

# Debating Labour Market Regulation in SA

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# Spot the difference

- A comparison of the “burden of labor regulation” in an international context leads to a “quite sobering assessment” of South Africa’s competitiveness”
  - dti 2007 Investment Climate Survey (Clarke & others, 2007)
- South Africa’s employment protection legislation is “relatively flexible” but there is a widespread perception among firms that the labour market is highly regulated.
  - OECD Country Survey of South Africa, 2008

# Dti reliance on WB

- A comparison of the “burden of labor regulation” in an international context leads to a “quite sobering assessment” of South Africa’s competitiveness”
- This statement in dti’s 2007 Investment Climate Survey (Clarke & others, 2007) is based on information drawn from World Bank’s Doing Business Survey
- That dti should rely on DB as a source of how our labour market regime is presented to investment community offers a very interesting illustration of how LMR is viewed

# Different perceptions

- According to World Economic Forum Global Competitiveness Survey South African LMR is among the most rigid in the world
- Survey based on perceptions of groupings such as business executives
- Perceptual studies do not assess interviewees understanding of topic; questions and answers generalised

# World Bank Doing Business Survey

- Assumes that costs imposed upon employer through law are detrimental to economy
- Implicit assumption is that less regulation will enhance economic performance
- Rates countries on the basis of 16 questions dealing with hiring, hours of work and dismissal and uses binary scoring system for 13 (1/0)
- Does not measure the benefits of regulation
- Does not look at collective labour law
- Examines only the text of regulation and not its interpretation, application or enforcement
- South Africa has mid-table ranking

# WB Independent Evaluation Group Assessment of DB

- no relationship between either the overall DB indicators or the "employing workers" indicator and any genuine improvement in economic performance, such as higher growth, investment or employment rates
- the assumption that less regulation better economic performance leads to country's with little or no labour law receiving high ratings
- overstated claims as to the indicator's explanatory powers
- also criticises the Report for its "inaccurate nomenclature" and for being too reliant on a small number of informants.
- (World Bank's Independent Evaluation Group, 2008)

# OECD 2008

- The 2008 Country Survey of South Africa by the Organisation for Economic Cooperation and Development rates South Africa's employment protection legislation as "relatively flexible" but points out that there is a widespread perception among firms that the labour market is highly regulated. (OECD, 2008)
- Only one OECD country USA has a more flexible labour market (EPL) than SA. Rating in respect of dismissal is among ten most flexible. (Survey includes all OECD members plus Chile, China, India, Brazil)
- Two possible explanations for discrepancy between rating and perception: employer perceptions unduly influenced by long-running "worst cases" and employer perceptions have not responded to shifts in institutional efficiency (CCMA)
- More comprehensive survey than DB which takes greater account of practice ,

# Assessing impact of law

- The capacity of regulation to achieve policy goals depends on a wide-range of factors including –
  - Responses of key stakeholders;
  - Legitimacy of legislation (and efficacy of voice regulation)
  - Level of enforcement
  - Interpretation by courts and administrators
  - Capacity and quality of institutions

# Way forward

- Any assessment of impact of law needs to focus on specific areas of law and understand source of rigidity: should focus on effectiveness of particular regulation rather than perpetuate “reg/ de-reg” debate
- Need to move away from “sterile opposition of rights and efficiency” and develop economic insights to shift policy away from deregulation towards the design of labour legislation with economic policy goals in mind
- -Simon Deakin and Frank Wilkinson (2000)
- Examples – role of law in allowing individuals to develop their capabilities