

The Language of Flexibility and the Flexibility of Language: Post-Apartheid South African Labour Market Debates

Andries Bezuidenhout & Bridget Kenny
Sociology of Work Unit
University of the Witwatersrand
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We may have a more limited success in terms of bills, but the whole language of politics will be in the midst of transformation... the real breaking point is when you find yourself having a whole new debate, with new terms. That's more important than legislative achievements.

Newt Gingrich¹

We are told South Africa suffers from 'labour market inflexibility', that investors are put off by the regulations and trade union power, and that it has 'the highest unemployment in the world'. Although there is no evidence to support those claims (except for what all agree are woefully inadequate data), the images feed into financial brochures and shape perceptions of the country's policy. In turn, policymakers are pushed into contemplating reforms to gain credibility.

Guy Standing²

Introduction

This paper unpacks the 'flexibility debate' in South Africa and argues that the discourse of flexibility has been more about positioning interests than about articulating empirical realities. However, we argue that the shape of the language of flexibility has defined the parameters of possible policy outcomes. Struggles over meaning condition political action. As Raymond Williams has said,

Language...is not a medium; it is a constitutive element of material social practice....[It] is at once a material practice and a process in which many complex activities...are specifically *realized* (Williams, 1977:165; italics added).

Given the fact that the South African labour market is flexible compared to other middle-income countries, especially in terms of numerical and wage flexibility, how did arguments to the contrary become so influential from the mid-1990s onwards?

This paper presents an overview of labour market policy narratives throughout the decade based on policy documents, academic input, and debates in the mass media. We start with the ANC's 1990 economic policy workshop in Harare, and end with flexibility debates after the 1998 Presidential Jobs Summit.

¹Quoted in Peck (1998: 1)

²Standing, G. "Tackling the jobless." *Mail and Guardian*, 26 November 1996.

The analysis is subdivided into two sections. Section 1 focuses on debates before 1996. During this period neo-liberal notions of the labour market filter into debate while foregrounded discussions concentrate on labour market transformation toward equity. The pre-1996 period illustrates that these positions converged in nascent formulations of labour market flexibility linking competitiveness to supposedly labour friendly forms of flexibility. In 1996 the concept of ‘labour market flexibility’ became central to labour market policy debates. During this period flexibility came to mean explicitly de-regulation. This position was countered in arguments for minimum standards. Debate over job creation presented expanded employment demand as a necessary trade-off between standards and flexibility, thereby embedding labour market policy in the concept of ‘labour market flexibility’.

We examine how policy makers and intellectuals who mobilise class and class-fractional interests to direct policy, change position through ‘talking the talk’. Hence the language of flexibility and its own permutations has entered social reality as a material force directing, amongst other policy, the redrafting of a newly imagined ‘restrictive’ labour legislation.

Labour as a social commodity

One of the most consistent underlying assumptions of arguments on labour market policy throughout these debates has been the narrow representation of the labour market as a commodity market. High levels of unemployment have been explained as a consequence of an imperfect match between the supply of and the demand for labour. Such an approach misunderstands and misconstrues how, when and why workers enter jobs. It suggests that where labour is cheap, employment magnetically flows.

Mainstream economists represent the labour market as a neutral institution where sellers and buyers meet to exchange labour-power for a wage (Folbre, 1994; Fine, 1998; Elson, 1999). Discrimination is acknowledged, but if it cannot be explained by differences in education, training, or job experience, then it is treated as a residual factor, something external to the workings of the labour market (Elson, 1999: 611). When neo-classical economics assumes that a move toward de-regulation of labour markets will promote efficiency, it assumes that the micro-efficiencies of individual and firm decision-making will naturally add up to a macro efficiency of the economy as a whole (Elson, 1999:618; Fine, 1998). However, the labour market is *embedded* in society. Individuals and firms make decisions not simply through individual preference, but because decision-making is inscribed in social institutions (Elson, 1999: 611; Ferber and Nelson, 1993; Folbre, 1994). Decisions made at one level may, therefore, be completely incompatible with efficiencies at another level.

We begin with the premise, therefore, that labour is not a pure commodity like other commodities because its reproduction is social (Polanyi, 1957 [1944]). Furthermore, labour markets are not perfectly competitive markets, nor do they simply operate evenly from pre-constituted social inequalities. Labour markets actively reproduce and reconstruct inequalities (Elson, 1999). Therefore the labour market must be looked at as a “socially constructed and politically motivated structure of conflict and accommodation among contending forces” (Peck, 1996:4-5).

Three dimensions structure labour markets: demand-side or production, supply-side or reproduction, and state regulation. The demand-side factors include all those dictating what jobs are available. These include industrial structure, labour processes, labour control strategies, etc. The supply-side factors include factors which influence the source of labour,

its nature and quantity. These include the household division of labour, gender, racial, ethnic and other ideologies, occupational socialisation, trade union policies, etc. Finally state regulation includes labour regulation, but also welfare provisioning, industrial relations systems, education and training systems, etc. Labour markets can, then, be categorised on the one hand by relative skill levels, wage levels and job security and by integration into the labour process and forms of control over it (Doeringer and Piore, 1971; Reich, Gordon & Edwards, 1973; Gordon, Edwards & Reich, 1982; Webster, 1985). They can also be explained by the extent and nature of regulation of those employment contracts, including the extent to which these workers fall under social security legislation as well as how they contend with processes of social reproduction within households and communities (Humphries and Rubery, 1984; Offe, 1985; Mingione, 1985; Peck, 1996).

Throughout this analysis of the language and usage of the concept of labour market flexibility, we will return to the importance of representing labour as a social commodity. In revolving around business' neo-classical economic modelling of the labour market where 'price' equilibrates supply and demand, the flexibility debate in South Africa egregiously evades the social consequences of decreasing job security for workers already perilously segmented within labour market, especially in the context of a non-existent welfare state. We first define labour market flexibility, and then we turn to an analysis of the debate.

What is 'labour market flexibility'?

In general, labour market flexibility refers to the ability of companies to adapt the use of labour to changes in other markets. The model we use is based on Atkinson's model of the flexible firm (Atkinson, 1985). Although this model has been criticised (see Pollert, 1991), we agree with its 'defenders' that, when used as a descriptive model, it is a useful conceptual framework to understand different strategies to achieve 'flexibility' at the firm level (see Proctor, *et al.*, 1994). Where Atkinson's model refers to three types of flexibility, functional, numerical, and financial flexibility, we agree with Blyton (1991) that it is also important to add a fourth dimension, that of temporal (or work time) flexibility (see Bezuidenhout, 1997). We therefore distinguish between the following four types of labour market flexibility.

Work process flexibility relies on multi-skilling, job-rotation and different forms of team work in order to structure the labour process to allow workers joint decision-making. The assumption is that this form of flexibility will enhance "the adaptability and mobility of employees to undertake a range of tasks" (Horwitz, 1995:1; Horwitz & Erskine, 1995). Work process flexibility is part of the paradigm of 'post-Fordist production', where capital recognises workers as skilful partners in production.

Work time flexibility alters the patterns of working time, through for example, shift systems, part-time work, home-working, temporary work, or job-sharing. It can also be defined as "a deviation from an even breakdown of an agreed number of hours of work over an equally agreed number of weekdays" (Horwitz, 1995:1-2; 5).

Wage flexibility refers to "the shift from uniform pay systems towards individualised or team pay, with variability based on performance" (Horwitz, 1995:2). An example of this is productivity bonuses.

Numerical flexibility refers to the adaptability of the size of a firm's workforce to changes in demand for the product or service supplied. Examples of measures to acquire numerical

flexibility include the subcontracting of labour, the use of casual labour, seasonal labour, and home-working (Horwitz, 1995:1; 7-9). Labour markets can also be more prone to numerical flexibility if employers can relatively easily retrench or dismiss workers. In this case, employers would not need to hire more casual workers or use labour brokers. They could simply hire workers through ordinary employment contracts, and then lay them off when business falls.

The South African labour market is flexible in terms of most types of labour market flexibility (Standing, 1997; ILO, 1999; Horwitz 1995; Klerck, 1994; Rees, 1997; Kenny, 1998; Hemson, 1996; Levy, 1999; Kenny and Bezuidenhout, 1999a; 1999b; Godfrey and Theron, 1999; Spoor, 1999). In many instances, these forms of flexibility suggest different strategies through which employers evade minimum standards. Work process flexibility is the only form not prevalent (ILO, 1999: 29), a form of flexibility which is very difficult to attain without worker co-operation based on relative job security.

The labour market flexibility debate in South Africa strays from a clear understanding of the forms of flexibility. Significantly, 'flexibility' is introduced to labour market policy through post-Fordist language of work process flexibility. By 1996, flexibility implicitly comes to mean numerical, wage and work time flexibility. However, we argue that the term is used generally and uncritically; resulting confusion opens space for the reification of 'labour market flexibility' into policy parlance in ways counter to workers' interests.

SECTION 1: From Equity to Competitiveness, 1990-1995

Debates on the nature of labour market were bound by initial debates on a post-Apartheid macro-economic policy framework. Policy makers in the Left as well as those in the de Klerck government formulated their versions. Policy research processes diverged in the Left, notably between the Macro-economic Research Group (MERG) and the Industrial Strategy Project (ISP). As the MERG became marginalised, elements of the ISP's proposals took forward a concept of flexibility that converged with assumptions underlying the Normative Economic Model's focus on export-led growth. Flexibility, then, became inserted into labour market policy debates as a 'labour friendly' post-Fordist possibility compatible with competitiveness and trade liberalisation. This policy context forms a background for the 'labour market flexibility' debate which emerges in early 1996.

Harare workshop on economic policy, 1990

From April to May 1990, representatives from the ANC, the Congress of South African Trade Unions (COSATU) and a group of researchers, the Economic Trends Research Group, held a workshop in Harare, Zimbabwe, to discuss approaches to economic policy in a South Africa after apartheid (Padayachee, 1998: 434-436). After the workshop, a document with cursory recommendations was published. Although not regarded as official policy at the time, the document provided an indication of economic thinking in sectors of the liberation movement in the early 1990s. COSATU's influence still dominated. In the document, the state played a central role in the still vague economic model proposed by the workshop:

The transformation of the economy will require a viable state sector. Nationalisation would be an essential part of the reconstruction programme of such a state (ANC, 1990: 5).

The document did not refer to labour market policy specifically, but argued that the post-apartheid state had to commit itself “to the development of a high employment, high wage, high productivity economy” as well as ensuring “a central role for organised labour in the formulation and implementation of all economic policy”. The document’s proposals on “employment creation”, however, pointed more directly towards certain principles which might have underlined an emerging labour market policy:

The current state strategy of seeking to create employment through deregulation and privatisation is not a solution and must be opposed. The democratic state would address employment creation through public works programmes... retraining and the deployment of resources from apartheid-oriented projects into employment-creating economic activities...(ANC, 1990: 12).

Early policy thinking, then, stressed the labour market as a tool actively manipulated by the state to redress past segmentation and inequality. From this premise of equity, policy research took two directions.

After 1990, several of the researchers involved in the Economic Trends Research Group became active in the MERG, while others started to work in the ISP. Both research collectives played a role in the formulation of early ANC economic and industrial policy. The MERG was the first to publish a document with policy recommendations.

Macro-Economic Research Group (MERG), 1993

In 1993 in *Making Democracy Work*, MERG³ argued explicitly that it took the interests of the “poorest, most oppressed and downtrodden people in South Africa” (MERG, 1993:2) as its starting point. The report argued that an analysis of unemployment in South Africa should focus on “the failure of the [Apartheid] government to sustain reasonable levels of aggregate demand, and [the failure] of public sector investment in appropriate projects and the education of the labour force” (MERG, 1993:154). It criticised neo-liberal models which assume that as real wages fall employment increases (MERG, 1993:152).

Under the structural conditions created by apartheid, MERG saw a key role for the state to play in economic reconstruction (MERG, 1993; Padayachee 1998: 438). The MERG proposals on labour market policy emphasised expanding demand and placed a strong emphasis on training workers to enhance South Africa’s skills base (MERG, 1993:152). It proposed large-scale public works programmes and the introduction of a national minimum wage in order to boost domestic demand (MERG, 1993:162-167).

Even though the MERG model was described by the *Business Day* as “a serious challenge to the government’s approach”, and British economist Chris Edwards pointed out at the time that “in the light of the appalling legacy of Apartheid, it seems clear that there is no alternative to an approach modelled on that of the MERG” (Padayachee, 1998: 439), the

³The group consisted of 13 research teams based at the Universities of Surban-Westville, the North, Fort Hare, Western Cape and the Witwatersrand under the co-ordination of Vella Pillay. The MERG formally aligned itself with the democratic movement and took the economic policy goals of the ANC and Cosatu as its starting point (MERG, 1993:1-2). The team of researchers included prominent intellectuals such as Trevor Bell, Rob Davies (former chair of the Parliamentary Committee on Trade and Industry), Ben Fine and Vishnu Padayachee (both vocal critics of later economic thinking in the ANC). Also included were Alec Erwin (presently Minister of Trade and Industry) and Maria Ramos (presently Director General of Finance) (MERG, 1993:xv). MERG later became the National Institute for Economic Policy (NIEP).

ANC did not take the recommendations seriously. But, why was MERG discarded?

Towards the end of the process that led to the publication of *Making Democracy Work*, serious tensions emerged between MERG and the ANC's Department of Economic Policy (DEP). Some argue that the DEP felt resistance towards the MERG, dominated by non-South African economists (Padayachee, 1998: 439; Marais, 1998: 158). Others held the opinion that there was already an emerging tendency in certain segments of the ANC towards neo-liberal economic policies in response to internal debates between African 'nationalists' and 'workerists' (Padayachee, 1998). Indeed, by 1993 the ANC had already issued a letter of intent to the IMF which promised to retain the conservative governor of the Reserve Bank and which committed the new government to fiscal discipline (Webster and Adler, 1999). But MERG, for a short while, provided a theoretical alternative, at least to the Nationalist Party government's Normative Economic Model (NEM, 1993).

Hence even before the ANC was elected to power in 1994, tension between neo-Keynesian and neo-liberal economic models began to define the context in which labour market policy would be formulated. Meanwhile, the ISP was setting an agenda for industrial policy which linked the goal of competitiveness to labour market policy.

The Industrial Strategy Project (ISP), 1990-1995

While the MERG focussed on macro-economic strategy, the ISP looked at the micro-economics and sociology of the manufacturing industry in South Africa. We argue that the ISP introduced the concept of "flexibility" to the Left. The general thrust of its policy proposals represented a substantial shift from Keynesian demand-side measures, towards a supply-side strategy (Padayachee, 1998: 437).

In 1990, COSATU commissioned researchers to examine the South African manufacturing industry to facilitate the formulation of industrial policy. In its reports, the ISP saw "flexible production" as key to strategies for economic restructuring in light of the new "global challenge". In a review of the early work of the ISP, economist Nicoli Nattrass (1994:522) asserted that the ISP drew heavily on post-Fordist notions of flexibility to argue for more effective manufacturing strategies which respond to changing markets.

Nattrass criticized the authors of the ISP for not being critical enough in their reading of the supposedly "'growing evidence' supported by 'a wide body of literature' that the basis of competitive performance has been changing" (1994:522). She also pointed to the fact that economic restructuring could lead to a rise in the level of unemployment, and that flexible production patterns did not necessarily lead to enhanced worker participation (Nattrass, 1994:522-523; see also Maller & Dwolatsky, 1993:70-86). Keeping in line with his post-Fordist assumptions, Raphael Kaplinsky, one of the co-authors of the ISP, reacted to this criticism saying that their approach would favour "labour-friendly approaches to flexibility" as opposed to "labour-unfriendly" approaches (Kaplinsky, 1994:535).

In 1995, the ISP published its final report (see Joffe, *et al.*, 1995), as well as a range of studies focussing on different sectors of the manufacturing industry. The strategy proposed, called "intelligent production", clearly derived from the post-Fordist theoretical underpinnings used by the authors. Poor manufacturing performance was blamed on dated managerial techniques, and, even in firms where schemes such as "green areas, quality circles, suggestion boxes and briefing sessions" took place, "limited success" was achieved

because the schemes were led by “supervisors who frequently believe that workers do not have insights to offer” (Joffe, *et al.*, 1995: 86; 194-5). This historically racist, managerial prerogative in South African industrial relations was blamed as an obstacle to introducing post-Fordist organisational restructuring where workers took part in decision making and were rewarded through skill-acquisition (Joffe, *et al.*, 1995: 193).

Of course, the problem with the ISP’s perspective starts with its naive, post-Fordist theoretical assumptions that some flexibility is good, while other flexibility is bad. In fact, the two kinds of flexibility, work process and numerical flexibility, occur simultaneously with lean production: intensify work in the core, downsize, and then casualise (see Bezuidenhout, 1997; Hyman, 1988; Rainnie, 1991; for another critique see Bell, 1995).

Nevertheless, the concept of flexibility at the workplace level entered the debate through the work of the ISP. And, the ISP’s approach moved the emphasis from demand-side driven policy proposals of the MERG which centred around minimum wages, skills acquisition, and a public works programme, to supply-side measures to “meet the global challenge” which argued that only through improving productivity and competitiveness would skills, wages, and, eventually, employment levels increase. Critically, then, the introduction of the terminology of ‘flexibility’ entered debate coupled with the imperative of global competition.⁴

At the same time, debates initiated by business and by policy technocrats in the de Klerck government articulated a de-regulationist language of flexibility. For instance, negotiations in the National Manpower Commission reflected this preoccupation. The Normative Economic Model also introduced the seeds of proposals for ‘labour market flexibility’ based on the assumption that a ‘free’ labour market--one unfettered by state interference--would generate *natural* employment growth.

Early de-regulation policy, 1990-1993

Although in the early 1990’s, the language of flexibility had not yet become a national preoccupation, the assumptions underpinning this later debate were being formulated during this period. At the same time that debates over macro-economic frameworks were being contested within the ANC, for instance, the tripartite NMC discussed processes to exempt small businesses from labour legislation:

Though it is generally accepted that a country’s economy cannot function properly without a reasonable measure of regulation, the application of regulations can, under certain circumstances, actually have an inhibiting influence on the development of private entrepreneurship, the promotion of competition and the creation of job opportunities. It is important that *all such inhibiting factors be removed or reduced*, where possible, in order to promote the expansion of the business sector... The needs and interests of the unemployed should also be considered in addition to the interests of employers and employees (NMC Project Committee on Small Business, 1990: 2; italics added).

The document proposed that certain ‘softer’ dispute resolution mechanisms be considered for small business in terms of the Labour Relations Act of 1956, and that Industrial Council agreements, especially agreements in terms of minimum wages, not be extended to non-parties, or, alternatively, to micro-businesses.

⁴While moving toward an emphasis on global competitiveness, the ISP, however, still held the role of the state as central in the process (Joffe, *et al.*, 1995:109-113).

COSATU countered that although the federation had “no objection in principle to the accommodation and stimulation of the small and micro-business sector”, it did “not envisage that the accommodation of the sector in terms of labour legislation [would] make a significant impact on the growth and development of this sector, compared to other measures which could be taken” (COSATU, 1990: 1).

Hence in 1990, employer interests within the NMC suggested de-regulation as a means of encouraging growth of small business, and small businesses were depicted as a viable arena for job creation. Business’ language banked on emotive power of sympathy for the downtrodden unemployed, as distinct from organised labour. Labour standards as legislated by the state were considered to be “inhibiting factors” to growth and “expansion”. According to the language of the free market, the supply and demand of labour would normally, if left to its own processes, reach market related equilibrium.

In 1993 the Normative Economic Model (NEM) also suggested deregulating certain areas of the labour market. It dealt specifically with the extension of Industrial Council agreements. The authors of the NEM used the word ‘rigidity’ with negative meaning to frame their argument:

[The industrial council] system [of negotiating minimum wages] has been much criticised for the *rigidity* of these councils and for the fact that their activities may give rise to wages that are not justifiable in economic terms... A centralised wage determination process creates *rigidity in the labour market*, because it *impedes labour mobility*, does not take into account the production performance and profitability of individual enterprises and seeks to involve the entire business sector in wage disputes (NEM, 1993: 48-49; italics added).

This view assumed that the state, seen here as the sole agency responsible for regulation, was *external* to the labour market, and that the labour market was a bounded institution in reality, not only in social analysis. If the labour market ran on its own internal dynamics of equilibrium, outside of state regulation, then to *encourage* the functioning of the labour market was antithetical to its natural growth process, and, as if by logical conclusion, would therefore, impede ‘growth’.

The NEM argued that a decentralisation of collective bargaining was important if the economy was to create jobs. “[N]ormal market forces in the labour market” should be introduced, which would be essential “for the promotion of employment-creating economic growth and real wage improvements - which will also serve the interests of employees in the longer term” (NEM, 1993: 49). This is in stark contrast to the MERG proposals, which called for a national minimum wage. A free market for labour, the NEM argued, would eventually create jobs but also *raise wages*, which the NEM granted would be beneficial to capital in the long term. Here, again, wage increases would follow from expanded economic growth.

While the explicit use of the term ‘flexibility’ did not appear in this early debate, one can see the formulation of a neo-Keynesian and neo-liberal policy dichotomy. This opposition focussed on the role of the state as protector of labour standards versus one as inhibitor of a natural process of growth. We see, however, that in debate over industrial and economic policy, the ‘language of flexibility’ already began to converge toward neo-liberalism as both the ISP’s post-Fordist version and the de-regulationist perspective rested on assumptions of goals of global competitiveness. The ISP introduced flexibility as a buzzword linked to

global competition, but uncritically understood flexibility to mean ‘work process’ flexibility. Importantly, the labour market had not yet become singled out as a locus of debate on unemployment.

In 1994 the ANC came to power based on its election manifesto, the Reconstruction and Development Programme (RDP) a model of social redistribution based on an active state. The RDP used a watered down (after eight drafts) Keynesian approach. However, the new government was criticised from the Left as moving rapidly towards the right with the publication of the RDP White Paper, cynically called the “reconstruction of a development vision” by some critics (Adelzadeh & Padayachee, 1994).

In November 1995, the new Labour Relations Act became an act of Parliament. It legislated rights of collective action and rights to substantively and procedurally fair labour practices and favoured centralised collective bargaining and a workplace based on co-determination between workers and management. While codifying rights won by organised labour previously, the new LRA, however did not incorporate labour’s demands for mandatory centralised collective bargaining. This seems to suggest that issues of regulatory ‘rigidity’ were being discussed in these negotiations at Nedlac.⁵

The ISP’s version of competitiveness was compatible with assumptions underlying the LRA. In this vision, workplace forums would become central to facilitating work process flexibility. Ironically, the workplace forum, a cornerstone of the LRA, would become a white elephant. It is into this context that an explicit use of the term ‘flexibility’ was introduced. The ‘flexibility’ debate accelerated in 1996 and ‘labour market flexibility’ came to take on other meanings.

SECTION 2: De-regulation versus minimum standards, 1996-1999

The South Africa Foundation, 1996

In February 1996, the South Africa Foundation (SAF)⁶ published a proposed macro-economic strategy for South Africa which explicitly called for ‘labour market flexibility’. While using the broad term, implied in their use of flexibility was wage and numerical flexibility. The SAF blamed “labour market inequalities and institutional rigidities” on past racial politics of the South African state, including legislation institutionalising a colour bar and differential dispute settling mechanisms which had “protected white workers from black

⁵Suggestively, three months later in February 1996, a business think-tank released a proposed macro-economic framework backing its anti-bargaining council position.

⁶The South Africa Foundation acted as a lobby group against sanctions in the 1980s, but became “virtually defunct” in the early 1990s. The Brenthurst Group, a group of high powered financial and mining business leaders, played a significant role in the revival of the SAF into a very powerful lobby group and think tank for big business in South Africa. Fifty-three of South Africa’s top companies, certain foreign companies, and even certain South African state owned companies are members of the SAF (Baskin, 1996:7-8; COSATU, 1996). Harry Oppenheimer (Anglo) acted as the leader of the Brenthurst Group. The group was named after the residence of Oppenheimer and became prominent when it became known in the press that this group had been consulted on a regular basis by President Nelson Mandela before important economic decisions. Other members of the group were Julian Ogilvie-Thompson (Anglo), Conrad Strauss (Standard Bank), Marinus Daling (Samlan), Mike Levett (Old Mutual), Clive Menell (Anglovaal), Anton Rupert (Rembrandt), David Brink (Sanlam) and Warren Clewlow (Barlows) (Baskin, 1996:19).

workers". The SAF mentioned other state regulatory mechanisms such as forced removals, the dispossession of land, and group areas as examples of institutionalised discrimination which contributed to the process skewing labour market participation. The SAF also pinpointed the industrial council system which had "contributed to the inflexibility of the collective bargaining structure" by extending wage agreements to non-party employers (SAF, 1996:83-84).

The document also blamed the high rate of unemployment on the high cost of labour in South Africa. Coupled with high wages, the SAF argued that South Africa's productivity record left the country competitively disadvantaged in an environment of increasing international competition, and did not contribute to sustainable levels of economic growth (SAF, 1996:89).

As the title of the SAF chapter on labour market policies indicated, the focus was on a movement away from a "rigid" labour market to a "flexible" one. The SAF proposed a two-tier labour market to address the fact that wages were generally too high (SAF, 1996). Keeping in line with the assumption that lower wages would increase employment, the proposals explained how the second tier would differ from the first:

- In terms of the enhancement of numerical flexibility, workers in the second tier can be retrenched for commercial reasons. "There should be no automatic right to severance pay and no statutory procedural obligation prior to retrenchment";
- "Non-wage costs" are not to be "imposed" by the state or by law, although workers would be allowed to negotiate for better wages;
- Workers in the second tier "would be liable for immediate dismissal for participation in unprocedural [strike] action" and;
- "Employers in the second tier should be automatically exempt from all minimum standards legislation, other than those dealing with the most fundamental issues" (SAF, 1996:103).

The authors were quick to acknowledge that such a system had already existed to a certain extent. They argued that the workers in the formal sector were members of the already established first tier, while "farm workers, those in the informal sector, and the unemployed [!]" were included in the second tier (SAF, 1996:104). In terms of labour market flexibility, the proposals in the *Growth for All* document did not favour flexibility based on the skills of the workers, but rather the flexibility of employers to determine wages and numbers. The key issue was not the more effective organisation of production, but the cost of labour as a commodity in the production process, in keeping with its neo-classical economic assumptions.

In reaction to the *Growth for All* document, the labour caucus in Nedlac released a response entitled *Social Equity and Job Creation: The Key to a Stable Future*. The document reaffirmed the approach set out in the RDP. It argued that "growth can... enhance social equity... in South Africa, when it is labour absorbing growth" (Labour Caucus, 1996: 4). Interrogating how the concept 'economic growth' was used, the document pointed out: "It is regrettable however that the debate on growth has been used by sections of the business community to launch a systematic attack on organised workers and on social equity, as if the goal of economic growth is not precisely to foster social equity" (Labour Caucus, 1996: 5).

The document commented specifically on the perspective put forward in the South Africa Foundation's *Growth for All*:

...the business community represented by the SA Foundation has launched a well-financed and well publicised campaign to cling onto their wealth. They do so by creating a range of red-herrings, such as the

alleged 'inflexible' labour markets and the alleged 'labour elite'. In doing so, they seek to let poor people pay for growth and development, whilst keeping the wealth and power of the privileged intact (Labour Caucus, 1996: 6).

Marais described the Labour Caucus' response as "a reactive intervention prompted by the neo-liberal arrogance of the South Africa Foundation's *Growth for All* plan" (1998:160). Indeed, in arguments in the media, Labour consistently countered with evidence of economic inequality when confronted with 'flexibility' arguments, but did not challenge the assumptions behind those versions of flexibility. By now, business had developed a consistent alternative model which linked their arguments of flexibility (now, particular forms of flexibility) to the hard-to-ignore imperative of globalization.

The Labour Market Commission, 1996

In June 1996, the Labour Market Commission, comprised of representatives aligned to both labour and capital, published its report. A compromise position between the viewpoints of the two opposing interest groups, the report introduced the concept 'regulated flexibility'. The ILO played a central role in research support for the Labour Market Commission. It added a new dimension to the South African flexibility debate by arguing that the South African labour market was more flexible in world standards than some commentators were willing to admit. Guy Standing, director of labour market policies for the ILO, put it as follows:

South Africa has a flexible labour market. In some respects it may be too flexible... It is almost comical to describe SA as having employment inflexibility. Many workers have little employment protection, retrenchments are fairly easy and widespread, notice periods are short or non-existent, and most firms can resort to temporary or casual labour and, if need be, labour contracting - the world's most flexible labour system and spreading like wildfire.⁷

Standing also argued that the rigidities of wage flexibility have been overemphasised and that South Africa had one of the longest working weeks in the world.⁸ This implied that employers used temporal flexibility quite often to adapt to increases in demand for products or services, instead of numerical flexibility. Horwitz (1995) found a similar trend in his study of labour market flexibility in South Africa. In terms of work process flexibility, South African manufacturing is however "behind the times in many places".⁹

In an article published in the *Mail & Guardian* in June 1996, Guy Standing questioned the evidence provided by advocates of labour market flexibility: "If you say you have an inflexible labour market often enough, people will believe it even if they have no evidence."¹⁰ He pointed out that it was ironic that the Labour Relations Act was blamed for inflexibility and job loss even before it was implemented. He also argued that bargaining councils covered a relatively small proportion of the entire labour market, and that "[t]housands of exemptions [were] granted by the Department of Labour every year".¹¹ He asserted:

⁷Standing, G. *Business Day*, 29 June 1996.

⁸*Ibid.*

⁹*Ibid.*

¹⁰Standing, G. "Social pact to get SA back on track." *Mail & Guardian*, 28 June 1996.

¹¹*Ibid.*

Commentators should stop parroting unproven claims that do a disservice to the country's economic prospects. The labour market is flexible, in most senses of that overused term. Most workers face employment and income insecurity, while wages at the bottom are low and unprotected by the standards of many countries. To the Jeremiahs who assert otherwise, at least demand the evidence.¹²

The report of the Labour Market Commission (LMC, 1996) drew heavily on the data supplied by the ILO. The report shares certain characteristics with Standing's arguments:

While the increasingly globalized economy demands high levels of adaptability or flexibility on the part of the labour market and its participants, South Africa's commitment to democracy requires that this must be compatible with labour market security... This entails the protection from arbitrary loss of employment, protection against arbitrary reductions in income, protection against dangerous and unhealthy work practices, and protection against discrimination (LMC, 1996:2).

The commission agreed with the ILO that South African debates on labour market flexibility did not take the multi-dimensionality of different forms of flexibility into account. It disagreed with the notion that policy options were an either/or type choice between regulation and decentralisation. It supported an increased reliance on industrial democracy through collective bargaining mechanisms, workplace forums and other institutions to facilitate more effective ways of organising production (LMC, 1996:2- 3; 85-87). The regulation of labour market flexibility had to, according to the LMC, take place according to "voice regulation". This "implies that labour market practices and changes are managed through bargaining between representatives of potentially conflicting interests, which must embrace those on the margins as well as established vested interests" (Standing, Sender & Weeks, 1996:10).¹³

The flexibility concept also stood central to the Commission's requirements for a "labour-absorbing growth strategy". The report asserted that:

... reforms in the labour market must promote flexibility where flexibility is understood as a multi-faceted concept that is not merely a euphemism for lower real wages or weakened unions, and is furthermore consistent with labour market security (LMC, 1996:8).

The report distinguished between three types of labour market flexibility, employment flexibility (which incorporates numerical and temporal flexibility), wage flexibility, and work process flexibility. While promoting work process flexibility, it argued that each form of flexibility had advantages but could also be taken too far (LMC, 1996:11). The ILO position is quoted to illustrate the approach:

The competing or conflicting set of concerns for employers and for workers both need to be taken into account, as do those of the more marginalised or vulnerable on each side of the spectrum. They cannot be given their due weight if one party or the other is enfeebled or fragmented. This is ultimately why 'voice' mechanisms, or representative institutions, are required, even though the neo-liberal supply side advocates of flexibility and 'de-regulation' regard institutions and regulations as rigidities and the main source of inflexibility. Those sirens of de-regulation are wrong, because *unless flexibility is bargained between strong negotiators, opportunism would lead to short-term gains by one side or another* - usually large-scale, powerful employers - that would have long-term adverse consequences for dynamic efficiency (LMC, 1996:12; italics added).

The industrial relations scenario envisaged by the Labour Market Commission synchronised with the regime promoted by the Labour Relations Act, 1995, including the promotion of

¹²*Ibid.*

¹³All labour markets are regulated, be it by the market or by statutory regulations. According to Standing, voice regulation is seen as the third option, with collective bargaining as the central focus.

centralised collective bargaining (especially in terms of bargaining councils and statutory councils) and the promotion of industrial democracy in the workplace centred around the newly constituted workplace forums. Labour market flexibility must be “bargained”, not one imposed by the state, but facilitated by co-operation between the state, labour and capital in corporatist institutions. The LMC introduced the concept ‘regulated flexibility’ to signal the shift in debate toward this ‘balanced’ liberal democratic view: Regulated flexibility was meant to protect workers’ security on one hand while allowing employers strategies to reorganise to compete globally. However, other contingencies were to overshadow these attempts at compromise.

Growth, Employment and Redistribution (GEAR), 1996

The “unveiling” of the government’s new macro-economic policy, Growth, Employment and Redistribution (GEAR), in mid-1996, by the newly appointed minister of finance, Trevor Manuel, immediately sparked controversy which overtook the LMC’s report. The business sector welcomed it, but the labour movement, and especially COSATU, reacted strongly against the new programme. It was seen as directly opposed to the principles of the RDP (Bond, 1996). Regardless of the political disagreements with this macro-economic strategy, employers repeatedly used the GEAR document to tie the ANC government to a commitment to labour market flexibility. However, GEAR did not call unequivocally for a de-regulationist ‘labour market flexibility’.

The GEAR chapter on the labour market acknowledged a segmented labour market: “unregulated low wage employment has increased significantly since the 1970s, now accounting for an estimated one-third of all job opportunities.” It also argued that “[i]rregular, sub-contracted, out-sourced or part-time employment on semi-formal contractual terms” was increasing. This resulted in “a growing gap between the wages and benefits in the regulated and unregulated parts of the labour market.” But, it cautioned that certain regulations raised “the costs of job creation” in which case employers turned to “unregulated forms of employment” (GEAR, 1996).

GEAR argued that increases in wages should not outstrip increases in productivity. Despite the fact that GEAR was later used to support arguments for numerical and wage flexibility, it consciously used the language of the Labour Market Commission. The document committed the government to the pursuit of

... a policy of *regulated flexibility* in managing the labour market. This entails the regulation of the labour market in a manner that allows for flexible collective bargaining structures, variable application of employment standards and *voice regulation* (GEAR, 1996; italics added).

On the other hand, GEAR proposed a model (under the heading of “A more flexible labour market”) which recognised variation in the levels of wages and conditions across different sectors and regions and cautioned the state’s interference to extend bargaining council agreements (GEAR, 1996). On opportunities for “new entrants to the labour market”, GEAR mentioned the possibility of “a less onerous wage schedule for young trainees, increased incentives for more shifts, job-sharing and other measures to support greater employment flexibility.”

Even though GEAR shifted its language of the labour market between regulationist and free market, it was used extensively after 1996 to argue for a de-regulated labour market by protagonists of flexibility. These arguments drew the same responses from the antagonists,

who argued that the labour market was indeed flexible. The unveiling of GEAR also led to considerable tensions within the tripartite Alliance - specifically between COSATU and the ANC. While COSATU attacked GEAR as a whole, there seemed to emerge a schism in government between the Department of Finance and the Department of Labour. While the Finance Department championed the implementation of GEAR, along with the then Deputy President's office, the Department of Labour used the language of the Labour Market Commission - that of 'regulated flexibility' to reassert legislating minimum standards. Commenting in hindsight, a labour reporter later remarked:

The labour market commission report's release was overshadowed by the unveiling of Gear, which implicitly accepted the commission's major recommendations relating to labour market flexibility, negotiation of a social accord on employment and growth and human resource development... Although the proposals were, on the surface, the same in Gear and the commission report, the drafters of Gear changed the language to hint at a different nuance. This resulted in a change in emphasis in Gear - away from regulation towards flexibility.¹⁴

Maria Ramos, Director General of the Department of Finance later publicly denied that GEAR had created tensions between her department and the Department of Labour. According to a *Business Day* report, Ramos said that it was "nonsense that the labour department was being undermined by finance". Ramos pointed out that "Gear was a broad macroeconomic strategy with the labour market section *brief and vague* so that the labour department could develop its own policies. SA should not be a low-wage economy and basic worker rights should be protected"¹⁵. Precisely this brevity and ambivalence of GEAR's labour market language allowed different interpretations of flexibility; however, in the context of the whole macro-economic strategy, 'flexibility' translated as de-regulation for global competition.

In September 1996, the *Business Day* reported that the Labour Market Commission was under review by the Department of Labour "against the backdrop of government's commitment to its macroeconomic framework". The article commented specifically on "core recommendations related to mechanisms to achieve labour market flexibility". The reporter held the opinion that "the Commission's report does not contradict, but complements the macro-economic framework."¹⁶ This seemed to be the line put forward by the Department of Labour. Early in 1997, the then Minister of Labour, Tito Mboweni, was quoted as saying that "the ANC did not conflate flexibility with deregulation of the labour market. A programme of action had to ensure flexibility was coupled with labour security".¹⁷ Hence LMC's seemingly labour friendly language was used in GEAR and by the Department of Labour to appease Labour's concerns. The effect was to change labour market language: the debate conclusively shifted from issues of inequality in the labour market to a narrow focus on flexibility and efficiency to promote competitive advantage.

In the meantime, 'the language of flexibility' became more dominant in the media. For example, the 1996 wage and productivity agreement between the NUM and the Chamber of Mines was used as an example of 'labour market flexibility' in a *Business Day* editorial. The

¹⁴Grawitzky, R. "Labour and business pushing government to take a stand." *Business Day*, 10 July 1997.

¹⁵Grawitzky, R. "Finance not undermining labour." *Business Day*, 14 July 1997, italics added.

¹⁶Grawitzky, R. "Review committee starts work today." *Business Day*, 13 September 1996.

¹⁷Grawitzky, R. "ANC sets dealines for implementing macroeconomic strategy". *Business Day*, 22 January 1997.

editorial praised the agreement as being ‘decentralised’ and as a recognition of “the need for flexibility in this highly competitive era... The agreement recognises the existence of different needs and priorities of individual operations, which is what modern labour market policy demands.”¹⁸ A report in October 1996 gives an idea of how the language of flexibility was presented in the positive, self-evident jargon of consultants. The article linked flexibility to the multi-skilling of management:

The profile of [the new business] leader - typically a CEO - is one based on his or her ability to work in a team, able to forsake old hierarchical structures, be aware that corporate secrecy is no longer tenable and be a jack of all trades... Flexibility is the new touchstone to corporate success, particularly in the SA market where an ability to negotiate with a growing labour consciousness is a necessity. More and more, SA business leaders are tapping into the idea of kick starting productivity by offering pay incentives... The effects of performance-related remuneration are also being absorbed at middle management level where mediocrity is a byword in SA business circles.¹⁹

Another example of the common sensical ‘language of flexibility’ suggests benefits to the worker, the country, and the economy:

Flexibility of employment is widely thought to be a good thing. If a job can be shared between two people, it provides each with income and turns an unemployed person into a taxpayer... It creates greater efficiency and competitiveness by doing away with overtime pay and allowing the easier management of peaks and troughs.²⁰

By the end of 1996, the language of flexibility had become quite common - to such an extent that Guy Standing felt it appropriate to comment explicitly on how the South African government responded to the ‘flexibility’ lobby groups. He argued that, in the 1990s, “most governments are almost prisoners of international opinion... Economic policy is determined not only by realities, but by impressions that filter through a small community of commentators”.²¹

By the beginning of 1997, commentators began to introduce into arguments against labour market flexibility, the *social* costs of flexibility, including reproductive costs and social conflict²²; others challenged a simplistic understanding of productivity based solely on labour costs and pointed to inefficiencies in outdated management practises.²³ However, these additions did not substantially shift debate on labour market flexibility.

Hence 1996 saw the solidification of debate around labour market flexibility. Two positions became articulated: de-regulation and limiting wage costs versus some employment flexibility combined with basic labour rights. Both sets of terms, however, rested on unexamined assumptions of globalisation. The flexibility debate served as a catalyst to move policy debates farther away from redistributive models. Finally, with the fight within the tripartite Alliance over macro-economic basics flaring with the introduction of GEAR, labour market flexibility became the arena of political contestation *par excellence*. COSATU’s muscle flexing over flexibility seemed more about a reactive shift in interest politics around

¹⁸Editor’s comment. *Business Day*, 17 September 1996.

¹⁹McKay, D. “Flexibility now a key attribute for new SA’s business leaders.” *Business Day*, 3 October 1996.

²⁰Anon. “Report casts doubt over flexible employment.” *Business Day*, 5 December 1996.

²¹Standing, G. “Tackling the jobless” *Mail & Guardian*, 26 November 1996.

²²Baskin, J. “Pay the citizens of SA.” *Mail & Guardian*, 24 January 1997.

²³Webster, E. and Macun, I. “Productivity counts-not labour costs”, *Mail & Guardian*, 7 February 1997.

GEAR.

Basic Conditions of Employment Bill, 1996-1997

In the above section we argue that the language of flexibility became a central concern in public debates in 1996. This language was linked to attempts to influence policy agendas and outcomes. Nowhere is this better illustrated than in the process of negotiations around the BCEA during 1996 and 1997.

In February 1996, just as the SAF released its *Growth for All* document, the Department of Labour tabled its Green Paper for a New Employment Standards Statute meant to replace the previous Basic Conditions of Employment Act, 1983 and the Wage Act, 1957. Using similar language to the soon-to-be released Labour Market Commission Report, this document argued that labour market flexibility must be introduced in order to facilitate job creation and better South African competition in the world economy and to “guarantee basic rights for all workers”. It also proposed a model of “regulated flexibility” which had two components: “the protection and enforcement of a revised body of basic employment standards; and rules and procedures to vary these standards through collective bargaining, sectoral determinations for unorganised sectors and administrative variations (exemptions)” (Republic of South Africa, 1996: 9). It set as one of its principal considerations to improve the protection of vulnerable workers. Its main focus of flexibility revolved around allowing variation in arrangements around working time and allowing variation through collective bargaining.

The Employment Standards Statute entered negotiations in Nedlac in 1996 (Republic of South Africa, 1996). However, the introduction of GEAR overshadowed these negotiations because of tensions between COSATU and the ANC.

COSATU sent a negotiating team for Employment Standards into Nedlac which later became known as the “B-team”. Towards the middle of 1996, the negotiators drew up a list containing issues of possible agreement. This was rejected by both the Department of Labour, as well as the “B-team’s” principals. The Department of Labour, as well as the Ministry of Labour, felt that the labour negotiators had “conceded too much to business”. However, when GEAR entered the picture in mid-1996, “their view was later to shift again”.²⁴

Because of the “unmandated” position of the “B-team” negotiators, as well as the “destabilising effect” of the government’s constant tabling of “the first in a long line of draft bills”, the negotiations around minimum standards “unravelling” towards mid-1996.²⁵ When negotiations opened on the issue again at the beginning of 1997, it was a whole new ball game. This time around, the ‘flexibility’ debate had become much more prominent, and the relationship between COSATU and the ANC, and consequently COSATU’s relationship with the Department of Labour, had become much more complex. The labour caucus sent in their “A-Team”, led by Ebrahim Patel, who had headed the labour negotiating team on the Labour Relations Act.²⁶

²⁴Grawitzky, R. “Cosatu unlikely to win on the streets.” *Business Day*, 4 April 1997.

²⁵Grawitzky, R. “Cosatu unlikely to win on the streets.” *Business Day*, 4 April 1997.

²⁶*Ibid.*

In April 1997, a new draft, the Basic Conditions of Employment Bill, was made available to the public.²⁷ However, the parties found it impossible to reach agreement. Two *Mail & Guardian* reporters predicted that the negotiation process in Nedlac was “set to make the negotiations around the Labour Relations Act look like a friendly joust.” But, they argued, “a compromise is vital if GEAR [was] to stay on track.”²⁸ The reason they gave for the anticipated conflict over the Basic Conditions of Employment Bill was the following: “[T]his one’s about money... And lots of it”. Providing ‘evidence’, but not citing sources, they claimed:

Evidence points to a 20% increase in business costs if the working week is indeed cut down to 40 hours as demanded by labour, and part-time employees are given the same benefits as full-time staff. The government won't be spared either - higher staff overheads could have severe implications for the Budget deficit target.²⁹

The relevance of the Basic Conditions had, then, shifted away from the protection of ‘employment standards’ for unorganised workers and toward positioning around GEAR. The language used by the journalists of a traditionally progressive newspaper indicates the level to which the language of flexibility had become self-evident, the terms no longer debatable.

In February, COSATU threatened a national stay away, planned for May 12th that year. A *Business Day* report put this in the context of “speculation within labour circles that the cabinet had given increasing prominence to labour market flexibility and deregulation”. The report also quoted a “labour source”, who said that “government was leaning towards the employer position, raising concern that existing rights would be taken away”.³⁰ The union federations in the NEDLAC labour caucus seemed to agree on the opinion that the labour market was flexible, but disagreed about the proposed stay away. FEDSAL general secretary, Dannhauser van der Merwe, said he “did not believe that the labour market was as inflexible as employers made out”. He also pointed out that “certain industrial council agreements already provided for flexibility by varying standards”.³¹ Quoting “union sources” to illustrate COSATU’s dilemma, Grawitzky pointed towards the intermeshing of debates on labour market flexibility and GEAR at the time:

A union source argued Cosatu would not embarrass government by continuing to lash out openly at Gear. But employment standards cannot be seen in isolation from Gear. Another official saw the action as an attempt to focus on labour market flexibility, one aspect of Gear still unresolved. He said labour realised it could not successfully challenge deficit reduction, but issues like flexibility and hours of work would strike a chord with workers.³²

The debate on flexibility, then, couched contestation over GEAR. Labour used the negotiations around the Basic Conditions of Employment Bill not so much to challenge the parameters of what labour market flexibility meant, but to poke holes in aspects of GEAR. By doing this, COSATU reinforced the perception that GEAR definitively supported one version of flexibility.

²⁷Grawitzky, R. “Jobs bill seeks to improve conditions.” *Business Day*, 18 April 1997.

²⁸Wackernagel, M. & Haffajee, F. “Jobs Bill row grows.” *Mail & Guardian*, 18 April 1997.

²⁹*Ibid.*

³⁰Grawitzky, R. “Cosatu threatens national stay away over legislation.” *Business Day*, 14 February 1997.

³¹Grawitzky, R. “Nedlac labour component divided over stay away.” *Business Day*, 28 February 1997.

³²Grawitzky, R. “Cosatu unlikely to win on the streets.” *Business Day*, 4 April 1997.

Not surprisingly, representatives from business immediately used GEAR in their arguments. Anticipating the “job summit” recommended by the Labour Market Commission, the South African Chamber of Business (SACOB) argued that the “government’s job summit... would have to test whether future labour legislation was compatible with the Growth, employment and redistribution strategy’s (Gear’s) goal of moving towards a flexible labour market.” In a statement, Raymond Parsons referred to the employment standards draft legislation specifically. He said that it would be “an acid test of the measure of commitment of government to the objectives of Gear regarding employment creation”.³³

Ann Bernstein from the Centre for Development and Enterprise, another big business think tank housed in the same building as the South Africa Foundation, argued that, although GEAR “had been declared ‘non-negotiable’ by President Nelson Mandela and Finance Minister Trevor Manuel”, the government would have to show “steely determination and strong leadership” to maintain consistency in GEAR. Within this framework, she saw ‘labour market flexibility’ as “the most effective and sustainable means of reducing inequality”.³⁴ Later that year, Anglo American deputy chairman Leslie Boyd also added his voice to the calls, saying that, in its present form, the Basic Conditions of Employment Bill was “clearly a step in the wrong direction”, particularly in terms of labour market flexibility. Boyd was quoted as saying: “As I said to the minister, he can have his bill or he can have jobs. He cannot have both.”³⁵ Since labour market flexibility in GEAR “had not even yet been tried”,³⁶ the macro-economic strategy should not be criticised for a lack of growth in employment.

Labour market flexibility became the *cause de celebre* of 1997 as political jousting between labour and government over GEAR was transposed to debate over the Basic Conditions of Employment Bill. Government’s previous measured approach to flexibility which attempted to “balance” wage, work time and numerical flexibility with job security faded away as COSATU’s back arched to fight.

In July 1997, Mbhazima Shilowa, then the general secretary of COSATU, responded to the ‘flexibility’ arguments, arguing that business wanted to use flexibility “as an instrument to reintroduce the dual labour market”, which, according to him “was a central feature of apartheid labour legislation...” “In other words,” he said, “conditions of employment would be changed willy nilly to suit employers’ desire for cheap labour under the guise of global competitiveness.”³⁷ Shilowa, then, countered by identifying business’ call for flexibility as lowering employment standards and conditions and the impact it would have on an existing segmented labour market. Other Labour commentators suggested similarly that in South Africa, “economic history has been afflicted with amnesia.”³⁸:

Understandably, the protagonist behind the obliteration of this past is business... Wielding simplistic economic theory that propagandistically highlights an inverse relationship between improved labour

³³Grawitzky, R. “Parsons wants laws tested for labour flexibility needs.” *Business Day*, 10 April 1997.

³⁴Bernstein, A. “Labour market flexibility essential to economic success.” *Business Day*, 8 May 1997.

³⁵Beresford, B. “Gear ‘may not create jobs if labour market is not right’.” *Business Day*, 21 August 1997.

³⁶*Ibid.*

³⁷Shilowa, M. “Cosatu retreat would betray workers,” *Business Day*, 25 June 1997.

³⁸Satgar, V. “Towards a better life for all. *Mail & Guardian*, 4 July 1997.

standards and job creation has allowed business to muster a chorus of voices against the “spectre” of improved labour standards being demanded by labour.³⁹

While Labour tried to move the debate back to inequality and labour market segmentation, in mid-1997, the IMF and the World Bank entered the ‘flexibility’ debate more openly. A report in the *Business Day* quoted sources as saying that the IMF communicated to government that, although they were satisfied with GEAR, “there was concern that words were not translating into action, especially on issues relating to labour flexibility.” They also “urged government to be more flexible on wages and conditions, and specifically to institute a low minimum ‘training wage’.”⁴⁰

Again in September, as negotiations on the Basic Conditions of Employment Bill entered their final stage, the IMF and the World Bank criticised the “government’s labour market policies and the proposed employment bill.” They claimed that these policies “impeded” employment. They argued that the “lack of flexibility in the SA labour market is identified as a key flaw”. Also, “the ‘flexible sector’ was very small compared to those sectors covered by wage regulating measures in the form of wage determinations or bargaining council agreements”. The main complaint rested on the Labour Relations Act “provision providing for the extension of council agreements to non-parties” as being “probably a key reason for high unemployment”. The World Bank said that “extending council agreements distorted wage levels and kept them above market levels”,⁴¹ once again re-iterating the standard list of neo-liberal prescriptions for economic ills.⁴²

Seeming to follow from flexibility debates, in July 1997, a process was set in motion to amend the Labour Relations Act in order to give the Minister of Labour more discretion when extending Bargaining Council agreements to non-parties.⁴³ By September 1997, there seemed to be a move towards a compromise of the Basic Conditions of Employment Bill.⁴⁴ Since business and labour were not able to reach agreement on several issues in the Nedlac negotiations, COSATU engaged in bilateral negotiations with the ANC. In October, COSATU called off strikes, after they had “reached a provisional agreement” on the Basic Conditions of Employment Bill with the ANC and the SACP.⁴⁵ Consequentially, the Bill was tabled in Parliament, to be discussed by the labour portfolio committee. When introducing the Bill to the Council of Provinces, Tito Mboweni motivated: “We need to compete, not on the basis of low wages and poor conditions, but on the basis of increasing our productivity and quality.”⁴⁶ Hence during the second half of 1997 the language of flexibility became

³⁹*Ibid.*

⁴⁰Barber, S. “IMF worried about SA jobs.” *Business Day*, 29 July 1997.

⁴¹Grawitzky, R. “World Bank criticises labour policy.” *Business Day*, 25 September 1997.

⁴²These prescriptions filtered into the region (hardly describable as having inflexible labour markets!) as, reporting on a Southern African Development Community conference in Harare, a *Mail & Guardian* reporter wrote: “In answer to how the SADC economies could become more competitive, the delegates were unanimous in their calls for lower barriers to entry, tax incentives and flexible labour markets” (Wackernagel, M. “Openness-the only way to go.” *Mail & Guardian*, 23 May 1997).

⁴³Grawitzky, R. “Labour amendments being drafted.” *Business Day*, 11 July 1997.

⁴⁴Grawitzky, R. “Progress in talks on employment bill.” *Business Day*, 10 September 1997.

⁴⁵Grawitzky, R. “Cosatu calls off planned strikes after agreement on employment bill,” *Business Day*, 23 October 1997.

⁴⁶Grawitzky, R. “Mboweni identifies key flaw in employment bill.” *Business Day*, 19 November 1997.

entrenched in the goals of global competitiveness, leaving an argument for minimum standards without much paradigmatic weight.

Labour seemed more defensive than offensive during this period. Never really taking head on the assumptions behind the flexibility debate in the public domain, Labour lost track of it in fights over GEAR. By 1998 and 1999 few would argue that despite debate centring around rhetoric, labour market flexibility was here to stay to inhabit policy processes.

The Jobs Summit, 1998

The de-regulationist language of flexibility was used in the mass media to influence negotiations around the Basic Conditions of Employment Bill. In the process, the labour market became seen as an arena to trade off minimum standards legislation with employment creation. When the Job Summit, proposed by the LMC, finally became a reality (scheduled for October 1998), these assumptions determined the parameters of debate there.

In January 1998, Raymond Parsons was quoted in his capacity as business co-ordinator in Nedlac: “‘The flexibility of the economy’ is a portmanteau term for the degree to which an economy can escape the necessity of accepting lower incomes... There is no more powerful form of delivery than employment growth. The goal of ‘a more flexible labour market’ in GEAR remains an elusive one, especially after experience with the basic conditions of employment legislation last year. We must not underestimate the extent to which raising the costs of employment inhibits job creation in SA.”⁴⁷ And so, in anticipation of the long awaited Job Summit--announced by President Mandela in his opening of Parliament address--all parties took 1998 to reconfirm their stances on labour market flexibility.

Business still called mainly for wage flexibility. Its mantra, that with flexibility, job growth would happen, and that business would champion small business in this pursuit.⁴⁸ Government argued also that flexibility created jobs. Finance Minister Trevor Manuel contested high unemployment figures and complained that the Central Statistical Service was not picking up “major changes in the economy, such as widespread use of independent contractors and growth in small businesses”. Manuel called these “huge changes”. In the same article, “Standard Bank chairman Conrad Strauss said there had been real progress in implementing Gear, except in the area of labour market flexibility...”⁴⁹ Several other commentators from business, as well as the Democratic Party, echoed this sentiment.

In April 1998, the South Africa Foundation released a document again calling for more flexibility in the labour market. According to the SAF, the International Monetary Fund argued “that the key differences between South Africa and other developing countries whose economies have grown rapidly is lack of flexibility in our labour market” (SAF 1998:9). Again, as in 1996, “union activity” was blamed for unemployment. As a result, according to the SAF, “it would make sense to curtail union wage-raising activities”. But, the document argued, “given the political power held by unions, it would be unlikely that the government is going to embark on a Thatcherite union-bashing exercise.” Therefore, the government should rather eliminate “other features of the labour market that reduce flexibility”, while

⁴⁷Parsons, R. “Year ahead poses great challenge to all.” *Business Day*, 19 January 1998.

⁴⁸Parsons, R. “Job creation in SA needs fresh innovative approach.” *Business Day*, 25 February 1998.

⁴⁹Steyn, G. “Positive Manuel seeking ‘realistic figure’ for unemployment.” *Business Day*, 27 February 1998.

“preserving those that are... reasonably flexible”. One rigidity in the labour market was seen to be the extension of bargaining council agreements to non-parties and the SAF defended small business against its “disadvantaged” position (SAF, 1998: 9):

The ‘fringe’ of the labour market is more flexible than the ‘core’, and it is this *flexible fringe* that the government must not kill through regulatory zeal. *Any attempt to regulate the fringe may result in some businesses moving in to the core sector, but many more will either be killed off or continue to operate illegally...*(SAF, 1998: 9-10; italics added).

The SAF set itself up as protector of the vulnerable from the lethal threats of the state. Operating illegally was seen to be an argument *against* greater regulation.

This time round, the SAF acknowledged the “human cost” involved in reducing employment security, but felt it necessary, since it would serve as a mechanism to reduce the distortions in the labour market brought about by trade unions:

But this flexibility comes at a high human cost, which includes *feelings of insecurity on the part of workers*, and a *reluctance on the part of firms to invest in their workers if they are only going to be with them until the next economic slowdown*. Nonetheless, a sense of insecurity may also serve to moderate wage demands and prevent wages exceeding the market clearing level (SAF, 1998: 10; italics added).

The very real danger of losing a job which results in poverty is reduced to “feelings of insecurity”. Acknowledging that flexibility actually would mean less employer investment in workers, such as skills training, SAF argued that worker insecurity and employer conservatism would simply bring the labour market back to a state of equilibrium, which for South Africa should rest around lower wages. The SAF continued to push for flexibility, but as we argued earlier, it selectively referenced GEAR for support, quoting the only sentence that did not refer to “*regulated flexibility*” (SAF, 1998: 10).

It then extended a stern warning to the government:

Government would do well to note that labour market regulation, once enacted, is often very difficult to repeal. Germany, South Korea and Britain (in the early 80s) have found that once unions are protected by legislation, it is very difficult to get rid of such *entrenched privileges...* (SAF, 1998: 10; italics added).

And so, the SAF now made minimum labour standards (rights) into ‘privileges’. Continued challenges to government took on a moral high tone: if government did not de-regulate some of this legislation, then government was to blame for slow growth.⁵⁰

The three trade union federations represented at Nedlac released their document “Creating jobs in South Africa: Key issues and strategies”, also in April 1998. The document argued:

In order to arrest current trends interventionist policies must be established which place South Africa on a fundamentally different growth and employment path. Present approaches, conservatively framed within neo-liberal economic parameters, show little sign of working. However, *the South African economy is a contested terrain and many economic policies will be subject to conflict of interests*. It is important

⁵⁰By this time, in contrast to the ‘bad cop routine’ of the SAF, even the World Bank seemed to take a more moderate line. Judith Edstrom, the Bank’s resident representative in South Africa argued: “The need for flexibility does not condone a laissez-faire policy regarding workers’ rights under the banner of economic restructuring and job creation...Our labour analysis suggests that flexibility should not be associated purely or even primarily with wage levels, but with other factors which encourage the creation of enterprise and associated creation of jobs.” (Edstrom, J. “How can SA escape from its two-tiered society?” *Business Day*, 27 August 1998).

therefore to recognise that vested interests will be threatened by a transformation strategy. Other policies might be far less controversial, but they might fail to seriously address some of the root causes of the unemployment problem (Labour Caucus, 1998).

Attempting to pull back from the increasingly inflamed debate over flexibility, Labour pointed to the politics of labour market flexibility debate. In an obvious jibe at the proponents of labour market flexibility, the document argued:

In order to link job creation to economic transformation, assumptions around what actually constitutes a job must be challenged. This must include addressing current employment trends that merely disguise unemployment through the erosion of well-paid, secure, meaningful work. A job creation strategy must therefore address the quality of jobs created (Labour Caucus, 1998).

Challenging previous assumptions, Labour tried to reframe debate on the nature of jobs, rather than the means to the creation of an uncritically assumed 'employment'. The main problem in the labour market, according to the document, was not rigidity, but the high levels of inequality and labour market segmentation. This labour market was inherited from "apartheid capitalism". Specifically on labour market flexibility, the authors of the document argued the following:

The issue of labour market flexibility inevitably arises in policy discussions linking labour market restructuring to job creation, and labour market flexibility is often portrayed as an important policy option for creating employment. There is little compelling evidence that institutions which regulate the labour market have any significant impact on employment creation. Labour market flexibility in fact often appears to create jobs by eroding conditions of employment, and leads to even larger numbers of people falling into the category of the working poor (Labour Caucus, 1998).

In preparation for the Job Summit, Labour attempted to regain control over the terms of debate, the first real attempt to redefine the debate. A heated call by Shilowa that labour market flexibility was simply another form of union bashing clearly positioned COSATU against *any form* of 'flexibility'⁵¹; gone was the language of 'regulated flexibility' and the notion that South Africa could achieve a balance between employer prerogative and labour standards.

Indeed, in June 1998, COSATU distanced itself from the Labour Market Commission report. A *Business Day* reporter wrote: "COSATU expressed its opposition to the type of social accord proposed by the Labour Market Commission. That type of accord was intended to 'commit COSATU to *mythical class peace* as advocated in social democratic countries and to ideas such as labour market flexibility and wage restraint"⁵².

Stories of international reports which questioned the simple equation of the US and UK for low unemployment linked to high labour flexibility, began to filter into South Africa's media. In May 1998, *Business South Africa* reportedly "softened" its "stance on labour market flexibility". A newspaper report argued: "[T]his softening is partly due to the realisation that labour market flexibility alone does not create jobs. More importantly, business sources said, they came to a realisation that labour market and other policies were in place and government was unlikely to revisit these ahead of next year's elections." The business document released in anticipation of the Jobs Summit, "focussed heavily on education and training"⁵³.

⁵¹ Grawitzky, R. "Labour market not 'inflexible' - Shilowa." *Business Day*, 7 April 1998.

⁵² Grawitzky, R. "COSATU considers options for looking after pensions." *Business Day*, 10 June 1998.

⁵³ Grawitzky, R. "BSA 'softens its stance on labour market flexibility'." *Business Day*, 20 May 1998.

In July, the government tabled its proposals on the Jobs Summit which seemed to try to straddle both sides. These proposals included, “[I]labour market changes, depending on the outcome of negotiations” which “could include amendments to the LRA to create some degree of flexibility; formulating a more comprehensive social security net and introducing a social plan technical support facility, as well as improving the unemployment insurance fund’s provisions to retrenchees.”⁵⁴ Even though business consciously knew that the issue of reforming legislation would not be addressed before elections, government signalled here a willingness to engage in such a process.

In July 1998, chief negotiator for Labour Ebrahim Patel wrote a series of articles in the *Business Day*, responding to arguments which linked wages to flexibility and showed that Labour continued to reject the assumptions of the debate:

It does not require a rocket scientist to know that if labour productivity grows faster than real wage increases, then real unit labour costs decrease. This means in turn that, all else being equal, aggregate labour costs are exercising a *deflationary pressure on the SA economy*... However, there is a bias deeply embedded in the old public servant soul of the [Reserve] Bank, which finds it difficult to accept the evidence that the core problems of the SA economy do not arise in the labour market, even when their own data show it.⁵⁵

He argued:

Labour can ignore that bias, but we ignore it at our own peril, since *it is a bias dressed up in techno-speak* beloved of economists. It seems objective and factual, but in truth it feeds a ‘conventional wisdom’ which argues for a particular form of labour flexibility. *Unless there is debate on the evidence*, many citizens, and indeed some policy-makers in all constituencies may uncritically accept this conventional wisdom.⁵⁶

Suggesting that the flexibility debate was more rhetorical than factual, Patel proposed an alternative agenda for the Jobs Summit: “We should focus on how to sustain and increase rising productivity and how to ensure that investment... converts the productivity growth into higher jobs and higher incomes.” However, Patel felt that this agenda could not be pursued in the context of continued calls for ‘labour market flexibility’, where ‘flexibility’ implied “lower wages, longer hours of work, and reduced protection against unfair dismissals”.⁵⁷ Patel pointed out that there was a potential for renewed conflict.⁵⁸

Labour rearticulated its call for job security as opposed to flexibility. Rejecting the flexibility debate as it stood, Patel called for the ‘labour market flexibility’ issue to be kept from dominating the Jobs Summit agenda:

Instead of a comprehensive review of industrial, trade, public sector and other policies, the job summit will get bogged down in the quicksand of labour market ‘flexibility’. *There is no such ‘silver bullet’ to the jobs*

⁵⁴Grawitzky, R. “Jobs Summit proposals skim the surface.” *Business Day*, 1 July 1998.

⁵⁵ Patel, E. “Labour not to blame for economic crisis.” *Business Day*, 9 July 1998.

⁵⁶ Patel, E. “Labour not to blame for economic crisis.” *Business Day*, 9 July 1998.

⁵⁷Patel, E. “Summit must not die in sterile debate” *Business Day*, 10 July 1998.

⁵⁸Indeed when several strikes turned violent in 1998, Shilowa linked the violence to the use of scab labour, as well as labour market flexibility. He said that “COSATU believed the employment of replacement labour inflamed ‘the already vulnerable situation’ and that employers aimed to advance Business SA’s call for labour market flexibility, lower wages and wage freeze” (Grawitzky, R. “Competition ‘puts strain on employers’.” *Business Day*, 2 October 1998).

challenge.⁵⁹

Implicit behind Labour's critique that all economic regulatory mechanisms lay in labour market legislation was a view that the labour market was not simply a demand and supply of an inarticulated commodity, labour.

A few days later, Philip Black, the research director of the SAF, responded to Patel's articles. He restated the position that "flexible labour markets" were "a necessary condition for economic growth and job creation", and that "leaving the issue off the job summit agenda would be foolish". Black used the US and the UK as examples where "many new jobs have been created, not only in the corporate sector, but also in the all-important small business sector." But in South Africa, Black cited the Malamulela Social Movement for the Unemployed: "As they recently said: 'The unemployed have a right to decide if they want to accept low-paying jobs'."⁶⁰

As the Jobs Summit approached, it became clear that neither GEAR nor the issue of labour market flexibility would be tabled at the Summit, as COSATU and the ANC decided to steer clear of contentious issues at this public forum. Instead, the focus would be much more 'practical'.

However, business continued to argue for the centrality of de-regulation to job creation.⁶¹ Humphreys Khoza, the president of the South African Chamber of Business (SACOB), speaking at the body's congress in October, addressed the issue of labour legislation reform: "The markets have little patience for experimentation, or for policy choices which do not fit into the approach accepted by international investors."⁶² He argued,

While I believe that much has been achieved in the field of labour market regulation, the *negative reaction of both local and foreign business people and investors*—and the employment statistics—suggest that we have gone too far...If the regulation of the labour market is not revisited, SA will pay a heavy price in terms of lost jobs....Our economic policies and labour market laws therefore need to converge with global norms, if the private sector is to be able to make its full contribution towards the rebuilding of our economy and the transformation of our society.⁶³

Business, then, began to argue that de-regulation was critical to foreign investment, even if foreign investors had only the *perception* that the labour market was 'rigid'.

While Labour began systematically to critique the parameters of the flexibility debate, in rejecting an opportunity to redefine it at the Job Summit, Labour would see policy continue along the same lines. In the end, the Job Summit neither addressed business' call for de-regulation nor brought Patel's proposals to examine industrial policy and mechanisms to channel investment into productive growth linked to expanding demand for *good* jobs. Patel's emphasis that no evidence supported linking flexibility to job creation would seem to have had no effect on debate. Ironically, business' urgency to deal with flexibility in the Jobs

⁵⁹Patel, E. "Summit must not die in sterile debate" *Business Day*, 10 July 1998.

⁶⁰ Black, P. "Market flexibility a condition for survival." *Business Day*, 23 July 1998.

⁶¹Grawitzky, R. "Date announced for 30 October." *Business Day*, 31 August 1998.

⁶²Khoza, H. "SA Chamber of Business president Humphrey Khoza looks at the challenges facing business in the year ahead." *Business Day*, 13 October 1998.

⁶³*Ibid.*

Summit would appear a more robust call to explore the current government position over 'employment creation'. Labour and government's interest in "not getting bogged down" in the technicalities of the flexibility debate before elections had consequences.

Reviewing labour legislation, 1999

Despite jockeying before the Jobs Summit by Labour to broaden the flexibility debate beyond a simple link between unemployment and labour costs—writ large as 'flexibility'—immediately following the Job Summit, government quickly moved to set in motion a process to review labour legislation. Moss Ngoasheng from Thabo Mbeki's office said that the government would embark on a process to review the impact of labour regulations on job creation:

*Any government when faced with a situation like ours of high unemployment would have to question if it has the appropriate regulation. We've been dealing with issues of the labour market but if these have introduced problems then we need to deal with them.*⁶⁴

Even Nelson Mandela, in his 1999 opening of Parliament address, diplomatically referred to the matter:

And if we say there is hope, in so far as job-creation is concerned, it is because we know that all the partners have put shoulders to the wheel to ensure that we succeed. In this context, we should reflect on our achievements regarding the regulation of the labour market...Notwithstanding these achievements, if indeed job-creation and ending poverty are among our primary challenges, we must continually evaluate how our labour market policies and the rate of private investments, among others, facilitate the realisation of these objectives. This we must do in order to ensure that we achieve our common objectives (Mandela, 1999. Italics added).

By the beginning of 1999 the ANC had re-established the flexibility debate in the terms of the imperative for economic growth. Without coming to negotiated consensus on the foundations of what labour market flexibility meant, the social partners' silence seemed to suggest agreement that some flexibility was inevitable. Although tempered by an up-coming election, 1999 would be haunted by the threat of labour legislation "review".

Business kept up the heat in the media. In January, the *Financial Mail* re-articulated the argument: "The problem with SA's present and pending labour legislation is that it creates disincentives both for employers to hire labour and for workers to give of their best."⁶⁵ Arguing that South Africa's sights were being set too high, the article stated, "It's a case of indulging champagne tastes on a beer budget. SA is putting First-World legislation in place in a developing environment, and it simply can't afford it".⁶⁶ Presenting a moderated view, however, the *Financial Mail* admitted that "There are benefits to enlightened labour practices. Economists believe, for example, that better-paid workers tend to be more motivated and productive". But, the *Financial Mail* hastened to add that despite domestic rationales, foreign investors have begun to comment on South Africa's labour market 'rigidity': they are citing it "as one of the greatest obstacles to foreign direct investment".

⁶⁴ Paton, C. "Mbeki to review labour law." *Business Times*, 4 April 1999.

⁶⁵ Roberts, A. "Why SA's Labour law must be revised." *Financial Mail*, 23 January 1999:16.

⁶⁶ *Ibid.*

The *Financial Mail* claimed that the new labour legislation carried high costs for business, and as a result the choice to “protect jobs instead of creating them...is not a ‘relative preference’ [that] SA can afford”. Concluding that “the only priority that can realistically be pursued now is jobs”.⁶⁷ Again, business argued that foreign perceptions of the labour market hindered investment in South Africa.

In its reasonable tone, the *Financial Mail* article then went on to explain the economics of labour legislation from business’ perspective: “The LRA makes it almost impossible to dismiss workers. The BCEA has imposed new leave regulations and longer notice periods. The Employment Equity Act pushes up search and recruitment costs. Managerial costs will be inflated by having to draw up new employment equity plans, monitor their implementation and submit annual audits to the Department of Labour”. It complained about training costs, the reduction of working hours in the BCEA, and other “legislated costs”. Indeed, according to the article, “Incentives to skip work have risen” because the LRA provides time off for union activities!⁶⁸

Business, then, preparing for the review of labour legislation, staked its claim. At the same time while busy with upcoming elections, the ANC announced job creation measures, including estimates of allocations of “hundreds of millions of rands” allocated to job creation projects agreed upon in the summit.⁶⁹ Framing this announcement, however, the Minister of Labour “warned that job creation would not be seen as an election issue. ‘Whether there are elections or not, people are still jobless’”.⁷⁰ The government allocated R1 billion for poverty relief and job creation projects.

Minister of Labour Mdladlana countered announcements from Mbeki and Mandela that labour legislation would be reviewed saying that “this issue was not agreed to at the job summit, but taken up by Mbeki who referred it back to the labour department”. Furthermore, while having “concerns” about legislation, labour and business “had never indicated that there was anything fundamentally wrong with the legislation”.

However, debate around flexibility continued to be linked, at this point solely, to the review of labour legislation. SACOB released a document which argued that small business was reducing employment because of the effect of labour regulation. Participating in the hysteria of global competition, it warned that “SA was ‘effectively exporting jobs to low-wage countries’”⁷¹ SACOB argued that small business was not absorbing very many jobs because they were wary of “let[ting] their labour forces grow beyond levels which allow them exemption from certain provisions of legislation”. The report also mentioned the “hassle factor” accompanying compliance. It argued for low-wage competition, and criticised the labour legislation for suggesting that “business should instead compete on the basis of other

⁶⁷ *Ibid.*

⁶⁸ Roberts, A. “Why SA’s Labour law must be revised.” *Financial Mail*, 23 January 1999:16.

⁶⁹ Grawitzky, R. “Government expected to allocate millions to job creation.” *Business Day*, 9 February 1999.

⁷⁰ *Ibid.*

⁷¹ “Small business ‘stifled by laws’”. *Business Day*, 25 February 1999.

costs and ‘intangibles’ such as quality, reliability and service”.⁷²

The *Financial Mail* reported in March that Mbeki’s legal adviser said that “there has been no decision, no thought about a review in the legal sense”.⁷³ The article reported that the “unintended consequences” of introducing new laws which eliminated previously discriminatory practices have been to limit investment, productivity increases, profit, and job creation. The article quoted various academics arguing that higher wages and job security promote longer term growth and development with the expansion of a domestic market.

Counter-arguments to those calling flexibility the cure to unemployment also cited the social costs: Frank Horwitz wrote, “They carry a huge social cost, increasing unemployment, social instability and crime, resulting in a vicious circle as crime tears away the social fabric of our new democracy and undermines confidence needed for growth and employment stimulating investment.”⁷⁴ This professor of human resource management and industrial relations from UCT’s Graduate School of Business argued that reducing labour standards in the US and New Zealand “has also resulted in rising earnings inequalities and a segmented workforce.” He argued as well that “labour standards can be seen as a competitive benefit, provided employers believe in the advantage of investing in human capital and innovation”.⁷⁵

The ILO report on the ‘Social consequences of globalisation’ came out in early 1999, arguing that SA had a flexible labour market, and also criticised the lack of evidence used to push forward labour market flexibility.

Alan Fine, the Cape Town editor of the *Business Day* called the President’s address to Parliament, followed by statements by Mbeki and Mdladlana “careful balancing acts.”⁷⁶ He suggested that the task team set to review labour legislation would gain momentum following elections. In this balance of forces, Fine pointed to underlying differences between different interests within the Alliance: “The ANC’s ‘broad church’ character has become even more pronounced, with an increasing number of business executives on its national executive. Leading member Saki Macozoma, for example, has complained bitterly about the effect of the Basic Conditions of Employment Act on the cost structure of Transnet...Simultaneously ANC leaders have recently been paying more attention to ‘bringing Cosatu on board’”.⁷⁷ Fine reported that at the time government was not thinking of putting the review through Nedlac, seen to be “adversarial, positional bargaining” and preferred using “behind-the-scenes” discussions.

In March 1999, Mdladlana hinted at mandatory negotiations, rather than consultation, before retrenchments, one of Labour’s demands for overhaul of the LRA.⁷⁸ Not surprisingly,

⁷²*Ibid.*

⁷³Mabotja, S. “Little sign of loosening up the new legislation”. *Financial Mail*, 5 March 1999.

⁷⁴Horwitz, F. “Trust crucial to flexibility in the workplace”. *Business Day*, 9 March 1999.

⁷⁵*Ibid.*

⁷⁶Fine, A. “Major changes loom in job market.” *Business Day*, 11 March 1999.

⁷⁷*Ibid.*

⁷⁸“No more bureaucracy.” *Business Day*, 17 March 1999.

business reacted strongly against this suggestion: “it would be a sad day if government intervened in market forces”.⁷⁹ Siphso Pityana, then Director General of the Department of Labour, said “labour argued that current retrenchment provisions in the act requiring employers to consult on retrenchments were not being taken seriously. As a result, it was being discredited.” At the same business criticised Mdladlana’s comments that he may introduce a minimum wage for agriculture and domestic workers.⁸⁰

In May, in a pre-election defence of the ANC, Alec Erwin wrote, “The rest of the world underwent profound change in the early 1990’s, but the National Party government ruled in ignorance of the implications of these developments. The ANC understood that if the economy was to grow and create sustainable jobs, it would have to be restructured.”⁸¹ The strategies, he reiterated, included, debt-servicing, export-led trade and industry policy, tariff reform, focus on small business for “improved wealth distribution, sustained growth and employment creation”. In the same breath, he said, “[t]he usual meaning of flexibility is making it easier to hire and fire in the hope that, with high unemployment, this will drive down wages. Its only outcome would be to greatly weaken the trade union movement”. He went on to argue that “[m]odern production requires flexibility in skill, leadership, technology, management, and institutions. This requires trained workers, interactive workplace relations, new managerial capacities and efficient dispute settlement processes. This is the type of labour market that is being developed. Those who believe otherwise are likely to be out of business fairly soon”. But, he also, added, “[t]he costs of compliance with legislation and regulation are too high for small business”.⁸²

Days after the election in June, Mdladlana confirmed that certain aspects of labour legislation “which warrant re-evaluation in relation to their *perceived or actual impact* on job creation” would be referred to the “social partners” for review. These aspects included: “probationary periods; unfair dismissal procedures and compensation in respect of procedurally unfair dismissals; dismissals for operational requirements; conditions of employment when companies change hands; provisions in the BCEA on Sunday work and notice; the role of the Minister and sectoral determinations in varying core rights in the BCEA; and improving the efficacy of some of the institutions set up to assist us in regulating the labour market, including the CCMA and the Labour Court”.⁸³

In July 1999 at the annual Labour Law Conference, Halton Cheadle, the chief drafter of the LRA, said that there would be a trade-off of clauses between business and labour. Despite Erwin’s pre-election emphasis on work process flexibility, clearly, negotiations have progressed beyond the point of defining the arena of flexibility. The forms of flexibility now held in discussion are those for which business has all along called: wage, numerical and work time flexibility. We see that government has accepted business’ argument that even the

⁷⁹ Grawitzky, R. and L. Ensor. “Suggested retrenchment provisions attacked.” *Business Day*, 17 March 1999.

⁸⁰ *Ibid.*

⁸¹ Erwin, A. “No quick fixes for unemployment”. *Business Day*, 26 May 1999.

⁸² *Ibid.*

⁸³ Mdladlana, MS. “Statement by the Minister of Labour Membathisi Mdladlana at the Parliamentary Media Briefing”, 29 June 1999.

perception of inflexibility, if hindering (especially foreign) investment, justifies loosening labour standards. In this context, any empirically based claims that the labour market is in fact flexible, have little chance effecting policy.

Conclusion

The front page of a recent *Financial Mail* featured a photograph of Labour Minister Membathisi Mdladlana with the caption: “Can this man liberate the jobs market?”⁸⁴ In this paper we attempted to explain the chain of events which entrusted this former trade unionist, with the task—in the *Financial Mail*’s ironic language of the anti-apartheid struggle—of the ‘libertion’ of jobs. How in the context of a flexible labour market, could arguments to the contrary become conventional wisdom?

We have argued that this process has not only been one of policy formulation between powerful interests. In hindsight, there were critical moments at which Labour could have redefined the parameters of labour market flexibility debate, including the immediate response to the SAF’s *Growth for All* document, the Basic Conditions of Employment debate, and the Jobs Summit. While the current process of labour legislation review is ongoing, there is a general acceptance that some forms of flexibility will be encouraged.

Hence policy contestation reflects social assumptions. The labour market flexibility debate, we argue, has centred on controlling language which carries assumptions of how the labour market operates. The language of business ‘naturalises’ the relationship of labour demand to labour supply. This process of naturalisation of relationships becomes a powerful technique in limiting parameters of debate and real possibilities (see Haraway 1991).

The language of flexibility is not only about reforming legislation, but it is also an attack on the legitimacy of organised labour in the post-apartheid economy. Ironically, the language of ‘regulated flexibility’ was used to give flexibility a labour-friendly face. Discussions of flexibility did not systematically specify forms of flexibility. This allowed the concept to be euphemistically considered as work process flexibility while shifting between these more positive images and more negative connotations, such as numerical and wage flexibility. Furthermore, assumptions of how labour markets operate—as a simple price relationship between supply and demand—dominated debate in the context of South Africa’s entry into the world economy. Labour unsuccessfully redirected the language toward recognising labour as a *social* commodity where increased flexibility would mean additional costs of social reproduction. Attempts to critique the factual basis of the flexibility language may be too late to change the assumptions behind the policy already in process. As we have seen, the *language* of labour market flexibility has redefined the national agenda.

Policy does not only respond to social needs, it can be used to *shape perceptions* of those needs (Elson 1999:623). In the context of democratic transition, then, the *language* of debate in public arena deserves critical attention by stakeholders. The policy agenda is not determined merely through meetings behind closed doors. As we see with the labour market flexibility debate, *perceptions* of reality can carry enough weight to change policy priorities.

⁸⁴*Financial Mail*, 153(12), 25 June 1999.

As Gingrich says, changing the terms of debate can be more powerful than changing law. Meaning enters as a material force.

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