

Constitution fails to recognise people's right to work

Daniel McLaren

In a year in which the economy fell into recession, public finances were squeezed to breaking point and data showed that poverty has been on the rise since 2011, Statistics SA has added to the gloom by announcing unemployment was at a 14-year high.

Including people who wanted to work but had become discouraged from looking for jobs due to a lack of opportunities, 36.8% of people in SA were without work.

It was no coincidence that the number of people living in poverty rose as joblessness soared. Unemployment deprives people of income necessary for survival. It affects families and communities.

With virtually no access to social security for working-age adults, the unemployed are dependent upon savings they may have and help from family and friends to get by.

Many seek loans from informal money lenders and end up in a spiral of debt. Others turn to crime.

Still others are dragged into a vicious cycle of deteriorating physical and mental health,



Hands on: Deputy President Cyril Ramaphosa, left, leads a government tour of various Expanded Public Works Programme projects in Thaba Nchu, Free State. / GCIS/Kopano Tape

alcohol and drug abuse and in many cases, partner violence.

SA's poor and working-class have endured high levels of unemployment for decades. The most affected are youth and historically disadvantaged groups – blacks are four times likelier to be unemployed than whites; coloureds are three times more likely. Women find it harder to secure work than men and more than half of youth aged 18–35 are

unemployed, one of the highest rates in the world.

There have been several policy initiatives to deal with widespread unemployment since the end of apartheid. Yet the problem remains as acute.

New research by the Studies in Poverty and Inequality Institute on access to decent work in SA offers a fresh perspective: the failure to deal with unemployment comes down in part to a failure to

recognise the central role that access to decent work plays in people's lives. Access to work should be regarded in the same way as access to education, healthcare or housing: as a fundamental right that must be respected and fulfilled.

Until now, the assumption has been that the millions of jobs needed will be provided by the private sector once optimum conditions for business have been achieved –

better educated and skilled workers, improved infrastructure and a growing economy. In other words: the state must "facilitate" job creation, rather than play an active role in the provision and enabling of work opportunities.

Yet, the state's role has been gaining attention globally as countries of all descriptions attempt to confront the effects of globalisation and technological change on insecure labour markets.

Inspiration for this change in approach can be taken from SA's constitution.

It is often described as unique because it recognises that the state has a central role to play in ensuring that everyone has access to education, healthcare, social security, adequate housing and even sufficient food and water.

Expanding access to these rights and improving the quality of access over time is not a political option for government: it is a fundamental obligation.

By enshrining basic social goods and services in the constitution, people's demands are legitimised and they can challenge any policy or conduct that limits the progressive realisation of the rights.

The Constitution creates a powerful dynamic between the state and citizens that has enabled significant progress towards the enjoyment of these social rights by all. Yet there is one essential area of social and economic life that is not recognised as a right in the Constitution and where the state has manifestly failed to improve access and opportunity: work.

The right to decent work is recognised in international human rights law instruments that SA has ratified (including the International Covenant on Economic, Social and Cultural Rights and the African Charter) as well as in several national constitutions and legal frameworks around the world.

The absence of this right in the Constitution is therefore an anomaly, especially given its presence in the Freedom Charter and in the ANC's 1989 constitutional guidelines for a democratic SA.

The right to decent work can be broken down into two parts: the right of every person to the opportunity to gain a living through work; and the individual and collective right to decent working conditions.

Much has been done to

improve working conditions in line with section 23 of the Constitution, which guarantees fair labour practices. But the right to the opportunity to work is largely unexplored in SA.

Yet this component of the right has the power to transform understanding of the potential interventions that are available. As with other rights, the state would have to play a more positive role in establishing an environment conducive to job creation and in providing and enabling work opportunities for people who lack them – including through partnerships with the private and nonprofit sectors.

This approach proved successful in many countries that accepted that while long-term restructuring of the economy is essential for greater levels of employment in the future, in the interim people must have some form of opportunity to work and access to lifelong education and training. If people are denied these opportunities for too long, the social and economic consequences will get worse.

Take India, for example, where after centuries of attempts to deal with seasonal unemployment in rural areas

dominated by agriculture, a right to work law was passed in 2005, guaranteeing every person in rural areas 100 days of paid work a year.

Where local government is unable to sign someone up for work for a period, an unconditional cash transfer is provided to ensure income for the worker. This scheme has significantly reduced rural unemployment and poverty at relatively small cost to the national fiscus.

The combination of productive programmes of work and a cash transfer when work is unavailable, could provide a model for the evolution of SA's Community Works Programme (CWP).

In Brazil, the constitutional right to work has been used by street traders to enable them to conduct their business freely.

In SA, the Expanded Public Works Programme (EPWP) is a mainstay of state employment policy. The target for the EPWP and CWP combined is to provide 6-million work opportunities with an annual budget of only R2.4bn.

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