

**Understanding the Efficiency and Effectiveness of the
Dispute Resolution System in South Africa:
An Analysis of CCMA Data**

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1. Introduction

Dispute resolution has shown itself to be the most important section of the labour debate as it revolves directly around mistreatment of workers and a possibility to influence job creation in the future. With employment grievances coming to the CCMA at a rate of 130 000 a year this study was done with the objective of judging the efficiency of this institution in order to create possible policy recommendations to speed up this process.

This paper assesses the **efficiency and effectiveness of the labour dispute resolution system in post-apartheid South Africa** by conducting **an in-depth analysis of recent case data (2001-2005) from the Commission for Conciliation, Mediation and Arbitration (CCMA)**.

Various aspects are considered, including the different types of arbitration available to the average worker as well as the structure of these institutions. It also includes detailed analysis of the data available and the overall efficiency of the CCMA. As well as **overall trends and patterns of dispute referrals (for example, by province, economic sector/occupation, and types of labour disputes) as well as the time cases take to be resolved (the so-called turnaround time)**.

2. Background

About 72 percent of the employed in South Africa fall under the jurisdiction of the CCMA; hence, this institution manages the majority of disputes that arise in the labour market. Occupations covered by the CCMA include **domestic workers, agricultural workers, and security personnel at the lower end of the skill spectrum, as well as a large number of skilled, formal sector occupations**. The remaining 28 percent of workers **fall under the jurisdiction of Bargaining Councils**; hence, a disproportionate share of semi-skilled blue-collar workers is not covered by the CCMA.

There are various **types of disputes**. The most common are **unfair dismissal disputes** (about 70 percent), while **unfair labour practices disputes** make up a further six to seven percent. **Severance pay disputes** account for about one to two percent, while **disputes arising when employers and employees have mutual interests** account for about one percent. These four dispute types are known as “genuine disputes”. The remaining 20 percent of cases involve a variety of less common disputes, about half of which are typically dismissed as “out of jurisdiction” cases.

A typical labour dispute referred to the CCMA can go through one or more of several processes. These include pre-conciliation, conciliation, arbitration and a combined process known colloquially as “con-arb”. The particular process during which the dispute is finally resolved is known as the **determinative process**. Conciliation involves the use of a neutral or acceptable third party to assist parties in arriving at a mutually acceptable, enforceable and binding solution. Unresolved disputes are referred for arbitration where an arbitrator settles the dispute by making a final and binding decision in favour of a particular party. Prior to a case being referred for conciliation, CCMA officials may attempt to settle a case informally (usually over the phone). This is known as pre-conciliation. Con-arb refers to a newly introduced efficiency-enhancing combined conciliation and arbitration process. Other determinative processes may include *in limine* cases (dismissed on technical grounds) or *rescission* (cases withdrawn or repealed after arbitration).

3. Overall Trends and Patterns of Dispute Referrals

Thirty percent of cases referred to the CCMA should have been referred to the Labour Court, the Department of Labour or one of the Bargaining Councils which is obviously having a negative affect on service delivery. Growth in referrals appears to have converged with the labour force growth rate. **There has been no significant “structural shift” over time in the type of disputes received or the share of referrals originating from different provinces, economic sectors or occupation types.**

Where significant shifts have taken place is in terms of the determinative process. The share of cases resolved at the conciliation stage dropped from 53 percent in 2001/02 to 22 percent in 2005/06. This fall coincides with a rapid rise in cases resolved through the con-arb process.

4. Internal and Statutory Measures of CCMA Efficiency: How has the CCMA fared?

Within the CCMA, outcomes are compared against targets on a monthly basis to measure the efficiency of each of the regional offices. The results and ranking of regional offices or provinces are published annually in the *Review of Operations*. The efficiency parameters are not necessarily comparable over time as dispute resolution processes adapt and evolve, which leads to new measures being introduced periodically. Efficiency targets are also revised regularly as information becomes available that are grounds for efficiency targets to be revised. A comprehensive list of efficiency parameters with descriptions, target levels and actual outcomes appears in the paper.

Below is a highlight which the paper considers as some of the most important efficiency parameters and outcomes over the last three years:

- The CCMA sets itself various efficiency targets in terms of turnaround times against which they can measure performance.
- The paper analyses trends in three key turnaround times:
 - the referral-to-activation date turnaround time
 - the activation-to-end date turnaround time for conciliation cases and
 - the arbitration referral-to-end date turnaround time for arbitration cases.
- The turnaround times vary significantly across regions. A recurring result is that the KwaZulu-Natal offices are by far the best performers, also in terms of the referral to activation turnaround times.
- The Eastern Cape has a very poor performance, with the highest referral to activation date turnaround time on average.
- In theory referral to activation dates for different determinative processes should not differ.
- There are, however, some substantial differences in turnaround times across determinative processes, with arbitration cases typically taking longer to activate.

Clearly, a better understanding of the management, referrals received and other unique circumstances that exist in each province is needed to fully explain differences in efficiency across provinces. It is also clear that the CCMA has not been successful in reaching their efficiency targets. A more detailed examination within the paper indicates that it is often the same offices that perform badly. Each year the CCMA ranks offices and/or provinces according to their overall efficiency using a weighted ranking process.

4.1 Determinants of Variation in Turnaround Times

In order to assess the efficiency of the CCMA we analyse the turnaround time for the conciliation and arbitration processes to be finalised. A comprehensive list of efficiency parameters with descriptions, target levels and actual outcomes appears in the paper:

- **As the number of days from the activation of the case up to the end date of the case.** Disputes are referred to the CCMA only after all the intra-firm dispute resolution procedures have been exhausted and the dispute remains unresolved.

- The CCMA resolves disputes about mutual interest, severance pay and other types of disputes more speedily relative to unfair dismissal disputes at the conciliation process. An unfair dismissal case as well as utilities and the public service sector have the highest conditional probability of proceeding to arbitration. These two sectors are also more likely to have the largest share of essential workers who under the LRA are prohibited from industrial action
- It should be noted here that by the time a case goes to arbitration it is not the unfair dismissals that have the highest turnaround time but the public service sector cases.
- The paper illustrates that the **con-arb innovation** is associated with an **increase in efficiency both in terms of conciliation and arbitration turnaround times**.
- Conciliation hearings is positive and significant which means that the effect of an additional hearing is predicted to increase the turnaround time by about 33 percent, holding other factors constant.
- Arbitration disputes at the con-arb process have turnaround times that are approximately 137 percent less than arbitration disputes at the arbitration process. This indeed reinforces the efficiency-enhancing impact realised through the con-arb innovation

The turnaround times vary significantly across regions. A recurring result is that the KwaZulu-Natal offices are by far the best performers, also in terms of the referral to activation turnaround times. This result also holds for individual years. The Eastern Cape (in particular the East London office) has a very poor performance, with the highest referral to activation date turnaround time on average. In theory referral to activation dates for different determinative processes should not differ. For example, at the referral stage it is unknown to the parties involved whether a case will be settled at conciliation or whether it will be referred for arbitration. However, as shown in the paper, there are some substantial differences in turnaround times across determinative processes, with arbitration cases typically taking longer to activate.

5. Conclusions and Policy Recommendations

It can be concluded that stability in referral rates and patterns should, in theory, aid regional CCMA offices in their planning processes. However, variations in turnaround times can also be attributed to general organisational effectiveness and management.

The results show that the share of cases settled at conciliation (either during the 'pure' conciliation or during the conciliation phase of a con-arb) has remained stable over the years. The econometric evidence indicates that the introduction of con-arb is associated with a drop in turnaround times for both conciliation and arbitration cases.

Atypical employment such as outsourcing, labour brokering, part-time contracts and so on are on the increase internationally. While the CCMA data, in its present format, has limited information on the nature of work contracts, the institution should perhaps take a bigger responsibility for monitoring the impact of atypical forms of employment on the incidence and nature of labour market disputes. It is important to formalise processes that would allow such disputes to be handled efficiently and effectively within the legislative context.

Although it remained at the margins of this study, a worrying trend that has emerged at the CCMA in recent years is a seemingly increased tendency for part-time commissioners to postpone cases and utilise other mechanisms for delaying cases.

Arbitration cases with professional representation for both workers and employers have lower turnaround times (marginally) relative to no representation at all.

While variations in efficiency cannot be explained by case load pressures and resource constraints alone, perhaps the CCMA is better placed to investigate issues around management and other unique circumstances that exist in each province to explain differences in efficiency across the provinces.

The study's attempts at broadening our understanding of dispute resolution in South Africa are understandably, somewhat restricted by the availability of reliable and relevant data. This study only uses CCMA case data. While it is believed that the findings present an accurate reflection of dispute resolution in South Africa in general, this hypothesis can only be tested once a comprehensive study is conducted using Bargaining Council data as well.