

THE MANDELA INITIATIVE

Dialogue and action to overcome poverty and inequality



UNIVERSITY OF CAPE TOWN
IYUNIVESITHI YASEKAPA • UNIVERSITEIT VAN KAAPSTAD

Themes: Labour Market

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Working inequality and working poverty: A policy-oriented socio-legal perspective

Income or earnings inequality in South Africa remains at a critical level; and, because of the fragmented structure of our labour market, any legislative or policy measures to reduce inequality levels should consider how inequality is sustained by developments, policies and practices in both the formal and the informal economy. In this regard, we have identified developments in equality law and good governance principles that are intended to address inequality in the formal economy. We have monitored the implementation and constraints of these to inform recommendations at policy level. In the context of the informal economy, we have distinguished a core tension between promotional policies and compliance with labour legislation in attempts to formalise the informal. We have therefore been monitoring the developments and processes resulting from the International Labour Organisation's (ILO) adoption in 2015 of Recommendation 204 concerning the transition from the informal to the formal economy. Our objective is to assess the potential for these processes ultimately to contribute toward a reduction of inequality.

About this brief

This brief was commissioned by the Mandela Initiative to help inform a synthesis report on its work since the 2012 national conference, *Strategies to Overcome Poverty and Inequality*, organised by the University of Cape Town. The MI provides a multi-sectoral platform to investigate and develop strategies to overcome poverty and reduce inequality in South Africa. While the Nelson Mandela Foundation is a key partner, the Initiative has relied on collaborations between academics and researchers, government, business leaders, civil society, the church and unions.

The synthesis report serves as a framework for reporting on the work of the MI at a national gathering on 12 – 14 February 2018 at the University of Cape Town. The MI *Think Tank* has identified the objectives for the gathering as:

- to anchor the contributions of the MI within an analysis of the current South African political and economic context;
- to share the recommendations emanating from the MI-related work streams at a policy/strategic level to advance the goal of eliminating poverty and reducing inequality;
- to critically engage with the potential impact of the recommendations on eliminating structural poverty and inequality; and
- to discuss ways of promoting popular conversations and debate about what needs to be done to eliminate poverty and reduce inequality, beyond the MI.

The synthesis report aims to assist participants to prepare for the national gathering. The report drew on findings from the sectoral research projects of Think Tank members; the MI's *Action Dialogues*; a report on an MI *Community of Practice workshop* with research chairs from different universities to identify cross-cutting themes emerging from the MI's *research programme*; and the work programmes of others who have expressed an interest in contributing to the goals of the MI.

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1. The major issues we have identified about the manifestations of structural poverty and persistent deep inequalities with regard to working inequality and working poverty.

Apartheid laws created a racially segmented labour market that was underpinned by differential access to education and skills training. This is reflected in a very wide gap between pay for management and most blue-collar workers as well as a gap between artisans and less skilled workers. At the same time, apartheid laws restricted the development of entrepreneurial skills and the growth of the informal economy.

The ending of apartheid could not on its own address the racially segmented labour market, or would do so only very slowly, which has left pay inequality deeply entrenched in salary and wage structures in the formal economy. This entrenchment of inequality has been abetted by the dysfunctional education system and numerous problems in the skills development system which have left skills in short supply.

After apartheid ended slow economic growth led to the rapid expansion of the informal economy, although the structure of the economy and the lack of entrepreneurial and other skills has meant that the majority are engaged in survivalist activities. Policy-makers have lauded the informal economy (problematically conflating it with the notion of ‘small business’) because it is creating employment and livelihoods. At the same time, it is recognised that there is a need to devote resources to the informal economy in order to assist small informal firms and the self-employed to become more viable and sustainable. The results, however, have been generally poor.

2. The main reasons for the persistence of deep inequalities and poverty amongst working people, including policy, capacity and implementation constraints/problems.

Our concern is with working people and we focus on the two ends of the labour market, i.e. the pay inequality primarily driven by very high earnings at the upper end in the formal economy, and poverty due to low earnings in the informal economy.

With regard to the first area, the Employment Equity Act 55 of 1998 (EEA) expressly recognises that ‘as a result of apartheid and other discriminatory laws and practices, there are disparities in employment, occupation and income within the national labour market’². The Act therefore included a provision (section 27) intended to progressively reduce disproportionate income differentials.³ However, the promise of this provision has not materialised. The Department of Labour has interpreted section 27 to apply only to disproportionate horizontal income differentials (this is patently incorrect), which has meant that the section has been ineffective in reducing horizontal differentials.

² *Preamble* of the EEA.

³ For a comprehensive discussion of the legislative development of section 27 and the failure to implement the provision, see R Helm (2015) *The vertical effect of section 27 of the Employment Equity Act*. Institute of Development and Labour Law Working Paper 1/2015. University of Cape Town.



The second area, i.e. the other end of the earnings spectrum in the informal economy, has remained resistant to policy and programmes. The reason, we believe, is because proactive attempts to formalise the informal economy, i.e. make it generate more value and become sustainable, go along with the application of regulation which has cost and risk implications. Our particular focus is on compliance with labour regulation. Any attempt to formalise the informal economy brings to the fore the tension between these positive and negative aspects of policy and regulation (effectively putting the Department of Small Business Development at odds with the Department of Labour). Policy makers have therefore avoided dealing directly with this tension, thereby tacitly condoning low earnings and poor working conditions in the informal economy because it is generating livelihoods and jobs in a context where the formal economy is not creating enough employment.

3. Recommendations at a macro policy/strategic level to deal with the issues identified above.

Besides directly engaging with the Department of Labour regarding its interpretation of section 27, the corporate governance principles now enshrined in King IV offer an alternative route to address high earnings at the top end of the labour market. The scope of King IV has been extended to include the governance of remuneration, which signals a growing concern to deal with the problem of income inequality. Principle 14 of King IV provides that the “governing body should ensure that the organisation remunerates fairly, responsibly and transparently.” On this foundation King IV has introduced the requirement that the remuneration of executive management should *be fair and responsible in the context of overall employee remuneration*. This acknowledges the need to address the gap between the remuneration of executives and those at the lower end of the pay scale.⁴ We have begun monitoring developments that result from these principles as well as any changes that might be effected in the implementation of the EEA⁵.

Our recommendation with regard to this aspect of our focus is to amend section 27 of the EEA (and make substantial changes to the EEA 4 form which is key to the implementation of the section). We also recommend engagement with the Institute of Directors, the custodians of King IV, with a view to directing greater attention on the scope of King IV to address income inequality through constraint on earnings at the top end of the labour market.

In 2015 the ILO adopted Recommendation No. 204: Concerning the Transition from the Informal to the Formal Economy, and, since then, has been encouraging tripartite processes in member countries to implement Recommendation 204. Such a process is currently gathering momentum in South Africa, involving government (with the Department of Labour taking the lead), organised business, organised labour, and civil society. We have had an indirect engagement with the Recommendation 204 process by participating with Women in Informal Employment: Globalizing and Organizing (WIEGO) in the drafting of a substantial concept note for the Streetnet representative in the process. The main thrust

⁴ King IV, p. 31.

⁵ Amendments to the EEA flowing from the introduction of a national minimum wage might result in section 27 of the EEA being made more effective.

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of this concept note was to foreground and deal with the tension noted above when attempting to formalise the informal economy.

Our recommendation with regard to this aspect of our focus is to support the Recommendation No. 204 process, providing research input where possible. The main objective will be to have input on key discussions about redesign of labour legislation that will seek to turn ‘rigid’ rights (where there is either compliance or not compliance), into ‘process’ rights that can be achieved over time. Collective bargaining is the traditional institution that has been used to achieve this conversion of rights but is not applicable in its current form in the informal economy because of weak trade union organisation.

The potential impact of our recommendations on eliminating structural poverty and reducing inequality

Our recommendations in respect of both aspects of our focus on working inequality and working poverty have potentially far-reaching impacts but are largely dependent on policy processes that we can try to engage with but over which we have very little influence. However, should these processes gather momentum our engagement with them will be important. In both cases we are dealing with issues of political will and policy incoherence. These factors remain obstacles with regard to the processes underway. Engagement and research can direct attention to these obstacles and find ways to move past them.

For more information on the Mandela Initiative:

