commissioners are required to deal with the substantial merits of the dispute with the minimum of legal formalities by ensuring that they resolve real dispute between the parties, they must do so expeditiously and act fairly to all the parties as the LRA orders them to do".[69]

The LRA confers duties and powers on the CCMA and guides its operations.[70] The Governing Body oversees and directs the CCMA's operations.[71] Section 116 of the LRA describes the 'governing body' as a team consisting of one chairperson and an additional nine members.[72] NEDLAC nominates each of these members and the Minister appoints these members to serve a term for a duration "of three years".[73] Moreover, the 'Director of the Commission', who is regarded as a member of the governing body by being appointed as the director; and is not permitted to vote at governing body meetings.[74] The governing body is also responsible for the appointment of Commissioners.[75] In terms of section 117 of the LRA, the governing body as Commissioners shall appoint a number of adequately qualified persons to undertake the duties of the Commissioners under or pursuant to the Labour Relations Act "or any other law."[76]

The CCMA plays a significant role in resolving labour disputes through the simple and "statutory procedures" it offers.[77] These labour disputes range from disagreements about severance pay and mutual interest to those involving unjust dismissal and unfair

[68] M Machete 'Legal Analysis of the Effectiveness of Arbitration Process in Unfair Dismissal Dispute: South African Perspective' Master of Laws, University of Limpopo, 2022 1.
[69] *CUSA v Tao Ying Metals Industries* 2008 (29) ILJ 2451 (CC) para 65 in M Machete 'Legal Analysis of the Effectiveness of Arbitration Process in Unfair Dismissal Dispute: South African Perspective', Master of Laws, University of Limpopo Page 7.
[70] Act 66 of 1995.
[71] C Nupan 'Mediation and conflict resolution in South and Southern Africa: A personal account of the past 30 years' (2013) 13(3) *African Journal on Conflict Resolution* 95.
[72] Act 66 of 1995.
[73] Act 66 of 1995.
[74] Act 66 of 1995.
[75] 'Commissioners at the CCMA, their conduct and powers' 13 January 2021 https://ceosa.org.za/commissioners-at-the-ccma-their-conduct-and-powers/ (accessed 06 May 2023).
[76] Act 66 of 1995.
[77] Act 66 of 1995.

employment practices.[78] It is the CCMA's duty to resolve these labour disputes by providing mechanisms including conciliation and arbitration.[79] These processes afford parties an opportunity to settle their problems amicably and "find agreement on the solution for" the parties to the conflicts through conciliation,[80] or alternatively by reaching an understanding or receiving binding decisions in terms of arbitration.[81]

2.2.1 The process of conciliation under the CCMA

The CCMA's conciliation procedure in South Africa is essential for resolving employment disputes as well as for fostering chances for more peaceful and positive labour relations by highlighting the importance of consensus-seeking procedures like conciliation and forums for worker engagement.[82] Conciliation is described as a non-binding, informal process where an objective third party supports the disputing parties in reaching a resolution that is agreeable to both parties.[83] It is crucial to keep in mind that in South Africa, conciliation is a required initial stage of labour dispute resolution.[84] If the conciliation process fails to produce a settlement, the dispute may be sent to arbitration,[85] where a commissioner may issue an award that is binding.[86]

Any dispute between an employee and an employer which involves an alleged unfair dismissal or unfair labour practice is first subjected to a process of conciliation.[87] When handling these types of disputes in procedure for conciliation in section 135 of the LRA

[78] Act 66 of 1995.
[79] P Benjamin 'Friend or Foe? The Impact of Judicial Decisions on the Operation of the CCMA' (2007) 28 *Industrial Law Journal* 3.
[80] ME Shneider 'Combining Arbitration with Conciliation' in *International dispute resolution: towards an international arbitration culture (ICCA Congress Series No. 8)* (1998) 57 *Kluwer Law International* 57.
[81] Shneider (n 80 above) 57.
[82] P Benjamin 'Assessing South Africa's Commission for Conciliation, Mediation and Arbitration (CCMA)' 2013 (No. 994802973402676) *International Labour Organization* 1 (accessible via: https://www.ilo.org/public/libdoc/ilo/2013/113B09_102_engl.pdf).
[83] C Blignaut 'The Effectiveness of Conciliation as an Alternative Dispute Resolution Process in Unfair Dismissal Disputes' Master of Law, University of Pretoria, 2018 13.
[84] C Blignaut 'The Effectiveness of Conciliation as an Alternative Dispute Resolution Process in Unfair Dismissal Disputes' Master of Law, University of Pretoria, 2018 12.
[85] G Ferreira 'The Commission for Conciliation, Mediation and Arbitration: its effectiveness in dispute resolution in labour relations' (2004) 23(2) *Politeia* 78.
[86] Ferreira (n 85 above) 81.
[87] P Benjamin *et al* 'An Analysis of Commission for Conciliation Mediation and Arbitration Awards' (2008) *Development Policy Research Unit DPRU Working Paper* 08/134 1.

needs to be followed.[88] According to this section within 30 days of receipt of a referral, the commissioner appointed is required to make a good faith effort to resolve the matter, however, the 30-day period may be extended by agreement of the parties.[89] The commissioner must decide on a procedure to use in an effort to settle the disagreement.[90] During the conciliation process legal representation is not allowed.[91] At the end of the conciliation proceedings the Commissioner is expected to issue a certificate stating whether the matter has not been resolved or not.[92]

The commissioner serves as a neutral facilitator,[93] assisting the parties in identify points of agreement and settling their disputes.[94] In *Kasipersad v CCMA* it was determined that conciliators ought to be extremely cautious while "giving counsel" to the parties as it could potentially "affect the parties", and to avoid creating an impression that "the conciliator is not neutral".[95] The CCMA commissioners are expected to support initiatives that seek consensus as well as foster positive and "harmonious labour relations."[96] Their role is to foster communication, facilitate comprehension, and foster an atmosphere that will help the conflict be resolved by assisting the parties in comprehending one another's point of view.[97]

[88] Act 66 of 1995.
[89] Act 66 of 1995.
[90] Act 66 of 1995.
[91] H Bhorat *et al* Understanding the efficiency and effectiveness of the dispute resolution system in South Africa: An analysis of CCMA Data (2009) *Development Policy Research Unit DPRU Working Paper,* (09/137) 6.
[92] Rapatsa (n 30 above) 207.
[93] A Ige-Olaobaju 'Understanding the Nature and Process of Alternative Dispute Resolution and Collective Conciliation: Lessons from United Kingdom, Canada, South Africa and Japan' (2017) 10(11) *International Business Research* 103.
[94] Ferreira (n 85 above) 80.
[95] M Machete 'Legal Analysis of the Effectiveness of Arbitration Process in Unfair Dismissal Dispute: South African Perspective', Master of Laws, University of Limpopo, 2022 23.
[96] R Venter *et al Labour Relations in South Africa* (2003) 423 in FZ Musukubili 'Towards an efficient Namibian labour dispute resolution system: compliance with international labour standards and a comparison with the South African Sytem' PhD thesis, University of Nelson Mandela Metropolitan University, 2013 187.
[97] R Venter *et al Labour Relations in South Africa* (2003) 245 in FZ Musukubili 'Towards an efficient Namibian labour dispute resolution system: compliance with international labour standards and a comparison with the South African Sytem' PhD thesis, University of Nelson Mandela Metropolitan University, 2013 187.

2.2.2 The process of arbitration under the CCMA

Any party may ask the CCMA to settle a disagreement through arbitration if it cannot be settled through conciliation, provided that the matter qualifies for arbitration.[98] Arbitration is a process where a CCMA Commissioner hears testimony as an impartial and objective party whom renders an agreement that is considered "mutually acceptable" and is legally binding on the dispute.[99] According to section 136 of the LRA, if arbitration is required in terms of the LRA, then the Commission is responsible for the appointment of a commissioner who can arbitrate the matter.[100]

The LRA requires arbitrators to issue an arbitration award within the standard timeframe of 14 days after the conclusion of the arbitration.[101] These awards cannot be appealed but can be reviewed by the Labour Court in terms of section 145 of the LRA.[102] In *Sidumo & Another v Rustenburg Platinum Mines*, a test for review was formulated, the Court put forth the question whether the decision made was "reached by the commissioner", and whether that decision is one that a "reasonable decision maker" would not be able to reach on "all the material available" to the commissioner.[103] This test for review was confirmed in *Herholdt v Nedbank*, where the Court held that this test does not infer a further "lenient standard of review".[104] Furthermore, in respect of enforcement or implementation of arbitration awards, section 158(1)(c) of the LRA allows for an employee to apply to the Labour Court and have an arbitration award be made into an order, as confirmed in *SA Transport & Allied Workers Union on behalf of Phakathi v Ghekko Services SA (Pty) Ltd and Others*.[105] Although arbitration is more formal than conciliation,

[98] H Bhorat *et al* Understanding the efficiency and effectiveness of the dispute resolution system in South Africa: An analysis of CCMA Data (2009) *Development Policy Research Unit DPRU Working Paper,* (09/137) 6.
[99] H Bhorat *et al* Understanding the efficiency and effectiveness of the dispute resolution system in South Africa: An analysis of CCMA Data (2009) *Development Policy Research Unit DPRU Working Paper*, (09/137) 4.
[100] H Bhorat *et al* Understanding the efficiency and effectiveness of the dispute resolution system in South Africa: An analysis of CCMA Data (2009) *Development Policy Research Unit DPRU Working Paper*, (09/137) 41.
[101] Benjamin (n 1 above) 33.
[102] Act 66 of 1995.
[103] *Sidumo v Rustenburg Platinum Mines Ltd* ((2007) 28 ILJ 2405 (CC) in A Van der Walt 'Sidumo revisited-an article on the development of the review test in South Africa' (2015) 36(3) *Obiter* 643.
[104] *Herholdt v Nedbank Ltd* (2013) 34 ILJ 2795 (SCA) in A Van der Walt 'Sidumo revisited-an article on the development of the review test in South Africa' (2015) 36(3) *Obiter* 643.
[105] *SA Transport & Allied Workers Union on behalf of Phakathi v Ghekko Services SA (Pty) Ltd and Others* in S Vettori 'Enforcement of Labour Arbitration Awards in South Africa (2013) 25(2) *Mercantile Law Journal* 248.

the arbitration process was envisioned to be “cheap, accessible, quick and informal”, and the fact that arbitration awards cannot be appealed helps the CCMA in ensuring that these dispute resolution processes remain “non-technical and non-legalistic” in nature.[106]

2.2.3) The role of the CCMA in the labour market

The CCMA has established a platform for employees to discuss their complaints with their superiors on an equal footing.[107] The success of the LRA is to a certain extent largely dependent on the performance of the CCMA in labour dispute resolution.[108] The lack of formal requirements and challenging referral processes is part of the reason the CCMA is as accessible as it is.[109] The simplicity of these procedures is frequently credited with helping many workers access the CCMA.[110] Bhorat points out how the costs involved in conciliation stands at zero and that these “zero entry costs” could be the reason for the high referrals before the CCMA.[111] In addition to the CCMA being easily accessible, other factors that influence the high referral rate is the applicants high expectations that they will receive compensation irrespective of the case’s merits and the employer’s contempt for substantive and procedural criteria for fairness as well as their ignorance of labour laws.[112] The pressure of the high referral rate can cause the commissioners to resolve the disputes quickly without having addressed the root causes of the dispute or catering to the true needs of the disputants.[113] Facilitating a swift conclusion may only be to complete the case and not really to guarantee quality service, which may compromise the

[106] P Benjamin ‘Assessing South Africa's Commission for Conciliation, Mediation and Arbitration (CCMA)’ 2013 (No. 994802973402676) *International Labour Organization* 6 (accessible via: https://www.ilo.org/public/libdoc/ilo/2013/113B09_102_engl.pdf).
[107] M Machete ‘Legal Analysis of the Effectiveness of Arbitration Process in Unfair Dismissal Dispute: South African Perspective’, Master of Laws, University of Limpopo, 2022 29.
[108] Rapatsa (n 30 above) 207.
[109] H Bhorat *et al* Understanding the efficiency and effectiveness of the dispute resolution system in South Africa: An analysis of CCMA Data (2009) *Development Policy Research Unit DPRU Working Paper,* (09/137) 7.
[110] H Bhorat *et al* Understanding the efficiency and effectiveness of the dispute resolution system in South Africa: An analysis of CCMA Data (2009) *Development Policy Research Unit DPRU Working Paper,* (09/137) 7.
[111] H Bhorat *et al* Understanding the efficiency and effectiveness of the dispute resolution system in South Africa: An analysis of CCMA Data (2009) *Development Policy Research Unit DPRU Working Paper,* (09/137) 7.
[112] M Machete ‘Legal Analysis of the Effectiveness of Arbitration Process in Unfair Dismissal Dispute: South African Perspective’, Master of Laws, University of Limpopo, 2022 8.
[113] H Bhorat *et al* Understanding the efficiency and effectiveness of the dispute resolution system in South Africa: An analysis of CCMA Data (2009) *Development Policy Research Unit DPRU Working Paper,* (09/137) 7.

institution's rationale.[114] The CCMA commissioners continuously work under pressure while dealing with a heavy case load and the requirement to achieve case efficiency standards.[115]

When the CCMA was founded, it was anticipated that it would manage a national average of 30 000 referrals annually.[116] However, the number of instances referred exceeded the average number of referrals anticipated.[117] During the 1997/98 financial year the CCMA received 67 319 case referrals, amounting to double the amount the CCMA anticipated.[118] The referrals continue to increase each year with 154 279 referrals received at the end of the 2010/11 financial year and 171 854 in the 2014/15 financial year.[119] This continued increasing with 193 732 referrals received at the end of 2018/19 and 221 547 referrals received in 2021/22.[120] The high referral rate highlights the crucial role the CCMA plays in the dispute resolution process as well as the forces threatening the labour market in general and employees in particular.[121]

To deal with its heavy caseload, the CCMA created procedures to identify incidents that could significantly affect the labour market.[122] As a result, there are protocols in place for enrolling instances involving significant layoffs, regardless of whether the disagreement is referred to as an unjust dismissal case, a Section 189A facilitation, or a dispute over

[114] Rapatsa (n 30 above) 207.
[115] H Bhorat *et al* Understanding the efficiency and effectiveness of the dispute resolution system in South Africa: An analysis of CCMA Data (2009) *Development Policy Research Unit DPRU Working Paper,* (09/137) 7.
[116] H Bhorat & K Pauw 'Understanding the efficiency and Effectiveness of the Dispute Resolution System in South Arica: An analysis of the CCMA Data' (2009) *Working paper 09/137 DPRU* in M Machete 'Legal Analysis of the Effectiveness of Arbitration Process in Unfair Dismissal Dispute: South African Perspective', Master of Laws, University of Limpopo, 2022 4.
[117] H Bhorat & K Pauw 'Understanding the efficiency and Effectiveness of the Dispute Resolution System in South Arica: An analysis of the CCMA Data' (2009) *Working paper 09/137 DPRU* in M Machete 'Legal Analysis of the Effectiveness of Arbitration Process in Unfair Dismissal Dispute: South African Perspective', Master of Laws, University of Limpopo, 2022 4.
[118] 'CCMA Annual Reports' 1997/8 available via https://www.ccma.org.za/categories/annual-reports/ (accessed 31 May).
[119] 'CCMA Annual Reports' available via https://www.ccma.org.za/categories/annual-reports/ (accessed 31 May 2023).
[120] 'Annual Report' 2019/2020 file:///C:/Users/willi/Downloads/CCMA%2020192020%20Annual%20Report%20(3).pdf (accessed 16 June 2023).
[121] Rapatsa (n 30 above) 209.
[122] P Benjamin 'Assessing South Africa's Commission for Conciliation, Mediation and Arbitration (CCMA)' 2013 (No. 994802973402676) *International Labour Organization* 15 (accessible via: https://www.ilo.org/public/libdoc/ilo/2013/113B09_102_engl.pdf).

severance compensation.[123] Priority is also given to collective bargaining conflicts involving significant employers or those that may affect many provinces.[124] These types of cases are assigned to Commissioners with the relevant training and experience, and their progress is continuously monitored to allow interventions to avoid intensifying a dispute.[125] In recognition of coping with the pressures that comes with the heavy caseload, the LRA provides for the establishment of "bargaining and statutory councils, private agencies and workplace forums" to aid in the prevention and resolution of labour disputes.[126] The CCMA accredits these bodies to ease the pressure on itself in respect of the "high referrals and the backlog of cases".[127] Having these organisations allows workers in less organized sectors to be represented and helps the CCMA deal with the backlog of cases.[128] This guarantees that the CCMA meets its fundamental objectives and maintains its efficiency.[129]

2.3 Conclusion

The CCMA has played a major role in changing South Africa's labour relations landscape, particularly in the area of labour dispute settlement by providing mechanisms like arbitration and conciliation that are carried out in line with the functions and duties in respect of the LRA and further advancing the objectives of the LRA through these mechanisms.[130] The CCMA serves the important purpose of enhancing mechanisms of dispute settlement outside of litigation with one of its main objectives being to promote the quick, inexpensive, and expedient resolution of labour disputes.[131]

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[123] P Benjamin 'Assessing South Africa's Commission for Conciliation, Mediation and Arbitration (CCMA)' 2013 (No. 994802973402676) *International Labour Organization* 15 (accessible via: https://www.ilo.org/public/libdoc/ilo/2013/113B09_102_engl.pdf).
[124] P Benjamin 'Assessing South Africa's Commission for Conciliation, Mediation and Arbitration (CCMA)' 2013 (No. 994802973402676) *International Labour Organization* 15 (accessible via: https://www.ilo.org/public/libdoc/ilo/2013/113B09_102_engl.pdf).
[125] P Benjamin 'Assessing South Africa's Commission for Conciliation, Mediation and Arbitration (CCMA)' 2013 (No. 994802973402676) *International Labour Organization* 16 (accessible via: https://www.ilo.org/public/libdoc/ilo/2013/113B09_102_engl.pdf).
[126] Rapatsa (n 30 above) 209.
[127] Rapatsa (n 30 above) 209.
[128] Rapatsa (n 30 above) 209.
[129] Rapatsa (n 30 above) 209.
[130] Rapatsa (n 30 above) 203.
[131] Rapatsa (n 30 above) 203.

The high referral rate is an indication of the reliance on the CCMA by employees and employers.[132] The CCMA's accreditation of other organizational bodies in terms of section 127 of the LRA, allows the CCMA to advance the resolution of disputes in a timely manner while maintaining efficiency which is in alignment with the objectives of the LRA.[133] The referral rate will continue to increase because of the lack of formal requirements and the simplicity of the processes offered by the CCMA.[134] Blignaut draws on the idea that accessibility could lead to "abuse of the system",[135] however, this does not necessarily mean that accessibility to the CCMA should be viewed in a negative light but rather be appreciated as the intention behind the creation of the CCMA was to provide procedures that could resolve disputes labour disputes in an uncomplicated and inexpensive way.[136] The opposition of the CCMA to litigation as a result of the lack of statutory requirements and challenging referral procedures forms part of the reason for the CCMA's accessibility and aids the CCMA in aligning itself with the purpose for its creation.[137]

[132] Rapatsa (n 30 above) 207.
[133] E Fergus 'From Sidumo to Dunsmuir: The Test for Review of CCMA Arbitration Awards', PhD Thesis, University of Cape Town, 2013 26.
[134] J Brand 'CCMA: Achievements and Challenges- Lessons from the First Three Years' (2000) 21(1) *Industrial Law Journal* 79.
[135] C Blignaut 'The Effectiveness of Conciliation as an Alternative Dispute Resolution Process in Unfair Dismissal Disputes' Master of Law, University of Pretoria, 2018 18.
[136] S Gounden 'An Analysis of the Presentation and Admissibility of Evidence at CCMA Arbitrations', Master of Laws, University of Kwazulu-Natal, 2013 1.
[137] H Bhorat *et al* Understanding the efficiency and effectiveness of the dispute resolution system in South Africa: An analysis of CCMA Data (2009) *Development Policy Research Unit DPRU Working Paper,* (09/137) 7.

Chapter 3: The CCMA in contributing to enhancing access to justice.

3.1 Introduction

This chapter highlights the importance of the CCMA in fulfilling the purpose of the LRA, which is to give effect to Section 23 of the Constitution, which provides individuals with the right to receive justice.[138] This chapter discusses how the CCMA ensures this right is implemented by offering methods for dispute resolution. This chapter further highlights the role played by the CCMA in reducing poverty, inequality, and unemployment.[139] By conducting an evaluation, analysis, critique, and interpretation of the relevant legislation like the Basic Conditions of Employment Act and the National Minimum Wage Act, in conjunction with the CCMA's performance indicators related to cases referred to them during the 2020-2021 and 2021-2022 financial years.

3.2 The Role of the CCMA in Promoting Access to Justice

Section 23 of the Constitution provides for everyone's right to "fair labour" practice including both the employer and employee.[140] Furthermore, Section 34 of the Constitution provides the way "fair labour practices" can be advanced.[141] The CCMA gives effect to section 34 of the Constitution as it provides for access to justice to be achieved by resolving a labour dispute through conciliation, mediation and arbitration offered by the CCMA.[142]

In conjunction with section 34 of the Constitution, section 1 of the LRA contains the purpose of the Act in terms of giving effect to sections 23 and 34 of the Constitution.[143] Ultimately, the creation and establishment of the CCMA was to give effect to sections 23 and 34 of the Constitution.[144] The establishment of the CCMA under the LRA, as an alternative to the court process is recognized "as having the" capacity to increase the

[138] Bosch (n 55 above) 1358.
[139] P Benjamin (n 56 above) 24.
[140] The Constitution of the Republic of South Africa, 1996.
[141] The Constitution of the Republic of South Africa, 1996.
[142] Tiemeni & Blackett (n 2 above) 6.
[143] Act 66 of 1995.
[144] Act 66 of 1995.

accessibility to justice.[145] The CCMA's ability to provide methods for dispute resolution encourages access to justice as the formation of these methods gives effect to sections 23 and 34 of the Constitution.[146]

As a result of the disparity in terms of the financial power between an employer and employee, it has been highlighted that the hardship of paying "a lawyer" led employees to concede "their rights."[147] Due to the employer's greater financial strength, employers are most likely in a better position to justify their course of action.[148] Hence, the introduction of the CCMA has been tremendously embraced "in South Africa" specifically by vulnerable employees.[149] Impecunious workers approach the CCMA "on a daily basis" to resolve cases involving "unfair labour practice".[150] This highlights the CCMA's role in advancing access to justice through its attempt to afford marginalized communities a foundation to equal access to justice.[151]

3.3 The CCMA's Role in Reducing Poverty, Inequality and Unemployment

3.3.1) Unemployment and the influence of the CCMA

The CCMA's legislative mandate is mainly derived from Section 23 of the Constitution and the purpose of the LRA,[152] which is "to advance economic development, social justice, labour peace, and the democratisation of the workplace".[153] The LRA's is "procedural in nature" and does not directly combat unemployment but it does play a role in matters that influence employment.[154] This is demonstrated by the manner is which the

[145] N Ntuli 'Africa: Alternative Dispute Resolution in a Comparative Perspective.' (2018) 22 *Conflict Studies Quarterly* 50.
[146] Tiemeni & Blackett (n 2 above) 6.
[147] Animashaun et al (n 25 above) 678.
[148] Animashaun *et al* (n 25 above) 678.
[149] Animashaun *et al* (n 25 above) 678.
[150] Animashaun *et al* (n 25 above) 678.
[151] Animashaun *et al* (n 25 above) 679.
[152] 'CCMA Annual Report' 2020/21 file:///C:/Users/willi/Downloads/202021%20CCMA%20Annual%20Report%20FV%20(1).pdf (accessed 03 June 2023).
[153] M van Staden 'Towards a South African understanding of social justice: the International Labour Organisation perspective' (2012) 1 *Journal of South African Law* 91.
[154] V Arora & LA Ricci 'Unemployment and the Labour Market' (2005) *Post-Apartheid South Africa: the first ten years* 27.

LRA caters for workers' "freedom of association",[155] workers' ability to demand improved "working conditions", and the encouragement of Collective Bargaining Councils between employers and employees.[156] The LRA outlines several rights and safeguards for employees, including the freedom "to form and join" unions,[157] the ability to participate in collective bargaining, and protection against unfair labour practices.[158] This is to ensure that workers' rights are protected and to advance better "working conditions" and ensuring fair wages for workers while ensuring a fair and equal relationship between employers and employees.[159]

Furthermore, the LRA contains provisions to resolve labour disputes through statutory dispute mechanism such as conciliation, mediation and arbitration.[160] This framework developed by the LRA is carried out through the CCMA, who aims to align its operations with the intent and objectives of the Act to further foster labour peace and counter unfair labour practices by resolving labour disputes by using the statutory dispute mechanisms provided in the Act.[161] These provisions aid in resolving disputes between employers and employees, potentially lowering the likelihood of "protracted strikes" that could adversely affect employment.[162] The CCMA's further contribution to matters affecting employment in the event of retrenchments resulting in unemployment can be seen in its job-saving strategy and how it ensures that all probable job-saving methods are explored as early as possible.[163]

[155] H Cheadle 'Collective Bargaining and the LRA' (2005) 9(2) *Law, Democracy & Development* 147.
[156] S Vettori 'The regulation of terms and conditions of employment for in the South African Hospitality Industry' (2015) 7.
[157] J Kruger & CI Tshoose 'The Impact of the Labour Relations Act on Minority Trade Unions: A South African Perspective' (2013) 16(4) *PER/PELJ* 286.
[158] Kruger & Tshoose (n 158 above) 285.
[159] Kruger & Tshoose (n 158 above) 296.
[160] Act 66 of 1995.
[161] V Arora & LA Ricci (n 155 above) 27.
[162] M Tenza 'An investigation into the cause of violent strikes in South Africa: Some lessons from foreign law and possible solutions' (2015) 19 *Law, Democracy & Development* 212.
[163] 'CCMA Annual Report' 2020/21 file:///C:/Users/willi/Downloads/202021%20CCMA%20Annual%20Report%20FV%20(1).pdf (accessed 03 June 2023).

In an effort to help parties in looking into measures to minimise or limit retrenchments and decrease the effects thereof,[164] sections 189 and 189A of the LRA enables the CCMA to conciliate and facilitate retrenchment disputes.[165] The 2020/21 Annual Performance Plan indicates that the CCMA aims to continue collaborating with institutions like Industrial Development Corporation (hereinafter 'IDC'), Productivity SA and the TERS implementation through the Employment Security Function.[166] This is to assist in the protection of jobs and to "support businesses" prior to the consideration of business closures and retrenchments.[167] This collaboration aims to provide a platform for businesses who may be facing financial troubles to seek financing from the IDC.[168] This collaboration also aims to start initiatives regarding "business turnaround" through the assistance of Productivity SA in order to avoid closure of businesses that could potentially result in retrenchments.[169]

According to the Annual Performance Plan of the CCMA, the rise in retrenchments is as a result of the negative impacts of the COVID-19 pandemic.[170] The impact of the COVID-19 pandemic resulted in chaos for the world economy and caused a negative impact on the labour market.[171] Especially in South Africa, the COVID-19 outbreak aggravated the pre-existing socio-economic factors like inequality and unemployment, specifically

[164] 'CCMA Annual Report' 2020/21 file:///C:/Users/willi/Downloads/202021%20CCMA%20Annual%20Report%20FV%20(1).pdf (accessed 03 June 2023).
[165] Act 66 of 1995.
[166] 'CCMA Annual Report' 2020/21 file:///C:/Users/willi/Downloads/202021%20CCMA%20Annual%20Report%20FV%20(1).pdf (accessed 03 June 2023).
[167] 'CCMA Annual Report' 2020/21 file:///C:/Users/willi/Downloads/202021%20CCMA%20Annual%20Report%20FV%20(1).pdf (accessed 03 June 2023).
[168] 'CCMA Annual Report' 2020/21 file:///C:/Users/willi/Downloads/202021%20CCMA%20Annual%20Report%20FV%20(1).pdf (accessed 03 June 2023).
[169] 'CCMA Annual Report' 2020/21 file:///C:/Users/willi/Downloads/202021%20CCMA%20Annual%20Report%20FV%20(1).pdf (accessed 03 June 2023).
[170] 'CCMA Annual Report' 2020/21 file:///C:/Users/willi/Downloads/202021%20CCMA%20Annual%20Report%20FV%20(1).pdf (accessed 03 June 2023).
[171] L Bonga-Bonga *et al* 'The Role of Personal Characteristics in Shaping Gender-Biased Job Losses during the COVID-19 Pandemic: The Case of South Africa' (2023) 15(8) *Sustainability* 2.

"among women".[172] During the April 2020 lockdown, women suffered more job losses than men, the female unemployment rate was recorded at 30% and the male unemployment rate was recorded at 20%.[173] During normal periods from 2008 up until 2019, the unemployment rate was higher for women than that of men.[174] In 2008, the female unemployment rate was recorded at 22% and the male unemployment rate was 17%, and in 2019 the male unemployment rate was recorded at 24% and the female unemployment rate was 27%.[175] The COVID-19 pandemic has exacerbated the gap of unemployment between women and men, indicating that women are more susceptible to unemployment in both normal times and during "crisis periods".[176]

Overall, COVID-19 resulted in a rise in unemployment and unfortunately, during the 2020/21 period the CCMA recorded the largest actual number of job losses due to retrenchment than previous years due to the spike in retrenchment matters. Furthermore, in the 2021/22 period, the CCMA managed to save 18 715 of the 46 953 employees likely to be retrenched, ultimately saving 39.86% of jobs against a target of 38%.[177] This resulted in a total retrenchment of 27 003 in comparison to the 74 747 in the 2020/21 financial year.[178] The CCMA maintained its efforts to save jobs by making sure that collaborations with institutions like Productivity SA is sustained.[179] The CCMA's success in protecting jobs can be primarily attributed to the admirable and sincere efforts of the

[172] Bonga-Bonga (n 172 above) 4.
[173] E Komanisi *et al* 'Vulnerability to COVID-19 Impacts in South Africa: Analysis of the Socio-Economic Characteristics' (2022) 9(2) *Africagrowth Agenda* 11.
[174] Bonga-Bonga *et al* (n 172 above) above) 3.
[175] Bonga-Bonga *et al* (n 172 above) 3.
[176] Bonga-Bonga *et al* (n 172 above) 3.
[177] 'CCMA Annual Report' 2020/21 file:///C:/Users/willi/Downloads/202021%20CCMA%20Annual%20Report%20FV%20(1).pdf (accessed 03 June 2023).
[178] 'CCMA Annual Report' 2020/21 file:///C:/Users/willi/Downloads/202021%20CCMA%20Annual%20Report%20FV%20(1).pdf (accessed 03 June 2023).
[179] 'CCMA Annual Report' 2020/21 file:///C:/Users/willi/Downloads/202021%20CCMA%20Annual%20Report%20FV%20(1).pdf (accessed 03 June 2023).

parties involved in the procedures to look into potential solutions to prevent job losses and aid in the revival and longevity of businesses.[180]

3.3.2) The influence of the National Minimum Wage on Inequality and Poverty

The national labour market in South Africa has considerable economic differences, making it one of the most disparate societies in the world.[181] Since 1994, "income inequality" has increased, "household poverty" rates have remained persistently high, and the labour market is dominated by low wages.[182] The National Minimum Wages Act, which was created as a result of years of study and discussion at the NEDLAC, begins by referring to the "huge disparities in income in the national labour market" and the necessity of addressing "poverty and inequality".[183] The National Minimum Wage Act 9 of 2018 (hereinafter 'NMWA') came into force on 1 January 2019.[184] According to Section 2 of this Act, the objectives include the promotion of "collective bargaining"; the protection of employees from unreasonable low pay; the improvement of earnings amongst the "lowest-paid workers"; and the advancement of "economic development and social justice", and supporting policy of economics.[185]

The National Minimum Wage Bill was signed in November 2018, setting the minimum wage at R20 per hour.[186] However, lower rates were established for workers employed in public government programmes at R11 per hour, domestic workers at R15 per hour and farmworkers at R18 per hour.[187] These rates were as a result of previous existing legislation wages in these industries being notably below the R20 per hour rate.[188] Before

[180] 'CCMA Annual Report' 2020/21 file:///C:/Users/willi/Downloads/202021%20CCMA%20Annual%20Report%20FV%20(1).pdf (accessed 03 June 2023).
[181] RS Masango 'Factors that negatively affect the implementation of the national minimum wage in South Africa' (2020) 28(1) *Administratio Publica* 68.
[182] H Bhorat *et al* 'The Impact of the National Minimum Wage in South Africa: Early Quantitative Evidence' (2020) *Development Policy Research Unit (DPRU), University of Cape Town* 2.
[183] Bhorat *et al* (n 193 above) 2.
[184] Masango (n 182 above) 68.
[185] Act 9 of 2018.
[186] K Future 'PERCEPTIONS OF SMALLHOLDER AND COMMERCIAL FARMERS TOWARDS THE 2018 AGRICULTURAL MINIMUM WAGE: A CASE STUDY IN BUSHBUCKRIDGE MUNICIPALITY OF MPUMALANGA PROVINCE' Master of Science, University of Limpopo, 2021 3.
[187] Bhorat *et al* (n 183 above) 5.
[188] Bhorat *et al* (n 183 above) 5.

the introduction of the National Minimum Wage in 2019, approximately 46.6% of wage earners, a total of 5 235 437, earned below the 2019 National Minimum Wage against the 11 225 344 wage earners recorded across the various sectors.[189] In the agriculture sector, out of a total of 861 581 wage earners, 560 180 earned less than the National Minimum Wage, which accounted for 65.02% of the total employees.[190] Similarly, in the construction industry, out of 864 574 wage earners, 459 776 earned less than the National Minimum Wage, totaling at 53.18%.[191] In the wholesale and retail industry, there was a total of 1 718 829 wage earners, of which 878 674 earned below the National Minimum Wage, amounting to 50.93%.[192]

It is essential to note that the National Minimum Wage has changed since it was first introduced in 2018 and implemented in 2019. Since 1st March 2023, the prescribed minimum wage increased to R25,42 per hour from R23,19 per hour in 2022.[193] These revisions reflect the National Minimum Wages Act's requirement that the minimum wage rates be continuously reviewed and adjusted considering variables such as inflation and the cost of living, as well as productivity.[194] And in doing so, it gives effect to the primary objectives of the National Minimum Wage by continuously reviewing and adjusting the minimum wage to continuously better economic advancement and fostering social justice for workers in South Africa.

Non-compliance with the National Minimum Wage would hinder the achievement of the National Minimum Wage objectives. As per Runciman, levels of non-compliance with sectoral minimum wages were at a point consistently high and can reach 50%.[195] For this reason, the institutional frameworks in support of the "minimum wage" are essential.[196]

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[189] Bhorat *et al* (n 183 above) 7.
[190] Bhorat *et al* (n 183 above) 27.
[191] H Bhorat *et al* 'The Impact of the National Minimum Wage in South Africa: Early Quantitative Evidence' (2021) *Development Policy Research Unit (DPRU), University of Cape Town* 7.
[192] Bhorat *et al* (n 192 above) 7.
[193] New earnings threshold and National Minimum Wage https://www.ccma.org.za/labourlaws/new-earnings-threshold-and-national-minimum-wage-effective-1-march-2023/ (accessed 10 June 2023).
[194] NS Mnqayi 'Review of the aggregate and sectoral relationship between wages and inflation in South Africa: 1980 -2019' Master of Commerce, University of South Africa, 2021 13.
[195] D Francis & E Webster 'Poverty and inequality in South Africa: critical reflections' (2019) 36(6) *Development Southern Africa* 798.
[196] Francis & Webster (n 196 above) 798.

The positive wage increase will be muted by high levels of non-compliance. Hence, it is crucial that the new rules be strictly adhered to and that the workers have quick access to legal recourse in the event that an employer does not comply.[197] This highlights the importance of officials tasked "with the responsibility of" warranting that there is compliance with the legislation through enforcement thereof.[198] Ultimately, the inspectors employed by the Department of Employment and Labour, carry the responsibility of ensuring enforcement in terms of "compliance with the National Minimum Wage Act 9 of 2018".[199] In 2019/20 there was an increase in the number of referrals to the CCMA, from 193 732 to 221 547 referrals, a total of 14% increase.[200] This increase is as a result of the CCMA's jurisdiction to cover cases involving conflicts over BCEA rights and the then newly implemented NMWA.[201] This suggests that one of the legislative institutional structures in charge of enforcing adherence to the National Minimum Wage is the CCMA.

According to section 73A of the BCEA, individuals who earn less than the threshold determined by the BCEA may seek the assistance of the CCMA where money is owed as a result of the employer's inability to pay the national minimum wage.[202] The LRA sets out the definition of "an employee", the CCMA is only able to serve individuals who meet the description of the definition of "an employee" in alignment with the LRA.[203] This is however with exceptions for specific cases in relation to the National Minimum Wage Act.[204] Consequently, the CCMA does not attend to all employees, but it is rather determined to cover approximately 72% of workers formally employed.[205] At the end of the 2021/22 financial year, the CCMA recorded a total of 156 777 referrals, this is 2 634 more than the 154 143 referrals received during the 2020/21 financial year.[206] During the

[197] Francis & Webster (n 196 above) 798.
[198] Masango (n 182 above) 74.
[199] Masango (n 182 above) 75.
[200] 'CCMA Annual Report 2020/21' https://static.pmg.org.za/202021_CCMA_Annual_Report_FV.pdf accessed 13 June 2023).
[201] C Runciman 'Worker rights and the neoliberal state under Covid-19' (2021) 37(2) *South African Journal on Human Rights* 265.
[202] Act 75 of 1997.
[203] Act 66 of 1995.
[204] Runciman (n 202 above) 263.
[205] Runciman (n 202 above) 263.
[206] 'CCMA Annual Report 2020/21' https://static.pmg.org.za/202021_CCMA_Annual_Report_FV.pdf (accessed 13 June 2023).

2020/21 financial year, the CCMA received 24 215 NMWA and BCEA referrals (excluding that of severance pay).[207] This figure increased by 9 356 referrals in 2021/22, totaling 33 571 NMWA and BCEA referrals.[208] This increase is as a result of the Covid-19 Pandemic and the restrictions and regulations imposed by government, as well as the office closures of the CCMA during the 2020/21 financial year.[209]

When an employee receives less than the stipulated minimum wage and inspectors are unsuccessful in noticing this, these employees are expected to follow up on the matter by approaching their employer.[210] Should this fail, it is expected of the employee to follow protocol and report this matter to the Labour Centre of to the CCMA.[211] Not addressing the matter could result in the continuation of the employer underpaying their employees.[212] This would hinder the achievement of the objectives of the NMWA and that of the LRA. One could argue that the '*Impimpa*' Hotline could not only be used to strengthen compliance with the national minimum wage but also to avoid victimization against employees who choose to speak up, as it ends up being anonymous.[213] The CCMA is constrained in the assistance it can provide and is instead only able to provide comprehensive assistance once it has been approached by an employee,[214] so this 'Impimpa' Hotline invention by the Department of Employment and Labour could draw the interference of the CCMA once a matter has been reported, allowing the CCMA to contribute to the achievement of the objectives of the NMWA and those of the LRA.

Despite not having a direct mandate to do so, the CCMA does contribute to the reduction of poverty, "unemployment and inequality" by issuing compliance orders, written commitments to comply, and arbitration awards for enforcement.[215] As well as conciliating

[207] 'CCMA Annual Report 2020/21' https://static.pmg.org.za/202021_CCMA_Annual_Report_FV.pdf (accessed 03 June 2023).
[208] 'CCMA Annual Performance Plan' https://www.ccma.org.za/wp-content/uploads/2022/01/CCMA-APP_2021_22.pdf (accessed 03 June 2023).
[209] 'CCMA Annual Performance Plan' https://www.ccma.org.za/wp-content/uploads/2022/01/CCMA-APP_2021_22.pdf (accessed 03 June 2023).
[210] Masango (n 182 above) 79.
[211] Masango (n 182 above) 79.
[212] Masango (n 182 above) 79.
[213] Masango (n 182 above) 72.
[214] Masango (n 182 above) 79.
[215] 'The Select Committee on Trade and Industry, Economic Development, Small Business Development, Tourism, Employment and Labour' https://pmg.org.za/files/220524CCMA.ppt (accessed 30 June 2023).

and arbitrating disputes involving financial obligations owed by an employer to a worker under the terms of the NMWA, the BCEA, and a contract of employment, collective agreement, or a sectoral agreement.[216]

3.4 Conclusion

It is significant to observe how vulnerable employees have enthusiastically embraced the introduction of the CCMA.[217] This is because through the LRA the CCMA has created a platform for vulnerable workers to address matters concerning "unfair labour practice".[218] Through its efforts to provide marginalized populations with a framework for equal access to justice, the CCMA further emphasizes its role in expanding access to justice.[219] Notwithstanding the increase in the case referrals, the CCMA has managed to constantly maintain "a settlement rate" exceeding 70% every year, with the most case referrals (221 547) in the 2019/20 financial year and the least case referrals (62 927) during the first operational period.[220]

Although the CCMA does not have a specific mandate in relation to lessening poverty, reducing unemployment and inequality, the CCMA contributes to the reduction of these socio-economic issues by issuing "compliance orders", written agreements to comply, and arbitration decisions for enforcement.[221] In order to combat unemployment, the CCMA's job-saving strategy makes sure that all prospective job-saving measures are looked at as soon as feasible to prevent as many layoffs as possible.[222] The CCMA was successful in achieving this since it was able to save 58 165 jobs out of the 138 816 workers that were expected to be retrenched in the 2020/21 financial year.[223] The ability

[216] 'The Select Committee on Trade and Industry, Economic Development, Small Business Development, Tourism, Employment and Labour' https://pmg.org.za/files/220524CCMA.ppt (accessed 30 June 2023).
[217] Animashaun *et al* (n 25 above) 678.
[218] Act 66 of 1995.
[219] Animashaun *et al* (n 25 above) 679.
[220] 'CCMA Annual Performance Plan' https://www.ccma.org.za/wp-content/uploads/2022/01/CCMA-APP_2021_22.pdf (accessed 03 June 2023).
[221] 'The Select Committee on Trade and Industry, Economic Development, Small Business Development, Tourism, Employment and Labour' https://pmg.org.za/files/220524CCMA.ppt (accessed 30 June 2023).
[222] 'CCMA Annual Performance Plan' https://www.ccma.org.za/wp-content/uploads/2022/01/CCMA-APP_2021_22.pdf (accessed 03 June 2023).
[223] 'CCMA Annual Performance Plan' https://www.ccma.org.za/wp-content/uploads/2022/01/CCMA-APP_2021_22.pdf (accessed 03 June 2023).

to hear and grant awards for BCEA and NMWA referrals assists the CCMA in combating non-compliance with the national minimum wage, to continue the fight against poverty and inequality.[224] Despite the difficulties presented, the CCMA persists in attempting to contribute to the labour market in a meaningful way.[225]

[224] 'The Select Committee on Trade and Industry, Economic Development, Small Business Development, Tourism, Employment and Labour' https://pmg.org.za/files/220524CCMA.ppt (accessed 30 June 2023).
[225] 'CCMA Annual Report 2020/21' https://static.pmg.org.za/202021_CCMA_Annual_Report_FV.pdf (accessed 03 June 2023).

Chapter 4: The Effectiveness of the CCMA Dispute Resolution Mechanisms

4.1 Introduction

The LRA emphasizes "effective dispute resolution" as part of its objectives.[226] The Act further establishes the foundation for the promotion of effective resolution as part of its purpose under section 1(d)(v) of the Act.[227] This chapter delves into the effectiveness of conciliation and arbitration as forms of alternative dispute resolution by focusing on the success rates of the CCMA in resolving disputes within the stipulated timeframes. This is achieved by using data provided by the CCMA in the form of Annual Performance Reports for the 2020/21 and 2021/22 financial years. In a further assessment of the effectiveness of the arbitration and conciliation procedures, this chapter also covers the impact of the quality of the procedures and its influence on compliance with conciliation agreements and arbitration awards. The level of satisfaction experienced by users, is explored relating to the encompassing quality of their experience and not only the satisfaction with the outcome, as well as the costs involved with the arbitration and conciliation procedures.

4.2 The Effectiveness of Conciliation and Arbitration as Alternative Dispute Resolution Processes

To assess the CCMA's effectiveness, this chapter focuses on factors like the level of satisfaction based on the parties' experience,[228] the CCMA's ability to provide dispute resolution in a timely manner,[229] the costs involved in the processes,[230] and lastly the level of compliance to the CCMA's decisions.[231] The assessment of the effectiveness of

[226] Bendeman (n 23 above) 82.
[227] Act 66 of 1995.
[228] BOK Kwakwala 'A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration (CCMA)' Master of Commerce, University of Stellenbosch, 2010 48.
[229] BOK Kwakwala 'A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration (CCMA)' Master of Commerce, University of Stellenbosch, 2010 42.
[230] B Bushe 'The Efficacy of Alternative Dispute Resolution (ADR) in Labour Dispute Resolution: A Critical Comparative Analysis of Botswana, South Africa and Zimbabwe' Master of Laws, University of South Africa, 2019 142.
[231] BOK Kwakwala 'A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration (CCMA)' Master of Commerce, University of Stellenbosch, 2010 102.

conciliation and arbitration is undertaken by using these factors as indicators of effectiveness.

4.2.1 The efficiency of the CCMA in conciliation and arbitration proceedings

In conciliation and arbitration proceedings efficiency is related to the time the CCMA takes to conclude the actual procedure. It further relates to the CCMA's settlement rate in respect of "disputes resolved" compared to referred disputes as covered in chapter 3 of this dissertation.[232] A dispute resolution system that can resolve disputes in an expeditious manner and maintain a high settlement rate is considered to be an "efficient dispute resolution" structure.[233]

The CCMA is obligated to commence conciliation within 30 days of receiving a dispute referral.[234] In the 2020/21 financial year, 91 296 of 91 810 (99.4%) cases were conciliated within 30 days, with four (4) conciliable cases conciliated outside the 30 days standard timeframe.[235] In 2021/22 the CCMA heard 101 014 out of the 101 253 conciliable cases amounting to 99.76%.[236] The LRA requires arbitrators to render an arbitration award within 14 days of the conclusion of the arbitration.[237] In 2021/22, 17 583 arbitration awards were issued, with eight (8) arbitration awards issued late.[238] In the 2020/21 financial year, 14 128 arbitration awards were issued in the same financial year, with nine (9) arbitration awards issued late compared to 53 late arbitration awards issued in 2019/20.[239] The

[232] LN Mboh 'The Effectiveness of Dispute Resolution Mechanisms Within the South African Labour Law System: A Critical Analysis' Master of Law, North-West University, 2012 42.
[233] LN Mboh 'The Effectiveness of Dispute Resolution Mechanisms Within the South African Labour Law System: A Critical Analysis' Master of Law, North-West University, 2012 41.
[234] S Albertyn 'The New CCMA Rules' (2002) 23(10) *Industrial Law Journal* 1720.
[235] 'CCMA Annual Reports' (2020/21 & 2021/22) https://www.ccma.org.za/categories/annual-reports/ (accessed 03 June 2023).
[236] 'CCMA Annual Reports' (2020/21 & 2021/22) https://www.ccma.org.za/categories/annual-reports/ (accessed 03 June 2023).
[237] Benjamin (n 1 above) 33.
[238] 'CCMA Annual Reports' (2020/21 & 2021/22) https://www.ccma.org.za/categories/annual-reports/ (accessed 03 June 2023).
[239] 'CCMA Annual Reports' (2020/21 & 2021/22) https://www.ccma.org.za/categories/annual-reports/ (accessed 03 June 2023).

ability to resolve disputes within the standard timeframe indicates the CCMA's responsiveness to all CCMA clients.[240]

The efficiency of conciliation and arbitration is replicated in the turnaround times.[241] In 2020/21 and 2021/22 the CCMA took 23 days on average to handle conciliation cases.[242] The average time from the date that arbitration was requested to the conclusion of the proceedings was 69 days in 2019/20, 77 days in 2020/21, and 85 days in 2021/22.[243] The average time taken to complete arbitrations continue to increase suggesting that the CCMA has been unsuccessful in achieving their efficiency objectives.[244] The CCMA noted that because CCMA users are used to a faster turnaround time, all CCMA offices across the country will continue working under pressure to meet this expectation.[245]

4.2.2 Measuring the quality of conciliation and arbitration proceedings in determining the effectiveness of dispute resolution by the CCMA

Quality dispute resolution is an important factor in determining the effectiveness of the CCMA Dispute Resolution Mechanisms. The LRA stipulates that commissioners should resolve disputes "fairly and quickly" with minimal legal requirements.[246] Benjamin holds the opinion that the words "fairly and quickly" suggest a unique balance between "fairness and expedition" as requirements in ensuring that the resolution of disputes are done in a manner that does not deny the parties their rights.[247] The quality of the outcomes of the arbitration and conciliation proceedings as well as the quality of the actual processes are

[240] A Adam 'Resolving Dismissal Disputes: A Comparative Analysis of Public Arbitration Bodies in South Africa and England' Master of Law, University of Cape Town, 2018 8.
[241] H Bhorat *et al* 'Understanding the efficiency and effectiveness of the dispute resolution system in South Africa: An analysis of CCMA Data' (2009) *Development Policy Research Unit* 32.
[242] 'CCMA Annual Reports' (2020/21 & 2021/22) https://www.ccma.org.za/categories/annual-reports/ (accessed 03 June 2023).
[243] 'CCMA Annual Reports' (2020/21 & 2021/22) https://www.ccma.org.za/categories/annual-reports/ (accessed 03 June 2023).
[244] H Bhorat *et al* Understanding the efficiency and effectiveness of the dispute resolution system in South Africa: An analysis of CCMA Data (2009) *Development Policy Research Unit DPRU Working Paper,* (09/137) 30.
[245] 'CCMA Annual Reports' (2020/21 & 2021/22) https://www.ccma.org.za/categories/annual-reports/ (accessed 03 June 2023).
[246] Act 66 of 1995.
[247] Benjamin (n 79 above) 9.

important elements to consider in determining the quality of dispute resolution by the CCMA.

The CCMA is frequently criticized that commissioners quickly evaluate the disputants' points of view in conciliation, based on a brief assessment of the available facts and ultimately suggests a settlement.[248] Additionally, the commissioners disclose that if the parties do not agree, the same decision would be reached in arbitration.[249] The commissioner conciliating the dispute is responsible for choosing the most appropriate technique to assist the parties in resolving the matter, the commissioner may choose to use mediation, carry out a fact-finding investigation, or provide parties with an advisory award under section 135(3)(c) of the LRA.[250] These problems create doubt surrounding the quality of the dispute resolution procedures offered by the CCMA.[251] It further implies that the CCMA compromises its procedures in order to handle its caseload, instead of seeking a balance between efficiency and natural justice.[252] This suggests that an emphasis is placed on quantity rather than quality. Kwakwala refers to statements used to assess the quality of conciliation and arbitration proceedings.[253] The statements mentioned by Kwakwala could be employed by the CCMA as a set of questions in the form of a user survey at the end of the process to gather feedback on the processes, and ultimately, assessing the quality of conciliation and arbitration.[254] Asking parties about their opinion on various aspects of the proceedings, in respect of conciliation, asking parties to evaluate factors such as whether the Commissioner provided clear explanations of the conciliation process, their own role, and the parties' roles.[255] As well as the adequacy of opportunities to present their case and shape the outcome, this will

[248] Brand (n 134 above) 84.
[249] Brand (n 134 above) 84.
[250] Act 66 of 1995.
[251] BOK Kwakwala 'A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration (CCMA)' Master of Commerce, University of Stellenbosch, 2010 52.
[252] BOK Kwakwala 'A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration (CCMA)' Master of Commerce, University of Stellenbosch, 2010 53.
[253] BOK Kwakwala 'A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration (CCMA)' Master of Commerce, University of Stellenbosch, 2010 58.
[254] BOK Kwakwala 'A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration (CCMA)' Master of Commerce, University of Stellenbosch, 2010 58.
[255] BOK Kwakwala 'A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration (CCMA)' Master of Commerce, University of Stellenbosch, 2010 58.

allow the CCMA to review the Commissioner's fairness, impartiality, and handling of the necessary steps in the event of non-resolution.[256]

Furthermore, Ury *et al* holds the position that irrespective of the outcome, a disputant's level of satisfaction with the settlement is deeply influenced by what the party perceives as fair in terms of the procedure itself.[257] The process by which decisions are reached holds immense significance, as it ensures that the rights and interests of all parties involved are upheld.[258] Fairness it not just a formality but should rather be viewed as a crucial element that contributes to the overall effectiveness of the CCMA.[259] When parties perceive the procedure as fair, they are more likely to accept the outcome.[260] In terms of arbitration, setting up the survey in a manner that evaluates the Commissioner's explanations of the arbitration process, roles of the parties, and opportunities for presenting and defending their cases.[261] As well as evaluating whether the Commissioner addressed the substantive merits of the dispute, acted fairly, allowed for questioning of the other party and/or witnesses, and provided opportunities for presenting evidence, calling witnesses, and making concluding arguments.[262] Furthermore, this survey can assess the Commissioner's handling of postponement requests and the explanation of rights in case of non-compliance with an arbitration award.[263] This will ensure that fairness is maintained throughout the arbitration process, and that the interests, needs, and rights of the parties are protected and upheld.[264] These questionnaires and assessments will

[256] BOK Kwakwala 'A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration (CCMA)' Master of Commerce, University of Stellenbosch, 2010 58.
[257] Ury *et al* 'Three approaches to resolving disputes: interests, rights and power' (1988) *New York, Ny: Jossey-Bass* in BOK Kwakwala 'A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration (CCMA)' Master of Commerce, University of Stellenbosch, 2010 48.
[258] C Blignaut 'The Effectiveness of Conciliation as an Alternative Dispute Resolution Process in Unfair Dismissal Disputes' Master of Law, University of Pretoria, 2018 17.
[259] C Blignaut 'The Effectiveness of Conciliation as an Alternative Dispute Resolution Process in Unfair Dismissal Disputes' Master of Law, University of Pretoria, 2018 17.
[260] DR Hensler 'Suppose It's Not True: Challenging Mediation Ideology' (2002) 2002(1) *Journal of Dispute Resolution* 88.
[261] BOK Kwakwala 'A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration (CCMA)' Master of Commerce, University of Stellenbosch, 2010 59.
[262] BOK Kwakwala 'A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration (CCMA)' Master of Commerce, University of Stellenbosch, 2010 59.
[263] BOK Kwakwala 'A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration (CCMA)' Master of Commerce, University of Stellenbosch, 2010 59.
[264] BOK Kwakwala 'A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration (CCMA)' Master of Commerce, University of Stellenbosch, 2010 59.

collectively assist the CCMA in gauging the user experience and the effectiveness of the conciliation and arbitration procedures. It can be used to continuously improve the CCMA's services.

4.2.3 Compliance and the level of satisfaction experienced by CCMA users.

The effectiveness of an alternative dispute resolution process is not solely based on the achievement of the agreement but also the level of satisfaction by the parties and the probability of compliance with the agreement.[265] Non-compliance with arbitration awards and Labour Court orders compromises the effectiveness of alternative dispute resolution mechanisms.[266] In *Mjeni v Minister of Health and Welfare*, Jafta J echoes the detrimental impact of non-compliance with court orders on the effectiveness of the Courts.[267] Failure to comply to an award or a court order can be rectified through enforcement by a party with the assistance of the Labour Court by virtue of "contempt proceedings".[268] Ebrahim J correctly interpreted and followed the *Mjeni* judgment in *East London Transitional Local Council v The Member of the Executive Council of the Province of the Eastern Cape for Health* where the first and second respondents initially disobeyed a High Court order, prompting civil contempt proceedings.[269] The High Court directed the respondents to pay a sum of money in dispute, but they remained silent about a substantial amount.[270] This led the applicant to seek an order for payment and a request for the respondents'

[265] P Elgoibar *et al* 'Mediation and Conciliation in Collective Labor Conflicts in Europe: A Cross Cultural Analysis' in MC Euwema, FJ Medina, AB Garcia, ER Pender (eds) *Mediation in Collective Labor Conflicts* (2019) 236.
[266] 'Investigation into the Non-Implementation of Arbitration Awards and Labour Related Court Orders by Department and Implications on Labour Relations' (2017) 1. Accessible via https://www.psc.gov.za/documents/reports/2017/Final%20report%20-%20non implementation%20of%20arbitration%20awards%202017.pdf (accessed 10 August 2023).
[267] *Mjeni v Minister of Health and Welfare, Eastern Cape* 2000 (4) SA 446 (TkHC) in 'Investigation into the Non-Implementation of Arbitration Awards and Labour Related Court Orders by Department and Implications on Labour Relations' (2017) 19. Accessible via https://www.psc.gov.za/documents/reports/2017/Final%20report%20-%20non implementation%20of%20arbitration%20awards%202017.pdf (accessed 10 August 2023).
[268] 'Investigation into the Non-Implementation of Arbitration Awards and Labour Related Court Orders by Department and Implications on Labour Relations' (2017) 9. Accessible via https://www.psc.gov.za/documents/reports/2017/Final%20report%20-%20non implementation%20of%20arbitration%20awards%202017.pdf (accessed 10 August 2023).
[269] *East London Transitional Local Council v The Member of the Executive Council of the Province of the Eastern Cape for Health* 2000 (4) All SA 443 (Ck). Accessible via https://www.saflii.org/za/cases/ZAECHC/2000/10.pdf (accessed 31 August 2023) 1.
[270] *East London Transitional Local Council v The Member of the Executive Council of the Province of the Eastern Cape for Health* 2000 (4) All SA 443 (Ck). Accessible via https://www.saflii.org/za/cases/ZAECHC/2000/10.pdf (accessed 31 August 2023) 2.

imprisonment for contempt.[271] However, before proceedings commenced, a cheque was handed over to the applicant, which led to the withdrawal of the imprisonment request.[272] Nevertheless, the court still pursued an explanation for the respondents' willful default regarding the court's order.[273] This case revealed a recurring issue of government officials' negligence and dilatoriness in implementing court orders, which undermines the court's authority and the efficacy of the orders.[274] Similarly, non-compliance with arbitration awards undermines the role of the arbitrator and the efficiency of the arbitration process as a verdict decided by a commissioner is considered final and binding under sections 143(1) and (2) of the LRA.[275] This section grants an arbitration award with the same legal standing as an order decided by the Labour Court.[276] The matter in *Mjeni* and *East London Transitional Local Council* also necessitated an avoidable financial burden on the state treasury due to costs related with such applications.[277] Having to approach the court yet again results in a "duplication and redundancy of functions", that ends up becoming expensive and time-consuming.[278] Despite finding the respondents not guilty of contempt, the court ordered them to pay the costs jointly and severally, emphasizing that these proceedings could have been avoided if they had complied promptly with the

[271] *East London Transitional Local Council v The Member of the Executive Council of the Province of the Eastern Cape for Health* 2000 (4) All SA 443 (Ck). Accessible via https://www.saflii.org/za/cases/ZAECHC/2000/10.pdf (accessed 31 August 2023) 3.
[272] *East London Transitional Local Council v The Member of the Executive Council of the Province of the Eastern Cape for Health* 2000 (4) All SA 443 (Ck). Accessible via https://www.saflii.org/za/cases/ZAECHC/2000/10.pdf (accessed 31 August 2023) 5.
[273] *East London Transitional Local Council v The Member of the Executive Council of the Province of the Eastern Cape for Health* 2000 (4) All SA 443 (Ck). Accessible via https://www.saflii.org/za/cases/ZAECHC/2000/10.pdf (accessed 31 August 2023) 4.
[274] *East London Transitional Local Council v The Member of the Executive Council of the Province of the Eastern Cape for Health* 2000 (4) All SA 443 (Ck). Accessible via https://www.saflii.org/za/cases/ZAECHC/2000/10.pdf (accessed 31 August 2023) 13.
[275] Act 66 of 1995.
[276] 'Investigation into the Non-Implementation of Arbitration Awards and Labour Related Court Orders by Department and Implications on Labour Relations' (2017) 14. Accessible via https://www.psc.gov.za/documents/reports/2017/Final%20report%20-%20non implementation%20of%20arbitration%20awards%202017.pdf (accessed 10 August 2023).
[277] *East London Transitional Local Council v The Member of the Executive Council of the Province of the Eastern Cape for Health* 2000 (4) All SA 443 (Ck). Accessible via https://www.saflii.org/za/cases/ZAECHC/2000/10.pdf (accessed 31 August 2023) 13.
[278] R Baboolal-Frank 'A critical analysis of tribunals in South Africa to create a harmonised tribunal system' Doctor of Law, University of Pretoria, 2019 105.

court's earlier order.[279] The court ordered the payment of costs and accentuated the magnitude of timely compliance with court orders.[280]

4.2.4 The costs involved in conciliation and arbitration proceedings

Hay *et al* asserts that legal fees, cost orders to the opposing party, and the fees for the actual service provided are what make up the costs of dispute resolution.[281] The CCMA does not charge for its services which results in a reduction of legal costs.[282] In respect of costs orders, several factors under Rule 39 of the CCMA rules and regulations should be considered when awarding costs, which governs the order of costs in arbitration proceedings.[283] Among many other factors these consists of the extent to which the parties succeeded; fairness considerations that impact favourably or unfavourably on issuing a cost order; any prejudice offers made to resolve the disagreement; and whether a party engaged in a vexatious or frivolous manner during the proceedings.[284] In *Ndwalane v The Magic Company*, the nature of the employee's employment contract was for a fixed term. Upon its expiration, the employee lodged a dispute against the employer on the basis of "an unfair labour practice".[285] Nevertheless, he had no evidence "of unfairness", the arbitrator involved in his case found that his case is "frivolous and vexatious".[286] The employee was then ordered to pay some of the employer's legal

[279] *East London Transitional Local Council v The Member of the Executive Council of the Province of the Eastern Cape for Health* 2000 (4) All SA 443 (Ck). Accessible via https://www.saflii.org/za/cases/ZAECHC/2000/10.pdf (accessed 31 August 2023) 14.
[280] *East London Transitional Local Council v The Member of the Executive Council of the Province of the Eastern Cape for Health* 2000 (4) All SA 443 (Ck). Accessible via https://www.saflii.org/za/cases/ZAECHC/2000/10.pdf (accessed 31 August 2023) 14.
[281] Hay *et al* 'Toward a theory of legal reform' (1996) 40(3) *European Economic Review* in BOK Kwakwala 'A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration (CCMA)' Master of Commerce, University of Stellenbosch, 2010 48.
[282] C Leeds & A Wocke 'Methods of reducing the referral of frivolous cases to the CCMA' (2009) 33(1) *South African Journal of Labour Relations* 29.
[283] 'CCMA Rules' https://ccma.org.za/wp-content/uploads/2022/02/CCMA-Rules-Info-Sheet-2020-01.pdf (accessed 04 September 2023).
[284] 'CCMA Rules' https://ccma.org.za/wp-content/uploads/2022/02/CCMA-Rules-Info-Sheet-2020-01.pdf (accessed 04 September 2023).
[285] I Israelstam 'Bringing Trivial Case to CCMA Could Cost You' https://labourguide.co.za/misconduct/bringing-trivial-case-to-ccma-could-cost-you/#:~:text=In%20Ndwalane%20v%20The%20Magic,practice%20case%20against%20the%20employer (accessed 12 September 2023.
[286] I Israelstam 'Bringing Trivial Case to CCMA Could Cost You' https://labourguide.co.za/misconduct/bringing-trivial-case-to-ccma-could-cost-

fees.[287] Imposing cost orders on parties for "vexatious referrals" and parties who are reluctant to take part in the process could restrict employees from abusing the system, especially those who were fairly dismissed.[288]

Even though the CCMA has the authority to issue cost orders, commissioners seem reluctant to do so; in reality, very few costs awards are made, and those that are made only occurs in extreme circumstances.[289] The expenses are restricted to reasonable disbursements that were actually incurred when a party is not represented by counsel, and the party claiming costs must specify the specific items and amounts.[290] Where parties are represented by attorneys, only when all parties are represented by attorneys may legal fees be claimed and granted, but not disbursements.[291] Legal costs are capped under the LRA at R7000 for the first day of arbitration and R4700 for each additional day.[292] In comparison to formal litigation with many complexities and high legal costs as well as delays, the CCMA processes are more cost-effective.[293] Litigation requires legal representation, and cost orders, which is inflicted on the losing party in favour of the party who ends up being successful.[294] There are also indirect costs that parties could incur, which makes litigation more expensive than alternative dispute resolution mechanisms.[295]

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you/#:~:text=In%20Ndwalane%20v%20The%20Magic,practice%20case%20against%20the%20employer (accessed 12 September 2023).

[287] I Israelstam 'Bringing Trivial Case to CCMA Could Cost You' https://labourguide.co.za/misconduct/bringing-trivial-case-to-ccma-could-cost-you/#:~:text=In%20Ndwalane%20v%20The%20Magic,practice%20case%20against%20the%20employer (accessed 12 September 2023).

[288] C Blignaut 'The Effectiveness of Conciliation as an Alternative Dispute Resolution Process in Unfair Dismissal Disputes' Master of Law, University of Pretoria, 2018 47.

[289] C Blignaut 'The Effectiveness of Conciliation as an Alternative Dispute Resolution Process in Unfair Dismissal Disputes' Master of Law, University of Pretoria, 2018 44.

[290] 'CCMA Fees and Costs' https://www.ccma.org.za/wp-content/uploads/2023/02/CCMA-Fees-and-Costs-Info-Sheet-2022-01.pdf (accessed 04 September 2023).

[291] 'CCMA Rules' https://ccma.org.za/wp-content/uploads/2022/02/CCMA-Rules-Info-Sheet-2020-01.pdf (accessed 04 September 2023).

[292] 'CCMA Rules' https://ccma.org.za/wp-content/uploads/2022/02/CCMA-Rules-Info-Sheet-2020-01.pdf (accessed 04 September 2023).

[293] K Muigua & K Francis 'ADR: Access to Justice and Development in Kenya' (2009) *Strathmore University Law School* 9.

[294] BOK Kwakwala 'A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration (CCMA)' Master of Commerce, University of Stellenbosch, 2010 3.

[295] BOK Kwakwala 'A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration (CCMA)' Master of Commerce, University of Stellenbosch, 2010 3.

This aspect of cost-effectiveness adds to the efficiency of resolving labour disputes through alternative dispute resolution mechanisms.[296]

4.3 Conclusion

This chapter focused on factors used to determine the CCMA's effectiveness. Namely, user satisfaction; resolution of disputes in a timely manner; costs involved in the proceedings, as well as compliance with court orders. Overall, this chapter illustrates that the CCMA's capacity to resolve disputes within the allocated timeframes assists in providing "effective dispute resolution".[297] As a result of the CCMA's ability to provide dispute resolution in a faster and cheaper way, more users become dependent on its services, and this results in an increase in turnaround time. The CCMA has noted this and continues to encourage all CCMA offices across the nation to continue working hard to meet the expectations of its users.[298] In respect of compliance with settlement agreements and arbitration awards, although the CCMA is more cost-effective litigation, non-compliance with orders leads to an increase in the costs associated and results in the dispute being time-consuming, thus affecting the effectiveness of the institution and the quality of dispute resolution services.[299]

Formulating questionnaires that inquire about the user's experience of the procedure will assist the CCMA in measuring the user's experience and the effectiveness of the dispute resolution procedures. Monitoring the on-going user satisfaction will keep the CCMA informed with its performance.[300] This will provide a more accurate representation of the level of satisfaction by the CCMA users and the quality of the dispute resolution

[296] B Bushe 'The Efficacy of Alternative Dispute Resolution (ADR) in Labour Dispute Resolution: A Critical Comparative Analysis of Botswana, South Africa and Zimbabwe' Master of Laws, University of South Africa, 2019 142.
[297] Gathongo & van der Walt (n 20 above) 470.
[298] 'CCMA Annual Reports' (2020/21 & 2021/22) https://www.ccma.org.za/categories/annual-reports/ (accessed 03 June 2023).
[299] 'Investigation into the Non-Implementation of Arbitration Awards and Labour Related Court Orders by Department and Implications on Labour Relations' (2017) 1. Accessible via https://www.psc.gov.za/documents/reports/2017/Final%20report%20-%20non implementation%20of%20arbitration%20awards%202017.pdf (accessed 10 August 2023).
[300] BOK Kwakwala 'A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration (CCMA)' Master of Commerce, University of Stellenbosch, 2010 108.

processes.[301] The CCMA will be able to use this data to evaluate its performance and ultimately continue contributing to the promotion of "effective dispute resolution".[302]

[301] BOK Kwakwala 'A critical evaluation of the dispute resolution function of the Commission for Conciliation, Mediation and Arbitration (CCMA)' Master of Commerce, University of Stellenbosch, 2010 107.
[302] Act 66 of 1995.

Chapter 5: Conclusion

This dissertation provides an assessment of the CCMA's current position with the intention of providing useful information for the enhancement and improvement of the CCMA. The establishment of the CCMA under the LRA has significantly transformed the landscape of labour dispute resolution.[303] Chapter 2 of this dissertation provides an in-depth exploration of the CCMA's structure, operations, and its role in resolving labour disputes through conciliation and arbitration. The high referral rate to the CCMA highlights its crucial role in the South African labour market.[304] The CCMA's accessibility, with minimal formal requirements and simple processes, has made it a preferred choice for both employees and employers seeking dispute resolution.[305] Although this accessibility may cause an increase in the number of cases referred, it aligns with the CCMA's objectives of providing efficient and simple resolutions to labour disputes.[306] In an attempt to manage its heavy caseload, the CCMA has employed protocols and procedures, particularly for cases with a significant impact on the labour market as discussed in Chapter 2.[307] Additionally, the accreditation of other organisational bodies has helped the CCMA cope with the influx of cases, ensuring that it continues to fulfill the objectives set by the LRA.[308] The CCMA has become a cornerstone of South Africa's labour relations landscape, facilitating consensus-seeking, promoting fairness, and contributing to more peaceful labour relations.[309] While challenges such as the high referral rate persist, the CCMA's commitment to fulfilling the objectives of the LRA remains evident, making it a crucial institution for the resolution of disputes in the South African labour market.[310]

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[303] Rapatsa (n 30 above) 203.
[304] Rapatsa (n 30 above) 209.
[305] Rapatsa (n 30 above) 207.
[306] See Chapter 2.
[307] See Chapter 2.
[308] Rapatsa (n 30 above) 209
[309] P Benjamin 'Assessing South Africa's Commission for Conciliation, Mediation and Arbitration (CCMA)' 2013 (No. 994802973402676) *International Labour Organization* 1 (accessible via: https://www.ilo.org/public/libdoc/ilo/2013/113B09_102_engl.pdf).
[310] P Benjamin 'Assessing South Africa's Commission for Conciliation, Mediation and Arbitration (CCMA)' 2013 (No. 994802973402676) *International Labour Organization* 6 (accessible via: https://www.ilo.org/public/libdoc/ilo/2013/113B09_102_engl.pdf) iii.

The research addresses the CCMA's role in reducing poverty, inequality, and unemployment. The CCMA's dedication to providing alternative dispute resolution mechanisms has ensured that vulnerable employees have a platform to address unfair labour practices.[311] Chapter 3 of this dissertation addresses how the CCMA has not only expanded access to justice but also empowered marginalized communities with a means to assert their rights.[312] The CCMA has contributed to job retention and economic stability by mitigating the adverse effects of retrenchments and protracted strikes.[313] The CCMA's role in ensuring compliance with the National Minimum Wage Act and addressing non-compliance has furthered its contribution to reducing poverty and inequality.[314] While the CCMA may not have a direct mandate to combat these socio-economic issues, its actions and interventions have consistently demonstrated a commitment to fostering social justice and economic development.[315] The CCMA's ability to adapt to changing circumstances, as seen during the COVID-19 pandemic, reflects its commitment to protecting workers and maintaining employment levels.[316] As the CCMA continues to progress and adapt to new challenges, it continues to play a crucial role in promoting social justice and advancing the principles enshrined in the Constitution and in alignment with the objectives of the LRA.[317] In alignment of the objectives of this dissertation chapter 3 successfully addresses the CCMA's role in advancing access to justice.

Chapter 4 evaluates the efficiency of the CCMA in resolving disputes by delving into the effectiveness of conciliation and arbitration as alternative dispute resolution processes of the CCMA.[318] It focuses on key factors that determine the effectiveness of these processes, including user satisfaction, timely resolution of disputes, costs involved, and compliance with decisions.[319] The CCMA has demonstrated its commitment to timely dispute resolution by settling majority of conciliable cases within the stipulated 30-day

[311] Animashaun *et al* (n 25 above) 679.
[312] Animashaun *et al* (n 25 above) 679.
[313] See Chapter 3.
[314] 'The Select Committee on Trade and Industry, Economic Development, Small Business Development, Tourism, Employment and Labour' https://pmg.org.za/files/220524CCMA.ppt (accessed 30 June 2023).
[315] See Chapter 3.
[316] See Chapter 3.
[317] Tiemeni & Blackett (n 2 above) 25.
[318] See Chapter 4.
[319] See Chapter 4.

timeframe, as well as issuing arbitration awards within the 14-day requirement.[320] The CCMA has also been very successful in maintaining a settlement rate of above 70% year after year.[321] However, there is a challenge in maintaining efficiency as the number of cases and expectations from users increase.[322] It is important for the CCMA to strike a balance between efficiency and maintaining the quality of its dispute resolution procedures.[323] The quality of conciliation and arbitration proceedings is essential in ensuring fairness and impartiality.[324] Compliance with settlement agreements and arbitration awards is crucial to the effectiveness of dispute resolution.[325] Non-compliance can lead to increased costs and time-consuming legal processes, ultimately undermining the efficiency of the CCMA.[326] It is recommended that the CCMA continues to emphasize the importance of compliance and explores measures to expedite the enforcement of its decisions. Overall, the CCMA plays a significant role in providing a cost-effective and efficient alternative to litigation for resolving labour disputes.[327] To further enhance its effectiveness, it should prioritise user satisfaction, maintain efficient timelines, ensure the quality of its procedures, and emphasize the importance of compliance.[328] By doing so, the CCMA can continue positively contributing to the promotion of effective dispute resolution in the South African labour market.

[320] 'Annual Reports' https://www.ccma.org.za/categories/annual-reports/ (accessed 03 April 2023).
[321] 'CCMA Annual Performance Plan' https://www.ccma.org.za/wp-content/uploads/2022/01/CCMA-APP_2021_22.pdf (accessed 03 June 2023).
[322] See Chapter 4.
[323] See Chapter 4.
[324] See Chapter 4.
[325] *East London Transitional Local Council v The Member of the Executive Council of the Province of the Eastern Cape for Health* 2000 (4) All SA 443 (Ck). Accessible via https://www.saflii.org/za/cases/ZAECHC/2000/10.pdf (accessed 31 August 2023) 13.
[326] See Chapter 4.
[327] 'Investigation into the Non-Implementation of Arbitration Awards and Labour Related Court Orders by Department and Implications on Labour Relations' (2017) 1. Accessible via https://www.psc.gov.za/documents/reports/2017/Final%20report%20-%20non implementation%20of%20arbitration%20awards%202017.pdf (accessed 10 August 2023).
[328] See Chapter 4.

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