LIBERTY FIRST

Regulation

Dr Morné Malan

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REGULATION

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Series Preface

On 29 May 2024, South Africa conducted its 7th election since the transition to constitutional democracy three decades prior in April 1994. In 1994, the African National Congress (ANC) thundered to power and acquired 63% of the seats in the National Assembly, a percentage it improved to 66.5% in the 1999 election, and finally to 69.69% in 2004. Since then, the ANC has been progressively losing vote share.

The ANC's liberalisation of the economy in the 1990s rewarded it with increasing democratic mandates, culminating in its significant mandate in the 2004 general elections in 2004. However, in the wake of the global financial crisis and the election of Jacob Zuma to the presidency of the ANC in the late 2000s, the ruling party abandoned this policy approach and adopted something approximating outright socialism as the lodestar for policymaking. Predictably, this resulted in worsening socio-economic outcomes.

Today unemployment in South Africa stands at 32.9% – the highest in the world – and South Africa has for the past decade (since 2013) averaged less than 1% annual growth in GDP per capita.

At the 2024 general election, the ANC lost its absolute hold on political power when it secured only 40% of the seats in the National Assembly, forcing it, for the first time, to share power nationally with parties formerly in opposition. This led to, among others, the Democratic Alliance (DA), Inkatha Freedom Party (IFP), and the Freedom Front Plus (FF+), all parties with historically more pro-market policy perspectives, being included in the so-called "Government of National Unity" (GNU) formed on 30 June 2024.

The outcome of this election has, once again, left the door towards fundamental policy reform ajar. In recognition of this potential and of the severity of the present situation, the Free Market Foundation (FMF) has launched its *Liberty First* initiative to place practical solutions at the feet of policymakers that would meaningfully change socio-economic outcomes.

These solutions are premised on the Fraser Institute's *Economic Freedom of the World* (EFW) annual report, which clearly sets out the kinds of policies that produce "economic freedom" around the world, and those that detract from economic freedom. Where the EFW is compared to indices on human development, mortality, democracy, civil liberty, press freedom, happiness, and so forth, it is evident that countries scoring highly on economic freedom produce better social outcomes, than countries with more interventionist governments.

The FMF therefore published this series of papers, with each covering one of the five categories that the EFW measures – Size of Government, Regulation, Sound Money, Freedom to Trade Internationally, and Legal System & Property Rights – setting out the reforms the GNU, or any subsequent government, can implement to climb the EFW ranks and follow the charted course of prosperity for all.

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INTRODUCTION

In recognition of a momentous change in the dynamics of South African politics after the 2024 general election, the Free Market Foundation is putting forward several, albeit non-exhaustive, policy proposals that would see South Africa ascend the *Economic Freedom of the World* ranking on the score of "Regulation." Such an ascension would buttress other necessary steps taken towards economic freedom and ensure prosperity for all.[1]

South Africa faces numerous challenges to unlocking its economic potential, with excessive regulation impeding progress in sectors crucial to growth: the labour market, education, and healthcare.

This paper provides an overview of the historical trends and characteristics of economic activity in South Africa since the dawn of democracy in 1994, and details how these trends relate to and correlate with various aspects of economic freedom as illustrated in the EFW report. Finally, the outcomes of these analyses for area 2 of the EFW index, namely, *Regulation*, are analysed.

This paper argues for the necessary steps towards deregulation of labour, education, and healthcare to promote economic freedom and opportunity in South Africa.

It is also argued that, in order to promote a dynamic economy, the South African government must reduce regulatory burdens across the economy, enabling greater participation from private enterprise.

Deregulation can unleash the country's economic energy, foster job creation, support small and medium-sized enterprises (SMEs), and enhance individual freedoms.

EFW SCORE AND WHY IT MATTERS

Overall economic growth in South Africa has consistently disappointed in recent years and the concomitant ills of

[1] See "Liberty First: A Policy Agenda for South Africa's 2024-2029 Parliamentary Term." https://libertyfirst.co.za/publications/.

unemployment and poverty have unfortunately accompanied the decline in economic prospects. However, it can be clearly gleaned from the underlying data that this has not always been the case – or at the very least that the extent to which our economy has been characterised by sclerotic expansion has not been equivalently dire in recent decades.

The following section will begin with a brief overview of the overall performance of the South African economy before identifying the key factors which have contributed to its more recent stagnation. As will become clear in the analysis, the relevant "turning point" in our economic prospects seems to have taken place in the post-2008/9 global financial crisis (GFC).

Brief historical overview of the South African economy

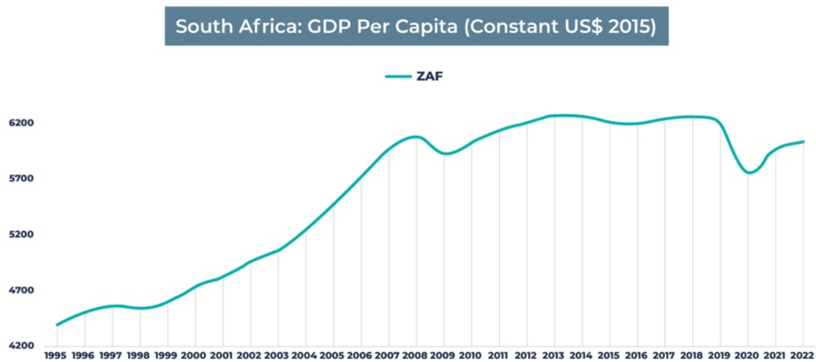

Figure 1: GDP per capita constant 2015 US dollars, South Africa 1995-2023

Figure 1 illustrates the extent to which growth in South Africa can be broadly broken down into three periods, each encompassing a decade in the democratic dispensation. The first period, in the 1990s was characterised by a reasonable, albeit relatively mild, recovery from the downturn on the 1980s. The second, taking place in the

2000s, represents the zenith of economic growth and development. Unfortunately, however, we have failed to replicate the results of either of the preceding periods since 2010 when an epoch of persistent overall stagnation and particular decline was introduced.

The vast gulf between the economic performance of our most recent period and that of the decade which preceded it can be ever more clearly illustrated not with reference to the above absolute performance in per capita GDP, but by looking at the rate of growth in real GDP per capita.

The following graph shows that whilst 2% real growth in per capita GDP had represented something of an expected minimum baseline for development in the 2000s leading up to 2008, the economy has since then struggled to reach even half that previous baseline.

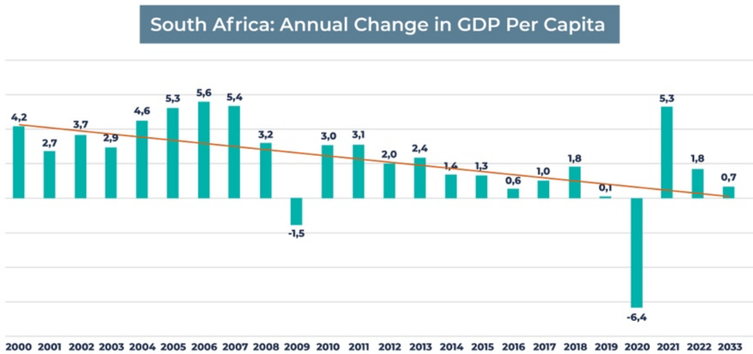

Figure 2: Annual change in GDP per capita, South Africa 2000-2023

Tragically, albeit unsurprisingly, such a reversal in economic performance has coincided with several other undesirable socio-economic outcomes such as increasing overall unemployment, a dramatic increase in youth unemployment and declining investment into the economy.

The significant gains in overall employment which characterised the 2000s had lost its momentum entirely by 2010 and had already begun to swing in the other direction when the devasting lockdown-era spikes in unemployment had taken place.

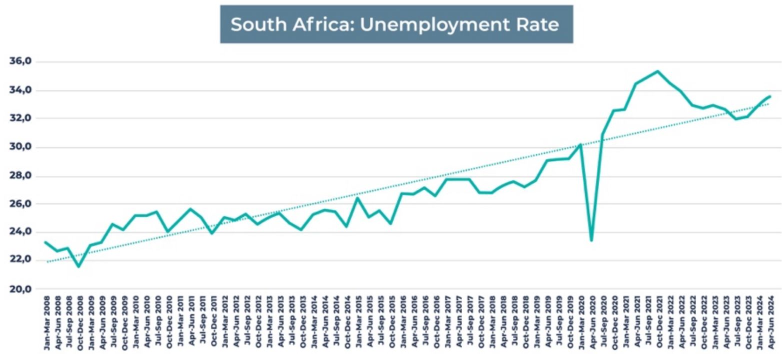

Figure 3: Unemployment rate, narrow definition South Africa 2008-2023

Worrying as the abovementioned may be, the figures for South Africa's youth look rather more dire. While some degree of unemployment amongst young people is to be expected and could suggest underlying dynamism and exploration as younger individuals seek better opportunities early in their careers, the spike in the aftermath of the GFC and the subsequent rise point to structural lack of opportunities for the youth to enter into the labour force.

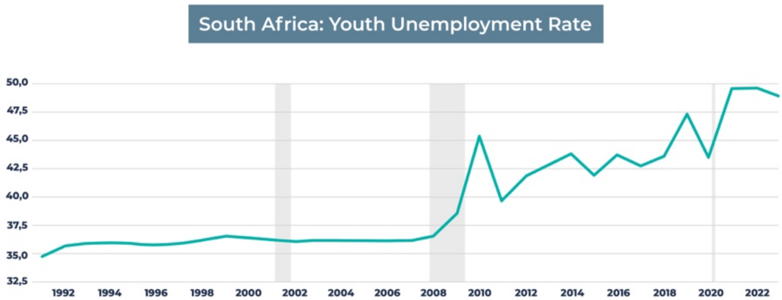

Figure 4: Youth unemployment for South Africa 1990-2023

A final metric which further illustrates the trend identified above relates to Gross Fixed Capital Formation in the economy. Here again, the data follow a similar pattern which flows from high growth in long term investment during the 2000s, towards a circumspect stance in the 2010s culminating in highly volatile and ever declining overall accumulation of capital goods.

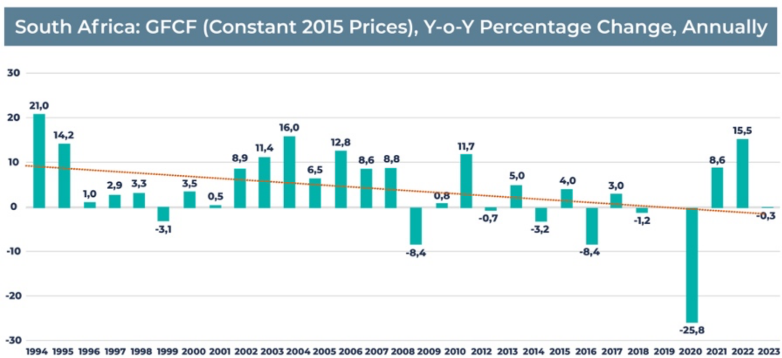

Figure 5: Gross fixed capital formation (GFCF) constant 2015 prices, Y-o-Y % change, South Africa 1994-2023

We have chosen for the purposes of this paper to focus on overall economic growth, unemployment rates and changes in fixed investment as measures of economic well-being. However, it should be stressed that regardless of the metric one chooses to analyse, South Africa's economic performance for the past three decades has been lacklustre. Yet, even more concerning is the fact that our performance on these metrics has not only been poor but has also worsened over time.

A fundamental shift in policy is non-negotiable. The rest of this paper will detail what such a shift must look like by identifying the ostensible causes undergirding the lacklustre performance of the South African economy in recent years. The first metric which concerns our analysis is that of overall economic freedom in the economy.

Stylised summary of trends in economic freedom for South Africa

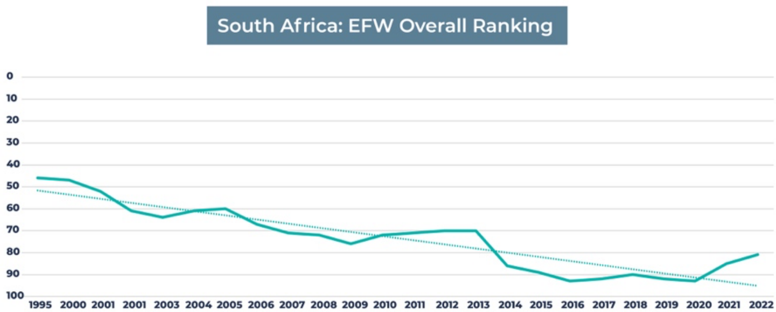

Figure 6: SA EFW rank 1995-2022

As indicated in the above chart South Africa has been in continual decline concerning economic freedom since the dawn of democracy. The most concerning development to note in the above graph is not so much the short-term fluctuations in South Africa's ranking relative to other countries but rather the long-term trend towards lesser freedom in the economy with an especially notable decline at roughly

2014. A final note before proceeding to further comparisons with other jurisdictions, is to highlight the relation between declining overall economic freedom and the decrease in economic performance identified in the previous section. It will be clear at the conclusion of the present section that such a strong positive correlation between freedom and growth exists not only within our country but is even more pronounced in comparisons between countries.

To further illustrate the extent to which South Africa has diverged from its peers regarding its trend toward greater intervention into the economy through regulation, taxation and state interference with economic activity, the following table details South Africa's decline relative to other Sub-Saharan African countries.

Rank	2000	2005	2010	2015	2022
1st	Mauritius	Mauritius	Mauritius	Mauritius	Mauritius
2nd	**South Africa**	**South Africa**	Uganda	Seychelles	Cabo Verde
3rd	Uganda	Kenya	**South Africa**	Cabo Verde	Seychelles
4th	Botswana	Botswana	Ghana	Gambia, The	Gambia, The
5th	Zambia	Uganda	Kenya	Uganda	Kenya
6th	Tanzania	Ghana	Zambia	Rwanda	Uganda
7th	Kenya	Zambia	Rwanda	Botswana	Botswana
8th	Namibia	Namibia	Gambia, The	Kenya	**South Africa**

9th	Mali	Tanzania	Botswana	**South Africa**	Rwanda
10th	Senegal	Côte d'Ivoire	Tanzania	Tanzania	Tanzania

Figure 7: Top 10 freest economies by overall EFW score in Sub-Saharan Africa, 2000-2022

Whereas South Africa was second only to Mauritius in terms of economic freedom in 2000 and 2005 the following periods have been characterised by a persistent drop in the rankings with South Africa still languishing at the bottom-end of the rankings in the latest report.

Because the EFW comprises a composite index of various factors, there is often a significant level of deviation within the underlying elements of the index where great gains could be made at one level while other factors remain constant or deteriorate. Moreover, one should not limit an analysis of the outcomes to the rankings but should instead focus on the changes in the actual scores from which those rankings are derived. The following graph compares the changes in economic freedom summary scores for South Africa (ZAF), Romania (ROU) and the Dominican Republic (DOM):

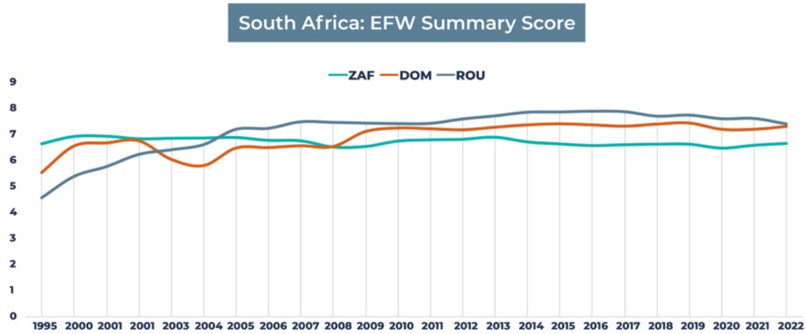

Figure 8: EFW summary scores: South Africa (ZAF), Romania (ROU), Dominican Republic (DOM), 1995 – 2022

The trends could hardly have been clearer. Whereas South Africa was the freest of the three jurisdictions under investigation in 1995, it is today the least free – resulting both from the adoption, over time, of freedom enhancing policies on the part of Romania and the Dominican Republic as well as a rejection thereof by domestic policymakers.

As alluded at the beginning of this section, the impact of such a trend goes far beyond mere figures in an index and is manifest in the tangible influence which such policies have on economic performance:

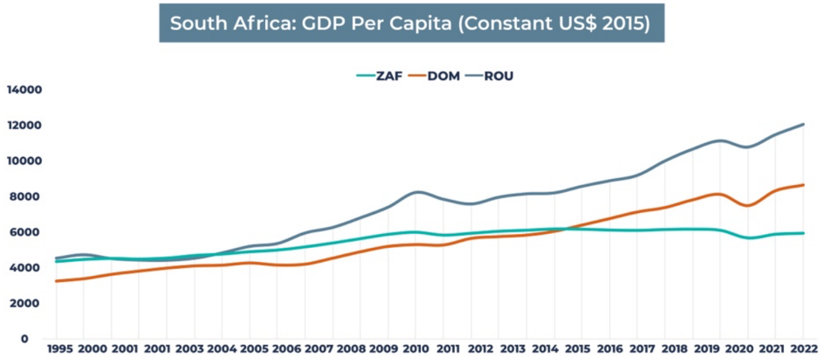

Figure 9: GDP per capita, constant US$ 2015 prices: South Africa (ZAF), Romania (ROU), Dominican Republic (DOM), 1995 – 2022

The results borne from greater economic freedom could scarcely have been clearer. South Africa having started in 1995 with a comparable level of economic wealth as that of Romania and being significantly richer than the Dominican Republic at that time, has since been surpassed by both. Likewise, Romania which saw a greater change in the degree of freedom has also seen far greater economic growth than the Dominican Republic.[2]

The above is but one of a multitude of examples which could be marshalled to illustrate the impact of what we have termed the "freedom dividend." This notion, namely that economic freedom generates societal wealth which accrues to all its members, represents the foundation of the Liberty First policy agenda.

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[2] Although not illustrated here, an even starker contrast could be drawn between the Dominican Republic and its immediate neighbour, Haiti. Once again, cementing the enormous value of economic freedom as a driver of prosperity.

The freedom dividend

One of the most notable revelations from the EFW is what might be termed the "freedom dividend" that exists for the poorest 10% of a society's population.

Comparing the economic freedom scores of countries with the amount of income earned by the poorest 10% of the populations in those countries, it is shown that the poorest demographic of the population in the first quartile of economic freedom (the most "free market" states) earns $14,204 (R250,000) on average per annum, compared to a mere $1,736 (R30,500) in the fourth quartile of economic freedom (the least free market states).[3] The difference is stark.

The poorest of the poor, therefore, earn some eight times more when they find themselves in the midst of free market policies. A higher degree of state interference in the economy is, therefore, not only unquestionably worse for overall economic performance but also quantifiably worse for the poor. Each of the following papers will indicate how placing *Liberty First* when crafting policy generates wealth, prosperity and fulfilment within societies.

Regulation score and rank

Given a cursory glance at the overall score and rank for regulation in South Africa, one could easily arrive at two seemingly valid, albeit simplistic, conclusions: Firstly, with regard to South Africa's score in the EFW, that it seems to track overall economic freedom for the country rather well (i.e., it seems to be roughly in line with the overall average); secondly, with regard to its ranking, that it tends to rank quite a bit better with regard to regulation than it does on headline economic freedom.

On further investigation, there does seem to be some support for the abovementioned conclusions. The following graph shows that South Africa tends to perform relatively well with regard to its regulation rank in global terms. Accepting for the moment that the premise,

[3] *Economic Freedom of the World: 2023 Annual Report* 19.

however, then one is still forced to reckon with the almost perpetual decline in our ranking – save for a moderate uptick in the past two years.

As described in other editions of the *Liberty First* proposals, such a graph which focusses narrowly on South Africa's ranking leaves far too much unsaid when hoping to analyse the true nature of the component being investigated. The table below summarises both the scores as well as the rankings for economic freedom and regulation. It also includes the scores for the sub-components which are used to construct the average score for regulation in general. Here the picture becomes significantly clearer, albeit slightly more nuanced:

South Africa					
Year	**2022**	**2017**	**2012**	**2007**	**2002**
Economic Freedom Summary Index (Rank)	6.65 (81)	6.60 (92)	6.81 (70)	6.81 (71)	6.77 (61)
Regulation Index (Rank)	6.73 (68)	6.59 (86)	6.78 (71)	7.11 (49)	6.73 (51)
A. Credit market regulation	8.94	8.77	8.87	10.00	9.62
I. Ownership of banks	10.00	10.00	10.00	10.00	10.00
II. Private sector credit	6.82	6.32	6.62	9.99	8.87

III. Interest rate controls / negative real interest rates	10.00	10.00	10.00	10.00	10.00
B. Labour market regulations	6.69	6.76	6.30	6.51	6.30
I. Labour regulations and minimum wage	5.28	5.28	4.72	4.18	4.18
II. Hiring and firing regulations	6.64	6.64	6.64	6.24	5.23
III. Flexible wage determination	4.11	4.57	2.84	4.19	4.67
IV. Hours regulation	8.00	8.00	8.00	8.00	8.00
V. Cost of worker dismissal	8.27	8.27	8.27	7.78	7.78
VI. Conscription	10.00	10.00	10.00	10.00	10.00
VII. Foreign labour	4.53	4.53	6.62	5.18	4.27
C. Business regulation	5.48	5.01	5.66	5.18	5.71
I. Regulatory burden	3.36	3.69	3.20	3.05	3.17
II. Bureaucracy costs	3.78	3.56	4.00	2.36	5.75
III. Impartial public administration	7.20	5.22	7.82	7.63	7.91
IV. Tax compliance	7.57	7.57	7.63	7.68	6.02
D. Freedom to enter markets and compete	5.81	5.81	6.28	6.73	5.29
I. Market openness	5.30	5.30	5.47	5.44	5.29
II. Business permits	8.39	8.39	9.63	8.03	-
III. Distortion of business environment	3.75	3.75	3.75	-	-

It is, of course, trite to note that whereas the overall average for any given area in the EFW index might seem relatively stable that much could be lost in aggregating all of the various sub-components.

Consequently, when perusing the scores which underlie the overall average, it is striking to note the substantial amount of deviation between the various variables being analysed.

In fact, regulation is likely the area of economic freedom which demonstrates the highest degree of variability amongst the relevant sub-components. This is particularly true with regard to the labour market where scores oscillate between a perfect 10 for conscription and a meagre 4.1 for flexible wage determination. Similarly, under business regulation, South Africa scores quite well with regard to tax compliance (score 7.57) but retains a shockingly low score for regulatory burden (score 3.36). The same can be said of the sub-component freedom to enter markets and compete, where scores deviate from 8.39 on the higher end of the distribution to 3.75 on the lower end.

It is, therefore, evident from the data that when it comes to regulation in South Africa, the environment in which businesses seek to operate is highly distorted and moreover that such distortions are reflected in other economic data point such as sluggish economic growth and extreme levels of unemployment.

In the following section, we provide the FMF's proposals for reform regarding the regulatory environment in South Africa. However, given the enormously complex and, at times, labyrinthian nature of regulation in our economy, we do not seek to address the entire structure of the regulatory state in the economy.

Instead, we have decided to focus on three areas hoping to chart in our analysis of these sectors of the economy a path which can be fruitfully applied to other segments of economic activity. We have also chosen to focus on those areas which present the greatest urgency either through abysmal performance or due to the urgent nature of the legislative and regulatory threats those sectors face.

The areas chosen for the purpose of our analysis are, therefore, the labour market, the health sector, as well as the education sector. This focus, however, should not detract from the imperative – we submit – of wholesale liberalisation of all economic sectors.

Right to Work

The good intentions of activists and legislators should not be allowed to stand in the way of the unemployed finding work.

- Add an opt-out clause to the Basic Conditions of Employment Act for long-term unemployed, allowing voluntary exemption from certain labour laws.
- Labour department to monitor for employer coercion.
- Amend the Labour Relations Act to prevent bargaining council agreements from extending to non-parties.

South Africa's labour market is burdened by stringent regulations, which act as barriers to entry both for the unemployed as well as for small businesses, who are deterred from hiring.

Labour laws, designed to mediate relations between large corporations and unionised employees, disproportionately impact small and medium-sized businesses that lack resources for compliance. For example, small employers disproportionately find themselves in ongoing disputes due to wrongful dismissal claims and face complex legal procedures at the Commission for Conciliation, Mediation and Arbitration (CCMA). This creates a high-risk environment for small employers, who may hesitate to hire, fearing costly legal battles over dismissals that ought to be regarded as routine in a dynamic economy.

To mitigate these barriers, South Africa should consider exempting the unemployed from being undermined by cumbersome labour regulations. Such measures would foster an environment where small businesses in particular can thrive and contribute to reducing unemployment. Deregulation in the labour market could release entrepreneurial energy and accelerate economic growth.

Additionally, a flexible, deregulated labour environment would encourage small businesses to absorb a larger portion of the unemployed. A deregulated labour market, particularly for small businesses, could allow for greater turnover and reduce the barriers for young and unskilled workers to enter the workforce, providing a foundation for job creation and economic mobility.

The FMF has long championed the implementation of a *Job Seekers Exemption Certificate* (JSEC). This policy aims to alleviate South Africa's high unemployment rate by granting long-term unemployed individuals the option to work outside the constraints of existing labour laws for up to two years. The JSEC allows these individuals greater flexibility to negotiate employment terms directly with potential employers, thus removing some of the legal and financial barriers that often prevent unskilled or low-experience workers from entering the workforce. This exemption allows jobseekers to negotiate terms such as lower wages or flexible hours, which increases their employability and offers a gateway into the workforce.[4]

Lastly, bargaining councils should not be allowed to extend agreements to non-parties. The phenomenon of binding third-parties to what are, effectively, contractual negotiations and agreements, is unknown in the common law and something of a legal aberration.

Currently, applying for exemptions is costly and inaccessible for small businesses. Granting what would effectively be "automatic exemptions" for small employers would save time and reduce costs, allowing them to compete more effectively. Labour agreements, when applied to non-parties, protect large firms by limiting small businesses' ability to offer competitive wages and flexible work conditions suited to individual employees, particularly those unsuited to large firm employment.

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[4] Read more about the JSEC: https://freemarketfoundation.com/jsec-job-seekers-exemption-certificate/

In conclusion, South Africa's labour market is one of the most highly regulated in the world – especially given the country's low-skill, high-unemployment context. Consequently, doing business in South Africa has been rendered nearly impossible to do legally for small firms. Unfortunately, this has had negative consequences for both employers, but especially for prospective employees.

South Africa needs to free up business and provide it with greater flexibility to conduct business. Labour productivity has been one of the most essential aspects of growth and development with an emerging consensus amongst development economists that it was a rise in productivity – even more so than a rise in investment – which has led to China achieving incredible growth rates since 1978.

A more flexible and dynamic labour environment is pro-poor, pro-jobs, pro-growth, and allows both workers and their employers to do business on a mutually beneficial basis and to reap the rewards of a free and energetic market.

Healthcare

The right to determine one's own healthcare affairs should be regarded as a non-negotiable aspect of human dignity.

- Repeal the National Health Insurance (NHI) Act, halt NHI-related policies, and abolish all interim NHI structures.
- Enable medical schemes and health insurers to offer low-cost, high-quality private healthcare products to the indigent.

South Africa's healthcare sector is similarly impacted by excessive regulation, particularly in its state-owned entities and public health institutions.

The public monopolisation of healthcare services, along with complex licensing requirements, limits private sector involvement in healthcare provision. Allowing greater private sector participation in healthcare, particularly in underserviced areas, could expand access, reduce waiting times, and introduce innovation through competition.

The introduction of what amounts to the effective nationalisation of healthcare services in South Africa through the NHI must, therefore, be unreservedly and expeditiously rejected.

Furthermore, by deregulating licensing for private healthcare providers, the state could allow more clinics, pharmacies, and hospitals to operate. This would not only improve service delivery but also allow private healthcare providers to cater to various community needs.

Deregulating the healthcare sector would help lower costs, as private providers competing in the market would drive efficiency and reduce unnecessary administrative expenses. With improved access and efficiency, the healthcare sector would become more responsive to individual needs, while also reducing the burden on the public healthcare system.

Reforms must, therefore, focus on opening up the private sector to make such services available to a broader base of the population as opposed to limiting their impact through harmful restrictions such as those imposed on the provision of low-cost benefit options.

Education

The authority of governing bodies and the autonomy of independent educational institutions should be restored and respected.

- Repeal measures limiting parental authority in public schools, especially the Basic Education Laws Amendment (BELA) Act.

- Revoke government interference in homeschooling and independent schools, adhering to section 29(3) of the Constitution.

South Africa's public education system has long been a source of frustration for taxpayers and policymakers alike. The current system is funded by tax revenue and managed by the government, but produces far below standard results, therefore limiting educational opportunities and skills development, especially among disadvantaged youth.

Unfortunately, the current situation with regard to reform in the education sector has echoed the trajectory of healthcare. Like the NHI, the BELA Act is not merely an insufficient solution to the issues plaguing education, it is rather a clear and significant step in the wrong direction.

The economist and Nobel Laureate, Milton Friedman, famously stated when arguing for deregulation of the education sector that, "We know from the experience of every other industry how imaginative competitive free enterprise can be." Applying this model to education would expand the variety of learning experiences available to students and promote excellence through competition.

Deregulating the education sector could provide parents and students with the freedom to choose their preferred educational paths, paving the way for a competitive, private-sector-driven education system that could better meet individual needs.

Furthermore, barriers to entry for independent (private) schools must be removed to allow these institutions to serve as alternatives to traditional public schooling. Government requirements for school registration create unnecessary obstacles, often based on political or ideological biases. Removing these registration requirements would increase parental choice, allow for greater innovation in curriculum, and encourage private enterprises to develop schools tailored to diverse educational needs.

Homeschooling, an essential component of educational freedom, faces unnecessary restrictions in South Africa.

Government requirements for curriculum adherence in homeschooling can stifle the educational variety that parents and students seek. Deregulating homeschooling and removing government interference would empower parents to provide tailored educational experiences, better suited to their children's specific needs. It would also bring about much needed security of the right to privacy, as micromanaging how parents teach their children is perhaps one of the greatest limitations of the right to an intimate, family domain.

When learning is individualised, students can often perform better and focus on developing skills that are most relevant to their future.

Qualified teachers who choose to educate their children at home may, over time, extend this option to other students, creating micro-schools or larger institutions. This natural progression, if unencumbered by regulation, can encourage educational innovation and entrepreneurial opportunity. To ensure minimum educational standards, proficiency testing could be offered by private institutions rather than the state, providing flexibility and fostering self-regulation within the educational community.

Deregulation would, therefore, not only respect parental choice but also strengthen the educational sector by enhancing quality through private enterprise.

Conclusion

Excessive regulation in South Africa's labour, education, and healthcare sectors hampers economic growth and impedes social progress.

By reducing the regulatory burden, the current government can foster an environment that empowers small businesses, enables educational choice, and improves healthcare access. Deregulation will enhance the capacity of the private sector to create jobs, foster innovation, and drive economic development, ultimately contributing to the fulfilment of the rights enshrined in the South African Constitution.

A deregulated economy is more responsive to the needs of the people it serves. Cutting red tape and reducing bureaucratic interference will not only create economic freedom but also ensure a more dynamic, inclusive, and prosperous South Africa. This shift would give citizens greater control over their livelihoods, educational opportunities, and healthcare choices, leading to a more equitable society aligned with the ideals of the country's Bill of Rights.

South Africa's future depends on a regulatory framework that empowers rather than restricts, enabling the country to harness the full potential of its people and resources.

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