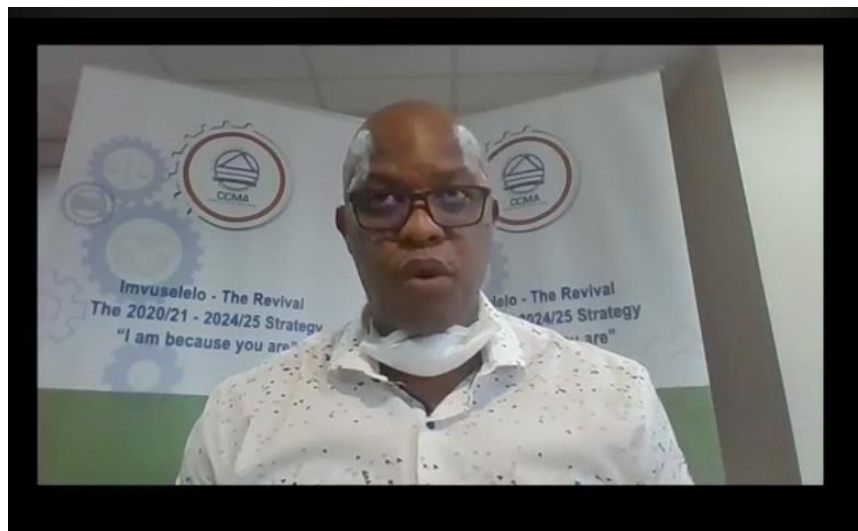


LRS Labour Research Service

Knowledge is too important to leave in the hands of the bosses

Transcript of the Facebook Live address by Cameron Sello Morajane, Director of the CCMA



Date of livestream: 8/05/2020

**We have cleaned up the transcript for purposes of clarity only.*

**View the livestream [here](#)*

Good afternoon everyone.

Those that have joined the CCMA on our very first Facebook Live submission and acknowledging that we have received a lot of interest from the members of the public. My name is Cameron Sello Morajane. I am the director of the CCMA.

Before we start with the festivities and the formalities of this process, I would like to request us to take a moment of silence because we have noted the statistics from the department of health. We are sitting with 8,232 infections and we have now recorded 161 deaths as at this morning. And for that purpose, I think it is in order and also very respecting in appreciation of the circumstances that we are in that we take a few seconds of silence.

Thank you.

This is a very important submission. As you can see am fully armed with my gloves and mask, and we have social distancing with my team. I can also confirm that our offices at 28 Harrison Street at our headquarters, together with the few offices of the CCMA, have been disinfected, deep-cleaned and there is provision of the PPEs that are necessary for the operation of the CMMA.

We have seen interest, particularly in Gauteng, that the premier Makhura announced that they've ordered PPEs worth R64.4m and they have so far received R10m of the order. We will take interest in ensuring that the CMMA and all its 24 offices are fully complaint to a Covid-19 free environment.

Ladies and gentlemen and the CCMA family,

This is a very important submission and it is in response to all the submissions that have been made by the different ministers, particularly Minister Nkosazana Zuma, also the Minister of Health, Mkhize, our Minister Thulas Nxesi, and also this morning, which was quite an important, impeccable timing submission before this submission, the Minister of Public Service and Administration, Senzo Mchunu, concerning what is expected for us to move forward.

In dealing with this submission, we will try also to address the questions we have received from the members of the public, but with one proviso – that when it comes to setting technical questions that we know for sure are still pending in the hearings of the CCMA, we are going to take a very cautious approach to ensure that the interest of the CCMA, the interests of the parties (both employers and employees) is not compromised in a public platform. We do not also want to influence our commissioners in dealing with certain questions that will come before them when they conduct the proceedings. But to a large extent, we will be in a position to respond to the questions that we thought are very important.

From the questions that we have seen, we have noted that the members of the public missed the CCMA and its function. I am sure you'll be excited to see some of the submissions we are going to make to respond to the pertinent questions and dispense justice. To that extent, we will be cautious but answer the questions to the extent possible.

Ladies and gentlemen, this submission comes at a time when there are a number of factors, both domestic and international, that are affecting the operations of the CCMA, our sister entities in the Department of Employment and Labour, and also the bargaining councils that the CMMA accredits. I can assure you that we will try to synchronize most of the things that we have done and what we will do going forward with the Department of Employment and Labour and Public Service and Administration. These will include essential services committee and the bargaining councils of the CCMA.

It is quite saddening to note that there is a prediction of 40-50% unemployment rate that may happen in South Africa due to covid-19 and its impact. If our unemployment rate reaches the 50% mark, it will be unprecedented. I will submit and argue that we look at the rate of unemployment as a people in a constitutional State, in a country that's trying its best to grow economically so that we can become a member of a family of nations as we see in the international arena. That we will have 50% of unemployed people, this will put pressure on the government's efforts to deal with the triple crises.

It is also with sadness that we have noted the large-scale dismissals and ordinary dismissals, and I will touch on this. The CCMA has been operating behind closed doors and we were able to receive applications online and to process them. But we didn't take face to face interactions in all our 24 offices, which did not operate at full strength. We have been unable to settle down matters in our offices because we were at level 5 of the lockdown.

We have noted with pain that the companies that are approaching us are closing. The companies that are largely affected are small to medium. We have seen a bloodbath. This is the bloodbath the CCMA has been talking about for months now. Business and organised labour have also noted the inevitable circumstance. The CCMA is an institution that is expected to provide social justice. We are privileged, albeit not pleasantly, that we do receive requests for the facilitation of certain labour market-related cases, particularly section 189 and 189(A). I shall touch on that.

I have noted also on international reports that 90,000 pilots worldwide will be without employment. I have noted Tsogo Sun, South African Airways and Comair, for example, are undergoing a business rescue. Some hard-hit businesses like hotels are experiencing high numbers of retrenchments. I will return to this later.

We have noted in terms of the labour market forces and activities that the South African Revenue Services is anticipating R280bn shortfall in terms of revenue collection. As a public entity, we should take a serious interest in such a shortfall because it's not just a budget fall. It will have a

direct impact on service delivery - our ability to provide the kind of assistance that has been provided to members of the public through the covid-19 UIF fund and the measures that were introduced by the President. We know that the UIF funds are under pressure or probably depleted because of the high demand that the Minister has spoken about - the requests and assistance or relief that has been granted to businesses under stress. I will talk about that later because there are questions specifically that we were asked about this.

Sadly, small businesses are closing, yet they are one of the biggest productions of our jobs and they reduce our unemployment rate. But if they are now closing it means our unemployment rate will start to soar. It is quite an acute problem that needs an integrated approach for us to be able to assist and improve.

We also noted that South Africa has been rated down by the rating agencies. We do understand that the rating agencies grading has a direct impact on the creditworthiness of South Africa's economy and our government as a company. That we also take with pain.

We also noted that our rail company, PRASA, reported yesterday that they are also anticipating, or actually suffered a R200m loss. That is very serious.

We also noted that there is a looming load shedding. The load shedding in our view will negatively affect some of the new measures that we are going to introduce to improve our accessibility and also to achieve expeditious resolutions of disputes.

We have noted the water shortages, and of course, the covid-19 pandemic.

Ladies and gentlemen, please note that during lockdown the CMMA received applications in terms of section 189A for large-scale dismissals. We also received referrals for retrenchments that are not large-scale. The bottom line is that they are both dismissals based on what the law calls operational requirements, commonly known as 'no fault dismissals'. During the lockdown,

we have experienced 17 referrals for large-scale dismissals, which is affecting 3,344 employees. We have received a normal section 189(A) that's not large-scale, which is 151 referrals. Of that, 133 are employees retrenchments. In total on the low scale, we have 303 dismissals.

But, I must emphasise something very important here. **These numbers that I have just read are not a true reflection of the actual dismissals that are happening in the labour market.** Small-scale dismissals operational requirements usually are not reported as referrals for unfair dismissals. There is no recourse for us to try to intervene and assist to the extent that is possible. Therefore, the numbers that you see also are directly affected by the fact that CCMA offices are on level 5 lockdown. But we are aware of them because we have received requests from people to refer, people who don't want to use the online approach and wanted to come to our offices. We have noted these numbers which are not reflected in our case management. I can say with certainty that the moment we open our offices, we will receive huge numbers of small-scale dismissals and ordinary unfair dismissals. Dismissals are not the only dispute that we are expecting.

I will comment about the dismissals of domestic workers that have been trending. The media reported that there about 40,000 covid-19 cases that are being referred to the CCMA. We have verified that some of these cases occurred even before lockdown. We have requested our commissioners through the dispute resolution of the CCMA to intervene in resolving those disputes. And we are receiving reports on the progress that we are making in that regard. When our doors are opened, I can assure you that the numbers are going to look completely different.

Let me go to specifics of the impact of covid-19 on the operations of the CCMA and also, of course, the bargaining councils.

This is a new entry, a new normal for the CCMA.

We expect a different type of CCMA commissioner. Covid-19 is going to be with us for some time, and we expect our commissioners to not only deal with cases at our offices. We expect our commissioners to travel to the different workplaces to do matters such as unfair labour practices, section 108(A), which is required of an arbitrator in unfair dismissal cases. Those type of cases are cases of relationships. Therefore, it is befitting that such matters were practical and we deploy commissioners to go and deal with them at workplaces. That is our new norm and it is going to increase.

I will also talk about a tech-savvy commissioner, that is a commissioner who is technically-savvy and quite capable of dealing with web-based hearings, which is a new approach that I will talk about later, as well the use of webinars to deliver our training. We believe that our new approach will ensure that we access workplaces, expedite resolution of disputes and make the process less costly and stressful. The CCMA is preparing to make sure that we achieve that.

Please note that we have agreed on the approach of web-based hearings and have already started it. The process is based on consent because it is still new and it needs to be managed properly. It is gaining momentum. Web-based hearings will be conducted via Zoom (despite the reported problems with the platform) and Microsoft teams. We will provide a directive on how we will be dealing with web-based matters.

We also expect our commissioners to be more of specialists in terms of the processes that we have already started so that they can give better service to our users. We expect our commissioners to be up-to-date with the happenings in the labour market, including developing in the area of law, both in terms of case laws and statutes.

But the most important thing and especially amidst the covid-19 pandemic, commissioners are expected to care. We want to develop more caring commissioners as South Africa and the world faces this coronavirus. We will ensure that our commissioners deal with matters in a caring way, especially covid-19 pandemic related matters. I must also emphasize that we expect our

commissioners to act with dignity in dealing with issues relating to relationships between employers and employees.

Let me proceed to talk about, in terms of covid-19 approach, the new aspects.

There are very important issues and developments concerning how we are going to deal with hearings. To the extent that parties agree, the workplaces of employers will be used for hearings. For the users who will not be able to use web-based or other auditing methods of hearing, the CCMA offices will continue to act as a venue for face to face hearings.

We strongly believe that as an entity of government that is operating from a budget allocated from the fiscus that all State venues and buildings should be accessible to the CCMA to be used for hearings. We will partner with government departments, particularly the Department of Employment and Labour, and our other stakeholders and social partners to use such venues. This will ensure that our people don't travel a lot and that they save on travelling costs.

Johannes Plessis: (I hope I am pronouncing your name correctly) **asked whether cases will be heard at plant level.**

The answer is, yes, there will be cases that will be heard at the plant level. I want to make a special call to all employers and employees of organised labour that are anticipating hearings of matters such as section 108(A) or unfair dismissals - have the hearings in the premises where the matter arose. It is acceptable, especially when both parties are comfortable and agree. The CCMA will deploy a commissioner to come to your workplace, but the Occupational Health Safety issues and coronavirus-free environment must be met. This is exactly what I meant when I said earlier that CCMA commissioners will travel during covid-19. We will give the commissioner gloves, sanitiser, a mask, and say, 'Go and resolve a dispute. You are a CCMA commissioner.' So, parties and witnesses don't have to travel and spend their money, be in trains and taxis to go to a hearing and expose themselves to the coronavirus.

Our view is that when you are dealing with the coronavirus, we must not make a mistake of thinking that it is the only virus or disease that is affecting the labour market. We have other illnesses that serious killers of our people, such as TB, hypertension, sugar diabetes and cancer. Covid-19 just added to the problem. A covid-19 free environment does not mean that other diseases should exist. The environment must be free of any health hazards. When a commissioner comes to your workplace, he must have the assurance that he will not infect your staff and that your staff will not infect him. So, workplaces should be places of social justice and our commissioners will be deployed to do cases there.

Let me deal with the issue of web-based services.

Firstly, the web-based hearing at this stage is going to be consent-based. In other words, for us to do the web-based hearings either on Zoom or Microsoft Teams, the employer and the employee, or the applicant and respondent, must agree to the process. The web-based cases that are currently running have been consented to by the parties. All we have to do is to ensure that resources such as WiFi are present. WiFi must be stable and uncapped. That is very important. I spoke about load shedding earlier, which can affect online processes. If there is load shedding your WiFi connectivity will be affected, and so will be your matter. These factors are important for web-based hearings to work properly. I must add we didn't agree to this lightly.

Casper asked the question of whether the web-based process will affect the credibility of the witness.

The answer is, no. The web-based hearing is a video and audio process. I acknowledge that in some cases the use of video will be problematic because it consumes a lot of data. I do understand this, and in some cases, the hearings will be conducted using audio only. But, we strongly recommend that the video be used for web-based hearings. Using video can help union

officials and the representatives of employers to observe, cross-examine and determine the credibility of a witness.

A web-based CCMA hearing must reflect in content and character the same type of features that parties would have enjoyed ordinarily when doing an office-based and face-to-face hearing. There must not be any prejudice in the new approach. I assure you that we have tested case law on the side effects that may be associated with web-based hearings. One of the concerns relates to the question of the credibility of witnesses.

We are going to develop [specific guidelines and directives](#) on how to properly conduct web-based hearings. Online must be seen as the new platform of hearing cases. Besides, you won't have to worry about masks, gloves and social distancing. We are going to perfect it. We are going to make it work.

However, I urge employers, unions and the government to provide efficient and sufficient tools for the web-based approach to work effectively. I am very glad that the labour court has also introduced the web-based approach. This effectively means the character of evidence that we deal with moving forward isn't just the documented transcript. You now have the video evidence because the platforms allow for recording and the recordings can be stored on the cloud. So, we are very excited, but our success depends on access to strong, uncapped WiFi or data of 4G or 5G. The last thing we want is for the hearing process to be interrupted because parties have run out of data or the WiFi is down.

A question by Dominic Vergan. I apologise if I mispronounced your name. Dominic is asking, **When are web-based hearings going to start?**

Web-based hearings have begun. We, however, need both parties to first consent to the online hearing. As we speak matters are being lined up on the platform, which has the technical aspects that are necessary to ensure minimal interruptions of hearings. Any parties that have pending

matters at the CCMA and would be interested in a web-based hearing can send a consent form and we will deploy a commissioner to advise on the setting of uncapped and stable WiFi. Please note that any interruptions due to data shortage will compromise the hearing and cause postponement and delays. This means it will cost more to deal with the case.

Michael Killion is asking: **What happens if the employer does not agree to the web-based hearing?**

We won't conduct a web-based hearing if any of the parties in the matter does not agree. At this stage, the approach is based on consent and not compulsory. I cannot say for certain if this approach will be mandatory in the future within the context of the Fourth Industrial Revolution. Remember in terms of Section 138, the commissioner has the power on how the matter should be determined.

Let me proceed, and I will continue to deal with the questions as they come.

The CCMA (the executive team and governing council) decided to decentralize the national call centre at 28 Harrison Street. We found it quite uncomfortable to re-route calls to other provinces from our headquarters in Gauteng. We are now installing an automated system that will enable you to directly call the province where the matter is being dealt with. For example, if your case is in Gauteng...press 1 and it directs you to Gauteng Province. If it's in Limpopo press 2 and it will redirect you to Limpopo Province. So, it is confirmed that the call centre is now decentralized. Some of you have complained that calls to the CCMA were not answered. We apologise for the problems that you have encountered in the past few weeks during this transition. From next week I can assure you that we will back in business and without glitches.

I will deal with the question of when our offices will re-open, but let me first talk about the process:

Number one, please note that today (latest tomorrow) we are going to publish the directives of how we are going to operate, including some of the matters I have talked about.

Number two, all matters that can be referred through papers, a stated case or affidavits will be dealt with in this way to stop unnecessary travel and exposure of people to the coronavirus. For example, Rule 25 issues, issues of certain type of cases that are dealing with pay disputes and applications for condonations. These can be dispensed without someone appearing before a commissioner. You submit your application. The other person answers. The applicant replies. You submit your heads of argument. A commissioner makes a ruling. I am saying that the cases that can be heard at a sit down will now be exclusively done on paper. Rulings will be issued in terms of the statutory requirements, nothing has changed in this regard.

The week of 11-15th of May is a preparatory/trial week for us and so we won't accept entrances to our offices for face to face referrals. This is important to note.

Now, here is a very important announcement based on the question that was asked by Charmaine Grey, Marietta and Tessa Fortune, Nathan Williams: **When will the CCMA offices reopen?**

Let me give you a direct answer: In the week of the 18th of May, the CCMA offices are going to reopen. The face to face referral of cases, the face to face hearings of the CCMA will take place from the 18th of May.

Next week (11-15th May) we are doing the following things:

All the offices of the CCMA will be disinfected. The office I am in now has been disinfected and deep cleaned. PPEs - sanitisers, gloves and masks have been secured. The floor markings to aid social distancing has been done. All workplace safety compliance measures that the Ministers of

Health, Public Service and Administration, and Employment and Labour have talked about will be done next week to make sure that when we welcome you, you and our staff are safe.

This complies with the incremental introduction of services. Our managers and others in critical functions will be back to work next week. This does not stop you from using the other CCMA alternatives for case referral.

We are developing digital referral forms to minimize the use of hard copies, which can be potentially contaminated. This question is settled.

Now there is a question that says: **Will arbitrations in May and June continue. What about those from March? Will they be prioritized and rescheduled?**

Let me respond to you this way: Matters that were referred before the lockdown are in the system and will be rescheduled for hearing after the CCMA opens on the 18th of May. We will not prioritise the cases that came during the covid-19 lockdown. We will manage the cases that were referred before lockdown first and then proceed from there.

When you receive a note that says '*case cancelled*', please do not panic. Matters are rescheduled, and not cancelled. They are not removed from the roll. There are no special applications that must be made for that matter to be settled. That is what we do ordinarily and you are going to see more of it next week. Hearings will be in progress by the end of May.

There are going to be time blocks because we need to deal with numbers – the one-third that is set, we are going to comply with that. We can't overload the CCMA. We have to do this incrementally.

The last thing we want is to have users who are covid-19 negative to leave our offices covid-19 positive. We will never do that to you. We are asking you not to come in if you are covid-19

positive. Please note that we are going to apply a very strict but decent approach to how we deal with queues, paper referrals and the time zones that we'll be set for matters to be heard in the offices of the CCMA. This is a direct response to the issue of arbitration.

Please note this very special call that I am making to all parties of referred cases to the CCMA:

Please remain alert to receive the phone calls from CCMA concerning the matters that are in conciliation and con-arbs. When we made phone calls during the lockdown, many of our users who referred cases did not answer our calls. We are going to attempt to maximise the pre-conciliation processes using a telephone. I am pleading with organised labour and business. When you see the CCMA number, please pick up. A commissioner will be on the line to try and conciliate the matter that you referred between yourself and your employer. We can only successfully do so if you answer your phone.

Our records reflect that the pre-conciliations that we have conducted have been very successful especially matters involving domestic workers and farm workers. The pre-conciliation process is not only limited to vulnerable groups of workers. Help us to expedite the backlog of cases by answering your phone and engaging meaningfully with the commissioners.

There is a specific question that comes from Francesca Moses and Dominic Vargen, again. Dominic is very busy. We are not discouraging you. We appreciate that. **The question is, have all CCMA offices been disinfected?**

The answer is, yes. I have confirmed this earlier on. Our services have been deep cleaned, disinfected and we will provide the necessary PPEs. The CCMA will continuously order our PPE equipment, and that's why it was important to mention that the premier of Gauteng has ordered 64 million units. We will take the temperature of users and staff members at our facilities and provide sanitizer. Every interpreter, case management officer, commissioner, every staff member of the CCMA will have to wear a mask at all times. Those who deal with papers will always wear gloves to make sure that your life that we treasure is protected. I will say the

following to emphasise the seriousness of the pandemic: Work is important but the lives of people are more important. We will not allow any user without a mask to enter any of our 24 offices when we open on 18th May. If you remove your mask you will be requested to leave. This is intended to protect you, to protect other users and to protect the CCMA. We care about your cases. We care that your cases have been delayed during the level 5 lockdown measures. Please work with us to ensure that all of us are safe from infection and spreading of covid-19.

Now, there's an important question from Brandon Ruando. I hope I am pronouncing that correctly. Brandon is asking; **Is the web-based approach going to be the norm going forward?**

Absolutely. We fully support you 100 per cent. As I stated earlier, it is very unfortunate that the web-based processes and alternative systems like using government facilities as venues for hearings are forced upon us by the covid-19 pandemic. This is what we ought to have done ordinarily.

All our offices and homes must be free of disease and viruses. This is just not about covid-19. This is about a matter of occupational health and safety for employees and the general public's health safety. We must make sure that people are free from hypertension, diabetes, TB, HIV and covid-19.

The different platforms that we are going to use are going to become the new normal. We accept this fully and without hesitation. And we are going to ensure that it remains like that because there is a lot of benefit in it

Nandi is asking: **Do we require permits to travel to the CCMA?**

At this stage, there's no requirement for permits to come to the CCMA. I wanted to deal with this question under essential services, so please bear with me. I will deal with the question while addressing the issue of essential services and permitted functions. What has caused the CCMA

to delay is exactly the question that you have raised. You will hear shortly who needs a permit, who must issue the permit and when must it be issued.

Let me deal with the issue of condonations.

There was a question that was asked that people weren't able to refer cases during the level 5 lockdown. People could not travel and as a result of that cases are late. But we have also noted that some of our users want to claim the benefits of covid-19 impact relief even when their matters were referred before lockdown.

One of the critical issues you'll note is that the Disaster Management Act, together with the regulations issued in terms of it, there's no provision suspending the application of other laws. This is a constitutional State that operates on the principle of conflict resolution. Therefore, the LRA (Labour Relations Act) continues to apply, so are the rules issued in terms of that.

Now, the issue of referral within 30 days is a matter that is provided for in terms of the Labour Relations Act. It is a statutory issue. It is a matter that is contained in our rules. For us to adopt a different approach, you will need to change the statutes to do so. But, we are not oblivious of the impact of the covid-19. If your matter is late and it's due to level 5 or level 4 lockdown measures, we plead with you to apply for condonation. The reason that you must state in terms of Rule 9 is that *'I could not apply or refer my case because I was prevented by the lockdown.'* This will help us to isolate the various cases.

Remember the referrals weren't blocked using the electronic approach. But we do understand that some of our unsophisticated users and others who don't have resources would not have gone to Internet shops to fax or email certain documents. As a result, they couldn't file the condonation. The easiest way to deal with that once you are in the covid-19 ambit is to make the condonation in terms of Rule 9 and state that, for example, *'I was dismissed on this date and the 30 days ended during the lockdown and I couldn't refer because I wanted to fax, I wanted to do*

this... I could not refer the case. May you please condone.' And of course, you'll comply with other issues - the degree of lateness, the reason for the lateness, which is a lockdown.

Now the question by Bra X Ngonyama: **How do we deal with Rule 25 and section 189(A) after lockdown?**

The same normal process that we follow. If you want to apply for Rule 25, which is the application for you to have legal representation, I did state earlier on – all applications that can be dispensed purely on paper must be submitted through the ordinary process using the ordinary documents.

Once an application in terms of Rule 25 is made, it will be allocated to a commissioner after taking into consideration the answer from the other side. Then a commissioner will then make a ruling. So there is no change in as far as Rule 25 is concerned. Whether the matter is done web-based or at a different venue, Rule 25 still applies.

Regarding Section 189(A), the process of requesting for facilitation has not changed. And this must not be mixed up. Two covid-19 TERS exist. There is the covid-19 related TERS (which is the Temporary Employer/Employee Relief Scheme) and there is the normal one, which assists companies that are in distress. When you make an application you must be clear which one you are applying to - If you are requesting relief because of covid-19 impact or ordinarily because your company is suffering the covid-19 impact. But the referrals and the timeframes mentioned in Section 189(A) must still be observed. I can share with you with pleasure that we have had web-based facilitation of 189(A) process, including the matter of the SAA (South African Airways).

Now let me deal with (audible) Mzimande, I hope you are related to Blade. **When will the directives be published?**

It should not be later than tomorrow. We will publish them on all our platforms. Remember we have got our Facebook, Website and Twitter, which we are going to enhance to ensure there is more accessibility. [Please read them](#) and apply them.

I have another question from Busilethu Grace: **What about bargaining councils?**

Bargaining councils have constitutions, collective agreements and other processes that are recognised by the CCMA. If you look at the rules of the bargaining councils and how they operate, it's exactly as the rules of the CCMA, a replica with exceptions here and there.

The approach that we are taking is the same approach the bargaining councils will take, and we are going to ensure we synchronize in how we deal with dispute resolution. You must be able to enjoy the same benefits at the bargaining councils.

Do not panic about the bargaining councils. I have seen public service bargaining councils such as the PSCBC talking about web-based hearings and things like that. So, we are going to make sure that we are consistent.

I have already dealt with the opening of offices. Let me come to the essential services and the question that was asked earlier whether one needs a permit to visit the CCMA or not.

One of the things that troubled us as the CCMA is when we read the regulations we were not specifically mentioned or permitted as essential services. This created confusion on whether matters can proceed.

The CCMA is a public entity, part of the Department of Employment and Labour. The DPSA advised us that public entities must continue service delivery to our people. This means the CCMA as a public entity must continue to operate, albeit limitedly. The handicap we faced is that even if our offices were opened, users would look at the lockdown regulations and see that they are only allowed to move from home to work; from home to buy groceries; or from home to buy

medication, unless you are an essential service. There was no express provision that said you can proceed and do cases.

When we read the latest regulations and on our generous interpretation of that, and heeding the call of the DPSA and our minister of labour asking that we ensure we open our offices, it is expected that members of the public should be able to go to the bargaining councils and the CCMA without the required permits. There are certain exceptions where an instruction has been given like attorneys and legal practitioners. The heads of these institutions must issue permission to travel.

Our view is that there is no permission required because this is a public function service, which is permitted and must be done. Any member of the public that experiences difficulty or disallowed from coming to the CCMA and the bargaining councils, alert us accordingly.

I have approached the Director General in the Department of Employment and Labour and the Minister to intervene where it is practical and necessary through a declaration saying to allow the CCMA and its users to operate. The workers and the employers who want to come to the CCMA do not need permission. That is the view we hold, so you are most welcome to come on the week of the 18th to the CCMA offices to deal with your cases.

I want to speed up, but first **I have to address the issue of essential services.**

The CCMA offices host also, as part of an integrated institution, the essential services. Therefore, we have seen a new definition of what is called essential services. Firstly, it must be noted that the traditional meaning of essential services as provided for in the Labour Relations Act has not changed. The meaning of essential services for the purposes of managing the disaster does not mean the same within the context of the Labour Relations Act. We must clarify that.

I have dealt with the issue of face to face interactions from the 18th of May. We have declared that life comes first, that life is more important than work. Masks must be worn at all times. You will not be allowed to remain or enter our offices without a mask. Always wear a mask at all our offices. Sanitizers will be provided and some compulsory assessment.

Our offices will continually be disinfected after each hearing is held. Observing social distance does not mean we must be anti-social. We will continue to be social, but within the distance prescribed.

We will expedite the backlog of cases because we have also offered that we will use weekends where possible to expedite the cases.

Social distancing has an impact on slowing the queue. There is going to be queue management.

For our conferences, we will use webinars and alternative methods of dealing with that.

Now there's a question regarding employers forcing their workers to seek leave – sick and annual.

I will deal with the frequently asked questions.

Several rights are affected as a result of level 5 lockdown. We have had to go and deal with industrial actions. You might not know that there have been some unprotected strikes, for example, at Pick n Pay. The distributors, workers and unions were on strike. We had to resolve that dispute together with the Minister late at night. If we had failed to resolve the dispute it would have affected the supply to outlets, which were running out of stock. So, the right to strike was limited as a result of that.

We are going to seriously pursue an integrated approach where the CCMA works closely with the UIF. We don't want you to come to the CCMA for UIF. There must be a system that we can link

with the UIF and the matter is resolved. This is the approach that we are going to take in matters that we are going to deal with relating to Section 189(A). For example, we work very closely with Productivity SA. I must say without hesitation during this period Productivity SA is one of the most relevant and needed institutions. We are going to ensure that our relationship with Productivity SA works to the extent that we can so that we can turn around the companies that are in distress.

I have dealt with the issue of bargaining councils.

Now, I want to make a plea to employers. We know that a company may close and that retrenchments may happen. I am asking that you treat workers with dignity when you notify them that you can't pay salaries or that you are going to retrench them. Our Constitution expects it of us. It is not a dignified approach to send a WhatsApp two days before payday to say that you can't pay an employee their salary, or sending an email to announce retrenchments in a week's time. At 9 pm some of them call me in tears saying, I have no employment I just got a letter, I wasn't spoken to, I was not in the meeting, it is done. You still have to break the news at home to your loved ones. It's a difficult circumstance to be in when you don't know how you are going to pay school fees, house bond, car, groceries or medical aid because your source of income is now gone. That's a painful experience that we don't wish for any person.

Unemployment poses a direct assault to dignity. How we communicate it and how we deal with the process must be compliant with the law. I am asking that we exercise *ubuntu* in how we deal with issues of closures of businesses and dismissals of any form.

Now there's a question **about businesses in distress and inability to pay salaries to staff. What should employers do?**

Please approach the department of labour urgently online. When you apply don't just apply for the company to be assisted in terms of the distress. Do it for employees, also. The principals of

dignity that I talked about, of people being hungry and having nowhere to go because there are no salaries is one of the most devastating issues that you can ever imagine. The president made R500bn available for assistance in the different ministries and particularly this one. Please approach the covid-19 TERS. Apply urgently. We have seen that people have been receiving money already. While that is located with the UIF in the Department of Employment and Labour, we encourage that you do your online applications to make sure that workers have salaries and the company is being assisted.

There's a specific question about the termination of fixed contracts before the actual expiration.

There are 2 parts to this. It is a technical question. Ordinarily, there's something called the sanctity of contracts. This means that if we agree that you are going to be contracted for one year, stick to the one year and let it run. The issues of whether that can be renewed...that is a different debate that can be dealt with in terms of Section 186. But any premature termination of a contract is called a dismissal. Once a contract is terminated prematurely - we have seen those cases coming through - that is a matter that is justifiable at the CCMA.

Premature termination of a contract is referred in terms of Section 186, read together with Section 108(B). I know that some take a lawful approach and call it *unlawful termination* of a contract and claim damages. I don't recommend it to be done at the labour court because it is a long and more expensive process.

Any premature termination of a contract remains a termination of a contract. Whether such a dismissal is fair or not depends on the facts that you are going to present to the commissioner. The commissioner shall decide terms of the evidence that is placed before him. I do not think it will be appropriate for me to make any call on whether it is fair or not, but yes, that's how it is dealt with and this is how it should be approached.

There was also a question that was asked whether an employer can impose leave on an employee. Please refer to Section 20 sub-section 10 paragraph (b) of the BCEA. It states: in the absence of an agreement an employer can direct on when an employee must take leave. But am giving this a general response because that is what the Act says. A different circumstance that we have witnessed where the issue of force is used, where there's no attempt to agree, wherein some companies some people are forced to take leave during lockdown because a company is trying to maintain a beautiful balance sheet, that is not the proper purpose to this.

Leave is a statutory requirement, a rights issue. Practically if you force an employee to take leave during the lockdown, what must they do? Where must they go? Leave is about rest and vacation. But for many employers it comes down to, 'I am sorry I don't want leave credit into my balance sheet, therefore, you must do it by gun'. We must avoid such approaches and take the consent approach which is ubuntu and constitutionally correct.

Some employers have applied for no work no pay. We must deal with this quickly because we have run out of time. For example, regarding working from home or remote working. Organised labour and business, develop guidelines before you implement this issue, please.

There is a contradiction when a worker complies with advice from WHO or our Department of Health to self-quarantine and then does not get paid. We must adopt an approach that is transparent, consultative and shows that people understand that the principals of working remotely are established and known by the employer and employee. If it is not applied in accordance with that, then you can consider using corrective measures. Penalty measures must be the last resort. But you do find cases where there is non-compliance. Issues involving pay reduction, no pay and no work, and no payment can be sent or referred to a CCMA commissioner.

There's another interesting question that was asked by one of our commissioners whether employees can be forced to sign an exemption indemnifying the employer in terms of compliance with the employment law.

You can't give away your employment rights because they are statutory based. But there are processes in terms of Section 40 of the OHS Act where the minister can exempt the employers from complying with certain provisions or all the provisions of the OHS Act. This is a technical question, and I don't have a yes or no answer. We recommend you consider in totality all the factors – whether there has been an exemption, whether there has been an application or there's a collective agreement or whatever the case that makes an employer not to comply. But it can't be done by force without following the exemption processes that are prescribed in the OHS Act.

Workers cannot, in terms of the LRA and BCEA, be made as a condition of employment to give up their employment law rights. All of them that are mentioned, in Section 2 I think of the NMWA and the BCEA and the list of employment law cases that are stated there.

Let me deal with the other remaining questions: We have attempted to respond to all the specific questions that you have been raising and we see the questions are still coming through.

My team is telling me that I have run out of time. But we commit to respond to all the questions that we have not responded to that we are seeing on the screen. The CCMA has four information officers who deal with over 2000 cases per day. I intend to increase the capacity of the desk so that we can try to achieve a 48-hour turnaround time in responding to your questions. I do understand and appreciate with my team and governing body that when it comes to practices as protected by Section 105 of the LRA and section 23 of the Constitution, that it must be dealt with expeditiously and effectively. We are going to increase that capacity.

We hope to have a monthly session of this nature where we interact live and direct with you like today. Going forward, we will address theme-based questions, and not general questions like we

did today. For example, we will say that in the next month we will be dealing with large-scale dismissals and small scale dismissals in terms of Section 189 (A). We will bring directives, case laws, the approaches, TERS Covid-19 and general terms. When you come to this site you will know what to expect. We will pronounce the theme a day in advance so that we can prepare comprehensive answers to your questions. If the need arises from public demand, we will consider extending the duration of the Livestream.

We have noted the interest of our users in our inaugural address on this platform. We have decided on the spot to have a monthly session. Other (live streams) will be quarterly. As things happen at the CCMA, such as new directives and new case laws, we will tell it to you live so that you know what is happening and where to go for assistance. We will give you the results of the new approaches that we have promised today regarding case hearing venues and the web-based approach.

I am happy to tell you that at this stage there is no single employee of the CCMA has the covid-19 infection. We are still sitting at zero and we want to keep it at zero. If any of our employees test positive for covid-19 after we have resumed work on the 18th, please tell us. We will assist with self-quarantine, follow the process that is recommended in ensuring you get treatment and proper support. We will also ensure that there is no stigma. It's a constitutional imperative not to stigmatize the coronavirus disease like we did HIV/AIDS. Coronavirus is a manageable disease. More than 3000 of our people have survived.

In closing, on the 18th of May, we are back in our offices to dispense justice. Thank you for the time you have spent with the CCMA family. We will ensure that we pursue our new strategy, as you see in my background it says, "Imvuselelo – The revival". What this effectively means is that we are more than 25 years into democracy and have passed one of the best constitutions and the best employment laws.

But the best application of any employment law is about it being properly applied. All the awards that we do at the CCMA together with the bargaining councils will mean nothing if they are not executed. The CCMA is committed to implementing every award that we have issued and every dispute that has been resolved. We shall see to it in partnership with the labour court and the sheriffs that those awards are fully implemented. An award that is not implemented does not mean anything.

We are 'reviving the spirit' with our strategy of five years. ...ubuntu bethu... "I am because you are" that is our slogan. I don't exist alone as an island. The CCMA does not exist as an island. We exist as a family of nations in the environment of other institutions. We are going to revive the Constitution as the Minister and the President has said, recognizing the values that underlie our Constitution - ensuring that there is integrity, recognition of rights of people and our history, and taking our place in the family of nations. We must revive our spirit. Ubuntu bethu. That we treat people with absolute dignity and recognizing the freedoms that we enjoy.

Therefore, it is our task to revive you, to revive the spirit of how we are as a nation. Covid-19 is an uninvited guest. It will not take our lives. As John Donne said, 'Death Be Not Proud'. It may have killed our family (members). Some of them are now in hospital and others are leaving us as we speak. But we will flatten the curve because we are a nation of winners. We are a revived nation.

Thank you very much.

LRS Labour Research Service

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