

CHAPTER 6

DEVELOPMENT OF LABOUR-BASED WORKS POLICY IN NAMIBIA

6.1 Chapter Overview

This Chapter describes the development of the Labour-Based Works Policy in Namibia.

6.2 Background

The need for an authoritative national organization to promote labour-based works as one of the means of addressing the unemployment problem in Namibia was conceived in a LBW conference held in Windhoek in September 1994. An organized national body that would function as a vehicle to support and promote Government policy on alleviation of poverty and unemployment was conceived at the conference. It was considered that such a body would also function to facilitate a sustainable strategy for employment creation through the efficient use of labour-based works techniques.

In order to properly constitute such a body and define its role clearly it was realized that a Government policy on LBW would be pivotal in the entire process. Recommendations made in the conference spurred initiatives for the LBW policy for Namibia. Notably, policy development initiatives commenced after the completion of Phase II of the pilot project.

6.3 Objectives of the Labour-Based Works Policy

According to the Green Paper on Labour-Based Works (DOT, 1997) the objectives of the policy on labour-based works are;

“to improve living standards in a sustainable way, through increasing income generation and employment opportunities, where technically and economically

feasible, for the poor and marginalised sectors of Namibian society, in both the public and private sectors, in a focused and targeted manner, by way of:

- (i) Encouraging the substitution of labour for capital and use of labour friendly technologies, thus substituting local resources for imports.*
- (ii) Ensuring the Government procurement procedures favour the use of local resources and employment generation.*
- (iii) Stimulating and supporting small scale enterprises to implement labour-based technology.*
- (iv) Maintaining the labour absorption characteristics of the various sectors of the economy that already utilize large amounts of labour”.*

6.4. The White Paper Development Process

6.4.1 Policy Drafting Process

Cabinet mandated the MWTC in November, 1995 to proceed with the preparation of a White Paper on labour-based works (Hjelm, 1997). At the initial planning stages for LBW, it was appreciated that due to the demographics of Namibia, impact on employment creation would not be significant if the technology was confined to the road sector alone. It was therefore necessary to broaden the scope of the policy to cover as many sectors as possible.

A policy drafting committee of senior officials was constituted in 1996. This consisted of representatives from the following bodies;

- Ministry of Labour.
- Ministry of Agriculture Water and Rural Development.
- Ministry of Trade and Industry.
- Ministry of Regional, Local Government and Housing.
- Ministry of Basic Education and Culture.
- Construction Industry Federation (representing the private sector).
- Engineering Professions Association of Namibia.
- Employers Federation of Namibia.
- Transport utility parastatal, TransNamib.

- Power utility parastatal, Nampower.
- Communications utility parastatal, Telecom Namibia.
- Chamber of Mine Workers.
- Namibia Building Workers Union.
- Metal and Allied Workers Union
- Association of Local Authorities of Namibia.
- Department of Women Affairs.
- National Planning Commission.
- Department of Transport and
- ILO ASIST.

The drafting committee was assisted by a panel of experts in the fields of engineering, economics, human resources and policy development, drawn from both public and private sectors.

6.4.2 The Green Paper on Labour-based Works

Through a series of consultative meetings and workshops, the Green Paper¹ on Labour-based Works was completed in February 1997. Stakeholders involved and consulted included local authorities, local administration and leadership, employers, the unemployed and all those who would have an interest in the implementation of labour-based works policy.

The Green Paper provided a socio-economic background framework and discussed in some detail the labour environment in Namibia, the potential role of labour-based works and the benefits that would accrue to the economy. A range of possible interventions including re-orientation of Government policies and expenditure towards more employment creation, the role of communities and the private sector were addressed (DOT, 1997(2)). The various success factors were highlighted and the need for creation of an enabling environment. The Green paper was a basic document for triggering public debate.

The paper also initiated dialogue on the following issues (ibid);

¹ The Green Paper is essentially an issues paper set out to identify pertinent issues that required the opinions of stakeholders.

- (a) Targeting aspects considering that unemployment was high and there were about 20 000 new job entrants per year and a backlog then of about 150 000 (1997 estimates).
- (b) Strategy aspects as to what mix of strategies would be effective and to what extent would strategies be combined.
- (c) Employment aspects related remuneration and condition of employment in view of the then prescriptive Namibia labour legislation. One of the questions was to what extent could the remuneration and conditions of employment be applied on labour-based works.
- (d) Sectoral application of LBW methods vis-a-viz potential of various sectors; and the need for incentive mechanisms to be applied to entice the private sector to review their mode of operations and adopt more employment friendly approaches.
- (e) Government policies and expenditure in respect of possibilities to influence policy and to re-direct expenditure priorities in a sustainable manner.
- (f) Education and training in respect of proportions of formal education and training investment in Namibia and issues of curriculum.
- (g) Community level issues in respect of participation in development and management of community level initiatives.

6.4.3 The Consultation Process

Workshops were held across the country in the regions and the results of the discussions were incorporated in the drafting process (Runji, 2000(2)). The first draft of the White Paper on Labour-based Works was released in September 1998, and

the final version completed in June 1999. The White Paper was submitted to Cabinet for its approval in September 1999. The National Assembly adopted it in October 1999 and the policy was finally launched on 16 December 1999.

6.5 Labour-Based Works Policy Issues

The White Paper (MWTC, 1999), addressed two issues that were considered as the basis for successful implementation of a multi-sectoral labour-based works policy. The first was the creation of an enabling environment to facilitate adoption, growth and expansion of labour-based works in Namibia. The second aspect dealt with the delivery mechanisms in the implementation of the policy. Key issues in the policy under these two steps are briefly discussed in the following paragraphs.

To facilitate the creation of an enabling environment, the White Paper proposed the creation of a statutory organ, the Labour-based Works Forum (LBWF) (ibid). This was conceived to be the coordinating hub of all activities in connection with employment creation through labour-based works without removing the implementation responsibilities from the direct role players. Another important function of the LBWF was that of raising awareness of the LBW policy. For this purpose, stakeholders would be required to formulate and propagate strategies based on the LBW policy directives. In all cases, the choice of technology to be applied in the various development endeavours would require careful consideration bearing in mind for example, that besides costing the economy dearly, imported products in fact result in creation of employment elsewhere. The issue of funding which is fundamental to all policy enabling aspects also requires primarily re-direction of existing resources. Implementation of the policy requires capacity and resources, and these had to be developed and harnessed.

With regard to the second step, that of actual implementation, the White Paper identified four main delivery agents: public sector force account (where Government implements project using own labour and/or machinery directly); public sector procurement (the way Government procures goods and services); private sector initiatives; and community initiatives (ibid). At that time, the Government committed itself to place greater emphasis on substituting labour for

equipment where technically and economically feasible, particularly in the development of economic infrastructure. To achieve these initiatives, targeted procurement is considered a necessary strategy. Strategy implementation options includes classification and reduction of tenders to smaller contracts, increasing the labour content of infrastructure works contracts where practicable and enhancing the development of small and medium enterprises. The private sector would also be expected to increase the labour absorption capacity of the economy if such initiatives can be shown to present sound business opportunities. It would therefore be expected that the Government would take a leading role in the formulation of strategic initiatives and undertake various other measures required to stimulate private sector interest. In addition, the participation and contribution by communities in policy formulation has significant importance in the employment creation initiatives and processes. As such it has to be accorded its rightful place.

6.6 The Labour-Based Works Forum (LBWF).

A Draft Bill for the formation of a LBWF was completed in 2000. The structure of the proposed Forum comprised of an advisory Council, a Board of Directors and a small Secretariat. The listed functions of the Forum were (Runji, 2000(2));

- Creation of awareness,
- Provision of advisory support on LBW issues,
- Co-ordination of activities of the role players,
- Promotion of research and development activities,
- Establishment of appropriate LBW standards, and
- Undertake all steps necessary to ensure the success of the policy.

At the end of 2000, actions that remained to establish the LBWF were the completion of the Draft Bill, promulgation of an Act of Parliament, and the staffing of the envisaged structure. The restructuring of the DOT and the transfer of LBW experts out of the MWTC following the formation of the RA had a significant retarding effect on LBW Forum initiatives. The process no longer had a champion, and commitment on the part of MWTC dwindled. The LBWF initiative is currently stalled and the Draft Bill is probably gathering dust somewhere in Government

offices for over five years now. A consequence of this is that the LBW technology adoption and implementation has not gone beyond the road sector in any significant way.

6.7. Labour Policies and Practices (LPP)

6.7.1 Labour Policies

Labour-based infrastructure programmes in the known success stories and where less successful attempts were carried out have all been implemented in a wide variety of conditions and national contexts. In many cases, it was recognized that existing national rules regulating temporary employment of workers were not suitable for sustained labour intensive technology application (ILO-ASIST, 2000). When machines are used in construction, the issues are downtime, availability of spares, foreign exchange, qualified technicians etc. In labour-based construction, the issues become how to manage large workforces, to provide decent working conditions to workers and to achieve satisfactory levels of productivity. These challenges are particularly important in execution of labour intensive works using the private sector.

In Namibia, continuous effort was made during the pilot projects and in subsequent projects to develop user-friendly working environments to enhance productivity and to lay a good foundation for sustainability of LBW programmes. At the project inception stage, following extensive consultations between the ILO, the Ministry of Labour, the Public Service Commission (PSC) and the MWTC, it was agreed to view the project as an experiment. Therefore general policy changes in the new Labour Act were withheld, pending the pilot scheme (ILO ASIST, 2000). Employment conditions proposed for the pilot projects were hence used in the pilot projects and the wage rate was linked to the hourly wage rate of casual labourers in the public service. Payment was linked to completion of tasks.

During the second phase of the pilot project it was found necessary to take a critical view of the labour practices. A study conducted by the ILO-SAMAT during

February-March 1995 to establish the way in which the project related to the labour legislation identified the following areas of concern (SAMAT, 1995):

- (i) The sick leave problem: when labour-based workers are hired, they are told they will come to work when they want to, and will be paid only when they have successfully completed the work. The problem is that if the person does not come, it might be that he/she is sick. In the labour-based situation, the contractor does not care about that, they are absent from work and will not be paid, period.
- (ii) Annual leave: this problem is similar to that of sick leave. The question is how frequently do workers get consecutive leave days in view of their period and mode of employment?
- (iii) Meal intervals: labour-based workers are flexible to decide when to break for a meal, and for what period. The law requires that there should be a meal break after every 5 hours of continuous work. Lunch break time is payable.
- (iv) Sundays and public holidays: according to the law, these are rest days. In the event that work is done, workers should be paid double their normal rate. But, what happens when a task spills over into the next day, or since flexible working hours are applied, if the worker decides to do the task on Sunday or on the public holiday?
- (v) Social Security Scheme: the question was how best labour-based workers can be covered under the scheme in terms of maternity and sick leave, death benefit, etc. considering their conditions of employment which are different from the norms in terms of duration of employment; working hours etc. The social security scheme legislation does not accommodate workers in short term employment such as task workers in labour-based works. In addition, a person needs to be employed and make contributions for at least 6 months before he/she can benefit from the fund.

Resolving these issues was crucial to ensure that private contractors which would be using labour-based construction methods in expanded programs did so within the requirements of Namibia law.

The SAMAT report recommended limited modifications under the Labour Act in order to improve implementation of labour standards within the LBW context. The text reads *“It is recommended that an approach seeking broad exemption for small scale private contractors [like that which had been used for the public sector pilot project] not be taken as it represents an unnecessary erosion of the Rule of law and removes important challenges for development of managerial capacity”* (ibid).

SAMAT recommendations were built in the policy development process. On conditions of employment, labour management and labour relations in LBW, the following are provisions of the White Paper (MWTC, 1999);

“Government is committed to prevent exploitation while encouraging the efficient and cost effective use of labour.”

“Existing legal conditions of employment and other statutory provisions on labour matters shall generally apply to employees in LBW.”

“There will be no labour related statutory amendments aimed exclusively at LBW. However, in the foreseeable future deviations from legal conditions of employment are deemed necessary. Recourse to exemptions will be encouraged and facilitated under the provisions of Section 114 of the Labour Act of 1992.”

“Employment contracts must be suitably flexible in areas not prescribed by law. Departures from accepted norms must be negotiated with workers or their representatives.”

“Wages should generally be linked to remuneration systems based on specific outputs.”

“Labour-based works will be devised so as to result in the generation of additional employment as opposed to the mere displacement of jobs.”

“Management/employee consultative structures should be incorporated in LBW as far as practicable.”

In February 2000, a stakeholder’s workshop on labour policies and practices in labour-based works in Namibia was to address labour issues identified by SAMAT and other policy analysts, and to discuss related challenges (ILO/ASIST, 2000). Over 500 stakeholders from the public, corporate and private sectors, including small contractors, organized labour and labour experts attended the workshop. Workshop recommendations were as follows;

- Employers must adhere to the labour law;
- Employers should not permit workers to work beyond 9 hours;
- There should be no exemption on overtime to be requested by employers;
- Workers working on Sundays and public holidays should receive double pay;
- Exemption be granted for workers to be required to produce sick leave certificate for at least one day of absence and such worker be paid for one task per day after producing the certificate;
- Collective agreements should not be binding on task workers as they are based on hours and not tasks and
- Full exemption for task workers from meal breaks because of their flexible working hours.

Some of the above recommendations such as leave pay and sick leave pay would add on to the operating costs of labour-based works, and in effect reduce its economic competitiveness with equipment intensive technology. It was argued that these costs could be absorbed by the contractor in order to provide decent working conditions for workers and not exploit the labour. Guidelines were subsequently developed in Namibia to control labour exploitation through the setting of tasks. To

enforce these, labour inspectors are now required to inspect construction sites regularly.

Although the outcome of the workshop could be considered to have had negative effects on the overall LBW development strategy, the dialogue by national stakeholders in LBW provided a sound basis for program expansion.

In sum, labour policies and practices is an area that needs to be tackled at the beginning of any LBW development program, to ensure program success. In this way, it ensures program sustainability. Program issues taken up and dealt with at the early stages of development, result in fewer problems in the implementation stage. With regard to levels and the mode of payments, these have an influence on workers' productivity level and impact on the quality of the product. In addition, it is necessary that Governments that use LBW technology approach as a tool of employment creation must, early in the process, develop consistent policies and standards, to maintain the credibility of the program.

6.7.2 Labour Legislation with Bearing on Labour-Based Works

The following statutes and delegated legislation have a bearing on LBW in Namibia:

I. Statutes

- Labour Act, 1992
- Social Security Act, 1994
- National Vocational Training Act, 1994
- Public Service Act, 1995
- Workmen's Compensation Act, 1941 as amended by the
- Employees Compensation Amendment Act, 1995
- Affirmative Action Employment Act, 1998.

II. Regulations, promulgated collective agreements and other relevant delegated legislation

- Government Notice No. 174 of 1992; Keeping of records and submission of certain particulars by employers in terms of section 4(1) of the Labour Act 1992
- Government Notice No. 175 of 1992; Particulars to be indicated on envelope or statement when remuneration is paid to employee in terms of section 36 (3) of the Labour Act, 1992
- Social Security Regulations, 1995.
- Regulations relating to the health and safety of employees at work, 1997.
- Government Notice No. 135 of 1999; Declaration of registered collective agreement relating to the construction industry to be binding on employees and employers in that industry: Labour Act, 1992.

As a rule, Namibian labour legislation aims to be “inclusive”. It covers a broad range of circumstances and types of arrangements where people perform work or services for others. Labour-based workers as a rule fall within the written scope of the legislation. Some regulatory requirements are built in the LBW guideline document for Namibia (DOT, 1996), and contractors are reminded in each contract to adhere to or meet specific legal requirement in labour-based projects contracts.

This study reveals however that;

- Although the MWTC has issued a guideline document, the “Labour-Based Road Construction in Namibia: Guidelines” (ibid), which contain valuable advice for practical labour force administration, including matters such as task work, wages, working hours, recruitment, productivity, workers committees, termination etc, few LBW contractors use and follow the guidelines. Reasons range from ignorance to sheer lack of interest.

- Non-compliance with certain provisions of the Labour Act for task workers in LBW is virtually universal. The main problematic areas include, as predicted in the SAMAT report; sick and annual leave, meal intervals, and public holidays. Overtime is also mentioned as a problem but due to the normally limited time duration per task, it does not constitute a real difficulty.
- LBW task workers are generally not being registered in accordance with the Social Security Act, although the law clearly covers them when they are working more than 2 days a week. Some contractors do comply with the provisions of the Employees Compensation Act and to some extent also with the provisions of the regulations relating to the Health and Safety of Employees at Work, but by no means all of them.
- No records of labour inspectors were found to have visited construction sites in the sites visited and in site minute's proceedings of projects reviewed.

6.8 Conclusion

This chapter has described and discussed the development of the LBW policy in Namibia.

The objectives of the policy, the Green Paper and the White Paper formulation process, policy components and the involvement of stakeholders have been reviewed. Labour-based policy issues, labour practices and the envisaged LBWF have been discussed. The labour legislation bearing on LBW implementation has also been briefly reviewed and the current status of labour related issues summarized.

The following conclusions are made;

6.8.1 The policy development initiative was started three (3) years, and was completed eight (8) years, after the labour-based works technology

development programme was initiated. The programme was therefore initiated to implement a broader government policy, as envisaged in NDP 1, without specific programme policy guidelines. The objectives of the new policy were thus formulated in a retrospective manner, with the hindsight of the actual implementation.

- 6.8.2 Stakeholders were sufficiently involved, at the right levels of Government, public sector, private sector and professionals in the policy formulation process.
- 6.8.3 The White Paper identified two main success factors for the LBWT institutionalization in Namibia; the creation of the enabling environment and the identification of appropriate delivery mechanisms. It is the view of the author that the second factor has been dealt with to some extent, but work remains to be done on the enabling environment for adoption, application, growth and expansion of the LBWT. In addition, except in the construction of rural roads, little have come out of the Government's commitment to place more emphasis on substituting labour for equipment where technically feasible and economically viable in development of infrastructure. Neither has the private sector been sufficiently stimulated in this regard.
- 6.8.4 Although there are various pieces of legislation and regulations bearing on LBW in Namibia, the labour legal environment is generally friendly, inclusive and supportive of LBW implementation. Some regulatory requirements have been built into the guideline document on labour-based works in Namibia, and contractors are reminded in each contract to adhere to or meet requirements of specific legal provisions. Within this environment, labour-based works projects have been executed in a harmonious way in the last decade.
- 6.8.5 Strategies are required to promote and enforce the use of existing labour-based guideline document, particularly by the small contractors, and to enforce adherence to labour laws in the implementation of contracts.

6.8.6 The successful implementation of policy requires long-term political understanding and support. Many policy makers and their advisors unreasonably believe that using labour is expensive, takes longer, results in a lower-quality of product and is more difficult to manage. It is therefore necessary that senior politicians have a full understanding of the reasons why a programme approach is required. Orientation courses may be necessary for them and senior civil servants who are policy and decision makers or implementers, including those who will be affected by policy implementation.

One of the important aspects of the LBW development programme in Namibia which has far reaching implications in the sustainability of the technology is the development of small labour-based works contractors. This subject is reviewed and discussed in the following chapter.