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Local labour procurement practices and policy : a case study of Kusile power station.

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2013-08-08
http://hdl.handle.net/10539/13023

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CHAPTER I

1.1 RESEARCH TITLE

Local labour procurement practices and policy: a case study of Kusile power station.

1.2 INTRODUCTION

The aim of this research is to analyse the nature of the local labour procurement requirement policy and practice at Kusile power station which is under construction in eMalahleni, Mpumalanga. The central argument of the research report is that the local labour procurement policy has had a minimal impact on job creation and is promoting casualisation, not decent work. This is in contradiction to both the COSATU and the ILO decent work agenda.

The local labour procurement policy was introduced in the context of the unemployment crisis in South Africa, a crisis which is deepening. It is part of a localisation strategy which is central to the government's push to industrialise the expansion of the domestic economy.

The study is based on employment procurement practices at the Kusile power station project. The employment of local labour is defined as procurement of employees from a 60 km radius around Kusile power station. This means the magisterial district of Bronkhorstspruit, Ogies, Delmas and Witbank in accordance with the criteria established by Eskom as the client to the project contractors and also regulated for in the Project Labour Agreement (PLA). This collective agreement was signed by the project

contractors, employers' organisations and six recognised industry trade unions.

In the research report the issue of local labour procurement is contextualised in a brief discussion of the climate crisis, the socio-economic conditions in the area surrounding Kusile power station, the changing labour regime in South Africa and the growing crisis of poverty and unemployment in the country as a whole.

The introduction of the local labour procurement of employee requirement in all Eskom projects like Ingula Dam, Medupi power station and Kusile power station is aimed to reduce unemployment and develop new skills (Eskom's presentation to the committee on Labour and Public Enterprises 22 June 2011).

At present some 12050 people are employed at Kusile power station (Key informant from Kusile Management 5th July, 2012) who requested confidentiality). All workers in the project are employed on a temporary basis involving limited duration terms of contracts, including managerial employees. In terms of the local labour procurement policy, of this number some 5063 people employed in the project are from the local area of the magisterial districts of Ogies, Phola, Delmas, Emalahleni (Witbank), Wilge, surrounding farms and the rest of Inkangala district. They represent 42% of the total workforce at Kusile. Another 959 come from the municipalities and districts in Mpumalanga province representing 8% therefore equating to 50% people employed from the local province. A total of 5873 are from the other provinces in the republic of South Africa representing 49%. Lastly 155 are expatriate employees from outside the borders of the country representing only 1%.

A total of 262 locally employed workers occupy managerial and supervisory positions and 2060 skilled employees also from the same category of locally employed workers. A total of 2698 unskilled people were recruited from the local area. Of the total workforce at Kusile 3134 are general workers

representing 26% of the entire workforce while skilled workers amounts to 7255 people a 60% of the total workforce and 1661 being supervisors and managerial employees representing 14%. Further also, of the total workforce 93% are male employees with 11206 employees while 7% are female employees equating to 844 employees.

The term limited duration contract (LDC) refers to non - permanent employees employed in the project inclusive of the locally recruited ones, whereas 'expert' refers to foreign employees possessing a skill that the project failed to source from within South African borders and had to acquire it from outside countries (Project Labour Agreement 2012). The temporary nature of the employment meant that many of those employees interviewed for this research reported a strong sense of insecurity. It will be argued below that they form part of what Standing (2009) has conceptualised as 'the precariat". It is shown below that such insecure contracts of employment has led to major protests by the contract employees at both Kusile and the Medupi power stations.

The aim of promoting the use of local labour is grounded in the Preferential Procurement Policy Framework Act 5 of 2000. The localisation strategy is part of *The New Growth Path* framework adopted in November 2011 "as the framework for economic policy and the driver of the country's jobs strategy", (DED, 2011:1). Job creation is a key goal of the New Growth Path economic blueprint which envisages annual economic growth of 7% and has a target of creating 5 million jobs by 2020.

These targets are unlikely to be met. According to Trade and Industry Minister, Rob Davies, the private sector has not contributed enough to the drive towards localisation. "Much stronger processes were needed "to secure private sector commitments to local procurement in key sectors, such as mining, construction, health, retail and so forth." (Cited in Business Day 18.12.2012)

Government and social partners, (business and labour and civil society) signed a Local Procurement Accord on 31 October 2011 as an outcome of social dialogue on the New Growth Path. "The objective of this accord is to accelerate the creation of 5 million new jobs by 2020 as well as the attainment of the goals of the Industrial Policy Action Plan (IPAP, 2)" (DED, 2011:6). The emphasis in this document is on procurement from local suppliers meaning the purchase of locally manufactured goods and locally-produced services. The promotion of purchasing locally manufactured goods increases the opportunities of employment creation.

At the inception of this project, a collective agreement was concluded, which was to regulate the terms and conditions of employment in the project (Kusile power station). The collective agreement is called, the Project Labour Agreement (PLA). The agreement was concluded by trade unions on behalf of its members and employer's organisations on behalf of the contractors Kusile Civil Works Joint Venture (KCWJV). After the conclusion of the collective agreement, the client (Eskom) took over the responsibility of overseeing the compliance to the collective agreement in accordance with its employment relations policies including but not limited to the recruitment policy. The agreement was concluded under the auspices of section 23 of the Labour Relations Act 66 of 1995 and it will be explored in detail on chapter 2 of this research report on employment in the country.

The signatories to this controversial collective agreement are, South African Federation Civil Engineering Contractors (SAFCEC), Construction Engineering Association of South Africa (CEA SA) both being employers representatives on one side and National Union of Mine Workers (NUM), Building Construction and Allied Workers Union (BCAWU), Solidarity, United Association of South Africa (UASA), National Union of Metal Workers of South (NUMSA) , South African Equity Workers Association (SAEWA) and Metal Electrical Workers Union of South Africa (MEWUSA) on the other hand representing workers. However in this research report some organisations will not feature that much compared to SAFCEC, BCAWU and NUM as they are the only parties involved in the National Negotiating Forum (NNF), where

most of the terms and conditions governing the employer / employee relations in the project were derived from. The conclusion of this collective agreement brought among other conditions of employment, *"a local labour procurement policy"* which is the basis of this research (Project Labour Agreement 2012).

It will be shown below that a policy preference for the employment of local labour is extremely controversial. This is especially so when the fragmentation of the South African labour force is deepening as casualization and outsourcing creates divisions between permanent and temporary workers. The fault-line is deepening between workers formally employed, and contract workers who obtain their jobs through the local labour procurement policy and subcontractors.

Furthermore, it will be shown that the construction of Kusile power station itself is extremely controversial as the reliance on coal fired electricity will increase the carbon emissions which are the major source of climate change. This will have devastating impacts – particularly on the working class - in the form of rising food prices, crop failures and water shortages. Both Kusile and Medupi power stations are also controversial because of the exorbitant costs involved in the construction of same.

1.3 THE LOCAL LABOUR PROCUREMENT POLICY

The project is bound by a collective agreement concluded in terms of section 23 of the Labour Relation Act 66 of 1995. The procurement policy is enshrined in the collective agreement and it advocates procurement of local people whenever there are employment vacancies. The recruitment of employees at the project is channelled through the Project Industrial Relations Manager (PIRM) in terms of this collective agreement, a position created by the Kusile Executive Team (KET). The incumbent of this position becomes the link between the recruitment agents and the project, he is the

communication channel. He is mandated to report to KET on all employment processes and statistics on all employees employed by the project.

The Project Labour Agreement established recruitment centres around local municipalities surrounding the project. There are four of these recruitment centres in the area which are operated by Backhousia Recruitment Services (BRS) which is described below. These recruitment offices are supposed to be run in liaison with the Department of Labour (DOL) and no recruitment of employees for the project is to be conducted at the gate or around the nearby squatter camps. However no liaison with the Department of Labour is happening and allegations of corruption on employment practices emerged from the interviews conducted for this research and will be dealt with in detail in chapter 3 of this report. A number of allegations of non-compliance with the recruitment policy and procedure were raised and also will be discussed in detail on chapter 3. It will be shown in chapter 3 of this report that local councillors played an important role in job procurement. They did so through operating as subcontractors using local government offices, such as municipal offices. The allegations regarding recruitment of employees in this project implicates the African National Congress (ANC) councillors regarding the role they played during the recruitment process.

A preference for the employment of local inhabitants is distinctively different from the historical reliance on migrant labour from remote communities in Southern Africa. The South African economy remains structured on the 'minerals-energy complex' (Fine and Rustomjee, 1996). Mineral resources are often found in remote places so, historically resource extraction was linked to migrant labour. Migrancy was often linked to specific ethnic groups from particular areas, an example being the rock drill operators on the platinum mines who are largely amaMpondo from the Eastern Cape (Gavin Hartford presentation, *Amandla* workshop 18.11.2012). Many rural communities historically and in some cases continue to be heavily dependent on the remittances of these migrant workers.

However the practice of local labour procurement was first introduced in the mining industry. This began when the platinum mining companies began opening mines in the north-east province along the boundaries of the Limpopo and the Mpumalanga Provinces in a small town called Burgersfort under chief Sekhukhune. The local authorities in this area in conjunction with local chiefs made it a prerequisite that any mining company intending to open mines in their area would first employ people from the local community, “bana bamobu” meaning sons and daughters of the soil.

Local labour procurement in the mines and in the construction industry is different. This is due to the fact that mining companies operate as private companies compared to the construction industry where the construction of state owned projects involves government policies.

Employment of local labour procurement in the construction industry started in 2006. A project labour agreement was an attempt to standardize basic terms and conditions of employment during the construction of the 2010 World Cup stadium projects as all construction firms were engaged on similar types of work (Lumley 2007; 1980). It began with the demolition process on the construction sites earmarked for the new 2010 World Cup stadiums. The groundwork preparation began in 2006 with Peter Mokaba stadium in Polokwane and Johannesburg’s Soccer City stadium, (the then FNB). According to Roskam (2009) the cause of several strikes during the 2010 World Cup projects was linked to the local labour procurement policy. All those recruited locally were employed on Limited Duration Contracts (LDC) and there was a wage discrepancy, their remuneration was less than that of the permanent employees. Tender requirements regarding recruitment of employees on these projects required about 70% of the employees recruited to be drawn from the local areas. The purpose of this requirement was to ensure that there was poverty alleviation in the local community and to promote a sense of “buy-in” from the local community (Roskam 2009). However the cost of the construction of infrastructure for the World Cup was extremely controversial and possibly benefitted only a small minority (Cornellisen, 2010:101).

http://www.mediaclubsouthafrica.com/index.php?option=com_content&view=article&id=93:worldcupstadiums&catid=39:2010bg#ellispark#ixzz29pG3P3U0

1.4 THE RESEARCH SITE: KUSILE POWER STATION

Kusile power station is situated in an area marked by high levels of poverty and unemployment. It is one of Eskom's power station projects and is located in the western part of Mpumalanga Province approximately 30 kilometres west of the town of Witbank between the N4 and N12 highways. The area is typically referred to as the Highveld which is dominated by grassland vegetation and large areas of cultivated fields. It is surrounded by four local municipalities in the form of Witbank, Bronkhorstspruit, Delmas and Ogies with a collective population of around 38 2880 people. The province as Mpumalanga has a total population of 3 657 181 people which is 7.23% of the country's total population (Mpumalanga Annual Performance plan 2012-15). The province further has a 35.1% rate of HIV prevalence. It also has a rate of 36.2% of infants exposed to the HIV infections and also 6.2% mother to child transmitted diseases, becoming the highest than any other provinces in the country (Statistics SA 2012).

It is a poor area, located in a province which has a 28.7% unemployment rate, (Moroka, Comprehensive Rural Development Programme Concept Document) (CRDP 2011). The working-class population in this area is largely employed by the Highveld Steel Company (HSC) and the surrounding farms. The province has a 10% of child–headed households' children living without parents mainly due to the Human Immune Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS). The province also has a ratio of seven out of ten children living in poverty (General Household Survey 2008).

Overall, some 16 million South Africans receive social grants and this dependence is reflected in Mpumalanga Province. The province has a total of social grant beneficiaries of 1,396,907 people with Child Support Grants (CSG) being the highest followed by Old Age Grants (OAG) (Social Grants

Statistics July 2012). This pattern of poverty and unemployment is reflected in the life expectancy of Mpumalanga citizens. The average life expectancy for males in the province is 50.3 years and that of a female is 51.6 years. This is below the National life expectancy of 53.3 years males and 55.2 years females. (General Household Survey, 2008)

1.5 ESKOM

Eskom is a state owned institution run under the guidance and supervision of the government as a State Owned Enterprise (SOE). The project operates under the authority of Eskom in partnership with Hitachi Power Africa (Pty) Ltd, a subsidiary of the German-based Hitachi Power Europe GmbH established in late 2005 and owned by three different companies namely: Hitachi Power Europe GmbH, Chancellor House Holdings (Pty) Ltd and Makotulo Investments and Services (Pty) Ltd.

The construction of the Kusile power station started in 2008 and is expected to be on line in 2014 (Eskom financial report 2012). There is also a nearby Eskom power station, Kendal power station, located approximately 20 km south of the project. The construction of the project involved the displacement of some 300 people, some of whom were subsequently employed by the project.

The construction of this project is aimed at increasing Eskom's supply of electricity. Eskom is the sole energy supplier in South Africa supplying electricity for both domestic and industrial usage. It is a State Owned Enterprise (SOE) run under the guidance and the supervision of the government. It employs a total workforce of 57000 employees in different categories and different qualifications. It supplies 96% of its electricity to South Africans. About 61% of Eskom's electricity is sold to the mining industries while the remainder is channelled to the industry in general, commercial industry, rural and domestic customers including the railway and local municipalities and also the country's neighbouring countries such

as Mozambique, Botswana, Lesotho, Namibia, Swaziland and Zimbabwe. As at 1988 Eskom had assets valued at R34 940 million. Yet of the 33 million South Africans in the country at the time, only 13 million had access to electricity.

heritage.eskom.co.za/heritage/annual reports/.../03_ProfileofEskom.

Eskom has been described as "the flagship among the parastatals". (Southall, 2007:215). Apart from meeting ambitious equity employment and procurement targets, Eskom had consistently recorded profits and between 1994 and 2000 played the major role in increasing the proportion of electrified homes from 37 to 70 per cent (Southall, 2007). By early 2005, it had secured approval from Cabinet for a five year R93 billion expansion programme. (Southall, 2007:1215)

Since then there have been numerous supply problems and cost increases. Controversy was generated in April 2010 when the World Bank approved a $3.75 billion loan to Eskom to construct two new coal fired power stations, Kusile power station in Mpumalanga and Medupi power station in Limpopo Province. Currently, Eskom's Multi Year Price Determination 3 Application of November 2012 requests an averaged electricity price increase of 16% a year for a period of 5 years. These increases are three times the rate of inflation. However Eskom maintains that these increases are important to avoid the electricity black–outs of the past, to ensure that electricity prices reflect the costs of supply, to support a sustainable electricity industry and finally to grow the economy and create jobs. However according to COSATU, "it is clear that Eskom increasingly wants to operate like a private company whose main objective is to make more profit. COSATU repeats its call that Eskom must operate according to developmental objectives of the country and not like the profit thirsty monster it has become" (COSATU Press Statement issued 3.12.2012).

COSATU maintains that the proposed electricity increases will undermine the government's programmes for infrastructure development, the promotion

of manufacturing industry and the creation of 5 million new jobs. COSATU therefore demands that government, as the sole shareholder, must play the central role in Eskom's capital expansion programme. The funding must come not from tariffs but from the fiscus (COSATU Press Statement issued 14.11.2012).

Industrial relations at Medupi are marked by deep suspicion and antagonism. For example unions Solidarity and the National Union of Mineworkers have complained that Eskom has been spying on them. According to a Press report, "Business Times has received numerous documents to support the claim that Eskom contracted special services company Swartberg to gather information on different stakeholders, including unions, employees, communities, green lobby groups and political players" (*Sunday Times* 27.1.2013).

1.6 UNION DENSITY AT THE PROJECT

At both Kusile and Medupi power stations several trade unions are recognised. The COSATU affiliate, (NUMSA) is strong at Medupi and also recognised but not strong at Kusile power station. Despite this trade union's presence at Kusile project, less worker protests have been experienced Kusile power station compared to Medupi power station. For example in September 2012 the Medupi power station was closed following protests about the fact that the contracts of some 600 local employees were due to end. Another strike occurred at Medupi in January 2013 where according to NUMSA spokesman Castro Ngobese, "a significant number of workers had found bonuses and salaries docked during the December holidays. He said, instead of the matters being addressed at Medupi power station, workers have endured all manner of victimisation, including a lockout, which has led to this on-going strike and violent unrest at this power station over the past four days. The construction of the R91billion plant was suspended when the workers embarked on an illegal strike (Reported in *Business Day* 23.1.2013).

It will be shown below that Kusile is not marked by the same level of worker unrest as at Medupi.

Recognised trade unions representing employees at Kusile power station project are the National Union of Mine Workers (NUM), Building Construction and Allied Workers Union (BCAWU), Solidarity (Solidarity), United Association of South Africa (UASA), National Union of Metal Workers of South (NUMSA), South African Equity Workers Association (SAEWA) and the Metal Electrical Workers Union of South Africa (MEWUSA). Collective union membership is quite low at Kusile power station project sitting at 3815. The majority of these union members are seconded employees, leaving about 6574 eligible members unorganised out of a total eligible workforce (eligible in terms of the bargaining unit) of 10389.

According to an interview with an Industrial Relations Officer (IRO) the unions have strength in the numbers from employees seconded to the project as they come with their union affiliation status. The presence of the trade unions at Kusile power station is unusual given that contract workers are frequently not unionised. Many unions in South Africa are presently experiencing a legitimacy crisis with an increasing social distance between full-time union officials and workers. Many of these officials are provided with good salaries, cell phones, cars, housing bonds and other benefits and this could be regarded as a union aristocracy. In this sense unions are becoming a kind of black empowerment train.

1.7 CONTROVERSY REGARDING LOCAL LABOUR PROCUREMENT

The local labour procurement policy has become a very controversial issue. The procurement of local labour seems to be in conflict with other aspects of the established labour regime which focuses upon core full time 'decent work'. The exploration of this apparent contradiction brought in by the local labour requirement is explored in chapter 3 of this research report. It could be argued that the procurement of local labour discriminates against South

Africans from other parts of the country as its main objective is that of promoting recruitment of local people.

The controversy regarding the employment of local labour has also contributed to the widespread strikes in the mining sector. According to the Bench Marks Foundation research into the sector, "problems begin with the mining houses that promise jobs to local communities and then largely recruit through centralised recruitment systems. This is resented by host communities who have been in the area for more than 100 years" (Capel, 2012: 3).

Another source confirmed this, "On the platinum belt, the preference of migrants is already a point of contention, with several local communities demanding access to job opportunities" (Paton, 2012: 4). But according to May Hermanus, director of the Centre for Sustainable Mining at the University of the Witwatersrand, the "downside of this would be the effect on the traditional labour-sending communities". Tied to this is the problem that many workers in South Africa, including mineworkers, maintain two households. "Is it realistic to phase this out in favour of local people?" she asks, (Cited by Paton, 2012: 4). Given the widespread dependence in rural communities on remittances from migrant workers, clearly the local labour procurement policy raises serious questions. Some of the xenophobic violence in South Africa in 2008 was related to the employment of 'foreign' labour, specifically from Zimbabwe and Mozambique.

Another aspect of the controversy regards the recent global trend for informal employment to be preferred compared to formal employment (Bieler, et al. 2008). Kusile power station has a different type of informal employee compared to the general employment trend regarding informal workers (Kusile Project Labour Agreement 2012). Hevenstone (2010) argues that "Atypical employment", is any type of employment that is not full-time and or permanent with a single direct employer. It includes diverse forms of work such as, *part-time work, self-employment, fixed-term contracts,*

temporary work, freelancing and informal day labour that occur for different reasons". The conditions of local labour employees at Kusile power station match this definition of atypical employment. However there are some significant differences regarding remuneration including transport allowances, food allowances, project bonuses and leave entitlements between different categories of workers.

The failure to adhere to a commitment to the procurement of local labour contributed to the collective violence in Standerton in 2010 where local people were denied employment. In 2009 residents marched over employment practices at the Platinum Australia Mine at Mandaagshoek, near Burgersfort. According to Makgokga, residents took to the streets after it was discovered that the majority of the people working at the mine came from outside the area, excluding locals, even those with mining experience. According to Makgokga the villagers also wanted the mine management to build schools, clinics, roads and houses for them as a way of ploughing back to the community, in addition to providing employment opportunities to the locals. Makgokga relates that when local people protested and got to the mine gate they pleaded with security guards to give them access in to the mine so that they could register their concerns with the mine management, but were denied access (Cited in The Sowetan 10 Feb 2009).

Kusile power station was also marked with series of violent wildcat strikes due to its failure to pay project bonuses. This serious labour unrest was experienced during the period 18 – 19 April 2011 and 4 – 6 May 2011 and it arose from one sub-contracting company, Roshcon. This company had had a mutual interest dispute issue relating to remuneration with its employees and this led to all construction activities being halted due to continued protest action from the 4th to 6th of May 2011. Offices buildings, motor vehicles and plant machinery were set ablaze by the angry and violent protesting employees.

http://d2zmx6mlqh7g3a.cloudfront.net/cdn/farfuture/mtime:1308922093/files/docs/110622eskom-edit.pdf

These protest action caused the project an estimated rand value of 17.7million in damages and production losses that took place over more than a month due to the closure of the project (Eskom financial report 2012*)*. The closure was a result of the violent nature of the strikers and that the safety of the employees was thought to be at risk if the project had remained open. These protests left around two thousand (2000) employees' jobless as the sanction for their action was summary dismissal. The locally employed workforce (local labour employees) also received letters from the project contractors confirming summary dismissal. Thereafter, they were served with eviction papers to vacate the hostels since they had been dismissed and contractors wanted to replace them with newly hired employees. However employees did not heed the eviction notices.

This led to the contractors approaching the Pretoria High Court to seek a court order compelling dismissed employees to vacate the hostels. The unions however challenged the eviction application by contractors and were successful. Furthermore, the Building, Construction and Allied Workers (BCAWU) also managed to minimise the dismissal of employees through the mediation processes conducted by the Commission for Conciliation, Mediation and Arbitration (CCMA). This resulted to a lesser sanction short of dismissal of the majority employees. The contents of the settlement agreement were that all employees were to be afforded an opportunity to re-apply for employment through the recruitment centres operated by Backhousia Recruitment Services with first preference being given to the dismissed employees. Also that their length of service was not be affected and further that those not successful in the recruitment processes for reasons related to the severity of their actions during the protest would receive R5000.00 as compensation in lieu of reinstatement plus all statutory obligations such as cash in lieu of leave, outstanding salaries, one month notice pays etc.

Also, the Medupi power station (another subsidiary of Eskom) was marred with serious strike violence and conflicts following the recruitment of foreign

nationals as expatriate workers during the period April and May 2011. The project had had a serious shortage of local skilled welders for both of its boiler and turbine contracts at Medupi and Kusile power stations (Eskom's presentation to the committee on Labour and Public Enterprises 22 June 2011). Recently further protests occurred at Medupi over the termination of 600 local contract employees contracted to Murray and Robert construction and Grinaker-LTA construction companies constructed to build Medupi Power Station (the MPSJV) through the *"demobilisation"* and *"mobilisation"* processes both enshrined in the project labour agreement governing the project's employment conditions. Workers demanded that the project labour agreement be abolished and that one NUM shop-steward be removed from the project, (Wait, 2012). This 'demobilisation' only affected the local labour procurement employees as they were employed purely based on LDCs, whereas the core employees if demobilised, would return to their primary employers.

The use of the military term 'demobilisation' by Murray and Roberts and ESKOM rather than retrenchment, emanates from the Project Labour Agreement which was agreed collectively and is also controversial. The term could be said to 'sanitise' or disguise the retrenchment process.

1.8 CONTROVERSY REGARDING THE CONSTRUCTION OF KUSILE PROJECT

The construction of Kusile power station also involved controversy over its costs and that of its sister power station also under construction (Medupi Power station) which the World Bank financed with an estimated value of $3.75 billion loan. Eskom recently told parliament that finance charges on the new power stations of Medupi and Kusile at this stage would be an estimated R25 million for Medupi in Limpopo and R40 million for Kusile in Mpumalanga. When interests' costs are included this could bring the price of Medupi closer to R116.2 billion and Kusile to R158, 2 billion respectively.

These figures were given in response to questions from Parliament's portfolio committee on energy and come amid calls from energy experts for an inquiry into the cost of over runs and delays in the projects. The revelations that electricity from Medupi could come in at an estimated 97, per kWh suggest that South Africa could have got better value from renewable technologies such as wind (Mail & Guardian Online – *Fri, Aug 24, 2012)*

Besides funding, other controversy revolves around the effects of the power station on the environment. South Africa has a carbon intense economy. Eskom is the sole energy supplier in South Africa supplying electricity for both domestic and industrial consumption and 90% of its electricity is generated from coal (Green Peace: annual Report 2011). In a sense the building of Kusile is in contradiction to the government's commitments made at the Copenhagen Climate Change conference in 2009 to reduce carbon emissions.

The construction of Kusile power station will increase South Africa's carbon emissions by 10% from its current standing of 16th position in the world of countries that produce high carbon emission (The Star: 8.11.2011). The construction of the power station has been marred with serious protests which led to some activist from Greenpeace being arrested (Pretoria News: 8.11.2011).

It has also been claimed that the construction of these two new mega coal-fired power stations, Medupi and Kusile, as well as increasing coal mining to supply them, will push South Africa closer to a significant water crisis. Kusile will use 2.9 million litres of water an hour and 173 times more water than wind power would use per unit of electricity. Its clean water supply will be drawn from the Vaal River – where Gauteng gets most of its water – because the Olifants River is too polluted by coal mining and associated industries. This will divert water from residential and agricultural use. Water demand is predicted to outstrip supply by 2025 already. Furthermore of the 22 mines which presently supply Eskom with coal, half were found to be operating without a valid water licence in 2010 (Greenpeace, 2012).

1.9 METHODOLOGY

The aim of this research was to analyse the nature and impact of the local labour procurement policy and practice with special reference to the Kusile power station. The overall research strategy was qualitative. As Greenstein (2003) stresses, qualitative research does not aim at generalizations, but rather at developing thick and rich description of the specific population and phenomenon under investigation. It follows a case study approach by focusing on a single example of a class of phenomena, namely, local labour procurement. Yin defines a case study as "an empirical enquiry that: investigates a contemporary phenomenon within its real-life context; when the boundaries between the phenomenon and the context are not clearly evident; and in which multiple sources of evidence are used." (Yin, 1989:23) A case study was chosen to provide data of a richness and detail that would be difficult to obtain from a survey (Babbie and Mouton, 2001).

The analysis was done through:-

- The description of the local labour procurement policy content.
- The description of the workforce and the working conditions in the construction industry.
- The establishment of why and when the local labour procurement policy was introduced.
- The identification and analysing the challenges faced by employers in complying with this policy.
- The identification and analysing differences between policy and practice in the implementation.

- The analysing of the impact of this local requirement policy and practice on permanent employees.
- The understanding of trade unions perspective on this policy and their role in the administration of it.

- The establishment of the benefits, if any, from the introduction of this policy and to identify exactly who are benefitting; business, labour, client, government, municipality, political party and or community.

- The establishment of the role of employers in the implementation and administration of this policy.

- The identification and analysing the effects of this policy and practice on families of the retrenched and that of the employed.

This involves two main data–gathering methods namely;

(i) A review of the relevant primary and secondary literature. This included documents, reports, statistics, published material, collective agreements and employment legislation.

(ii) Conducting 30 structured and semi-structured in-depth interviews with a variety of informants. In-depth interviews involve "asking questions, listening, expressing interest and recording what was said", (Neuman, 1997:371).

This included:-

- Twenty semi structured interviews with key informants (meaning employees, and people with expert knowledge of the issues in question) such as officials from representative trade unions at Kusile power station, officials from SAFCEC (an employer's organisation) and Eskom representative for Kusile power station and ex-employees.

- Five in-depth interviews with the human resources managers of the main contractors such as Kusile Civil Works Joint Venture (KCWJV).

- Five in depth interviews with the full time shop stewards from the recognised trade unions.

All the above informants were selected for their first-hand knowledge of the policy and practice on the local labour procurement of employees at Kusile power station and its day to day application. (Purposive sampling) Out of the total of 30, 17 interviews using a structured questionnaire(see Appendix at end of this report) were conducted with workers including some who are from the local area, some core workers and some who were retrenched solely for the purpose of accommodating the recruitment of local employees and these were selected using snowball sampling. The reason for choosing this method was because the process permitted respondents to propose other informants that assisted in gathering reliable information.

This is a qualitative study which required careful sampling. Sampling refers to the process of selected a specific number and characteristics of a given population. Sampling depends on the nature of the research, the time and resources available. A qualitative study does not strive for statistical generalizations and statistical representation, but rather theoretical generalizations and can therefore be based on a small sample. A qualitative study requires the use of non-probability sampling strategy. This research makes use of purposive sampling and snowball sampling. Purposive sampling refers to the process of selecting a given number of people with specific or deliberate characteristics or knowledge. Snowball sampling is a form of convenience sampling in which the research makes initial contact with a number of people that are relevant to the study and then uses them to find others.

The field work was conducted during July 2012 and involved a good deal of travel. The majority of these interviews were conducted at Kusile power station, about 120 km from Johannesburg, and Medupi power station which

is about 300 km from Johannesburg. Interviews were also conducted with informants from the surrounding community of Kusile, some in Rustenburg at Xstrata Alloys Mines (Smelter Plant) in Zinaville near Tlhabane and Noord locations and others in Gauteng. Those conducted in Gauteng were some held at SAFCEC offices in Bedford-view and some held partly at Murray and Roberts Construction site located at Driefontein in Mogale City along N14 road and later at South Shaft near Soccer City Stadium (former FNB Stadium).

The purpose of conducting interviews outside Kusile power station was to explore and understand the lives of the employees retrenched for the purpose of accommodating those to be employed through the local labour procurement policy and practice. Some permanent or core employees were retrenched by the contractor Murray and Roberts Construction (Pty) Ltd when projects such as the Gautrain Sandton station and Bombela were completed, so that they could accommodate the local labour employees that were to be employed at Medupi Power station. This will be explored and discussed at length in chapter 3 of this report.

All the interviews, including those held at Kusile power station, were conducted on a one on one basis. At Kusile power station, the project management made the atmosphere conducive for my research interviews. They allowed me to sit in the Human Resources office where I engaged in casual conversation with general (unskilled workers) employed on the project, some who came from the local area and others who had been seconded to the project from other areas. They had come to the Human Resources office with specific queries. On the basis of these conversations I selected who to interview, my main criteria being the different categories of employees and the richness of their experiences and insights. The management then provided me with an office so the interviews could be conducted in privacy and organised that the informants could have the time off work to be interviewed. Each interview lasted about an hour and was conducted in the language of the informant either in Zulu, Xhosa, Swati, and Pedi. All respondents felt at ease with me during the interview process.

The interviews were conducted during the employees working hours, paid for by their contractors without any loss of time due to the research interviews. Other interviews were conducted in the evenings after work in the informant's homes.

Table 1.1

THE LIST OF CATEGORIES OF INFORMANTS INTERVIEWED
Position
General employees
Human Resource Mangers
BCAWU Full time Shop steward
NUM Full time Shop steward
NUMSA Full time Shop steward
BCAWU Full time Shop steward
Employers' Association Officials
Trade Union Officials
Trade Union Officials
Recruitment Officials
Local Residents Witbank Community
Local Residents Phola Community
Local Residents Welge Community
Local Residents Delmas Community
Local Residents Kusile Surrounding Community
Local Residents Hlalanikahle Community
Eskom Representative
Retrenched Employees
Human Resource Mangers

1.10 ACCESS

This research has involved considerable difficulties in obtaining information, particularly as regarding numbers of retrenchments. Kusile power station project is a very fragmented workplace in the sense that there are at least 5 big construction companies operating there and more than 100 sub-contractors. According to Eskom, "there are many contractors on the Kusile site but (Eskom) could not give details on their progress, saying that it was not at liberty to comment on any individual contract" (Reported in *The Star* 11.2.2013)

In seeking access to Kusile power station, I first initiated my process by a telephone to one Dlungwana (the former Murray and Roberts Construction (Pty) Ltd Human Resources Manager) on how I could access Kusile power station. This telephone call was due to the fact that, I and Dlungwana had known each other earlier while he was still the Human Resources Manager (HRM) for the Murray and Roberts Construction (Pty) Ltd. Unfortunately, he had left Murray and Roberts Construction (Pty) Ltd and had joined another arm of Murray and Roberts Construction (Pty) Ltd but in the Murray and Roberts Projects Division which is also involved in the construction of Kusile power station project.

In my telephone discussion with Dlungwana, he advised me to contact the Project Industrial Relations Officer (PIRO), a Mdlongwa and gave me his details including his email address and his contact mobile and landline numbers. Having got the information required, I then sent a written email request to Mdlongwa describing myself and outlining my intentions of carrying out research at Kusile power station and obtained his co-operation. He advised me to obtain the consent from the shop stewards the relevant trade unions for the research which I did.

1.11 ETHICAL CONSIDERATION

The ethical issues related to my interaction with the respondents and their rights, integrity, privacy and confidentiality were explained by me prior to each interview with all the individual respondents. Further I also explained that their participation was voluntary and that they must not feel compelled or coerced in partaking with such process. Also as Mouton (2001) emphasises, I made it clear that at any time during the process they had the right to abort an interview if they felt offended or compromised.

1.12 INFORMED CONSENT AND CONFIDENTIALITY

Informed consent was sought from the respondents whether to reveal their identities or not. It is evident in chapter 3 that some respondents consented to their identities being revealed and others not. Confidentiality was assured to the respondents at the commencement of each interview. All records of notes taken during the interviews concerning those that opted to be anonymous have been erased.

1.13 STRUCTURE OF THE RESEARCH REPORT

The research report is divided into four sections, namely the introduction, employment in South Africa, employment at Kusile power station and conclusion. Chapter 1 is an introductory chapter, summarising the aim of the research, the research site, the controversial nature of Kusile and the methodology employed.

Chapter 2 locates the research in the context of the current unemployment crisis in South Africa, gives an overview of employment trends in the construction industry and outlines the changing labour regime in South Africa. It draws heavily from secondary sources, especially Webster and von Holdt's Beyond the Apartheid Workplace (2005), von Holdt's Transition From Below (2003), as well as primary unpublished sources.

Chapter 3 examines the employment policy and practices at Kusile power station, in relation to the provisions of the applicable legislation in the construction industry, the project labour agreement and the overall employment legislation at large.

Chapter 4 analyses the impacts of the local labour procurement policy, especially on employees from the local community areas surrounding Kusile power station. It suggests that the impact has been limited due to the very complex political and economic context in which the policy is operating.

CHAPTER 2

THE CONTEXT OF THE LOCAL LABOUR PROCUREMENT POLICY: THE CONSTRUCTION INDUSTRY AND LABOUR RELATIONS IN CONTEMPORARY SOUTH AFRICA

2.1 BACKGROUND

This chapter locates the Local Labour Procurement Policy (LLP) in the context of the unemployment crisis in South Africa. It discusses the main players involved in the construction industry responsible for both Medupi and Kusile power stations and the terms under which they operate. It outlines labour legislation relevant to understanding the situation of local employees of both Medupi and Kusile power stations. The chapter shows that proposed changes to existing labour legislations are highly contentious and is surfacing in deep disagreements at NEDLAC. The employment of temporary workers in terms of the local labour procurement policy is at the centre of these disagreements.

Two new labour laws which are expected to come into effect this year will introduce changes with regard to employment. Labour experts are warning that they will exacerbate the trend towards temporary employment. Both, the Employment Services Bill, which makes it possible for the government to set up a public employment services agency, and the Employment Equity Amendment Bill, which gives the government the right to fine companies for not meeting employment equity targets, have been hotly contested. For example labour analyst Sharp, believes the Bills, wills serve to discourage the creation of permanent jobs in favour of lower risk-temporary jobs (Cited in *the Mail and Guardian* 4.12.2012).

Since 2009 there has been a trend towards the reduction in permanent jobs and an increasing in temporary employment. A central argument in this research report is that the local labour procurement policy is promoting such temporary, informal employment and specifically casualisation which is in contradiction to the ILO decent work agenda.

2.2 THE UNEMPLOYMENT CRISIS IN SOUTH AFRICA

Job losses and unemployment have reached crisis levels in South Africa since 1994. We have lost a total of 774,000 formal jobs since 2010 (Presidency Report 2010). South Africa's unemployment number rose to 4,5 million in the second quarter of 2011, but declined during the second half of 2011 and rose again in the first quarter of 2012 by 282 000, reaching 4,5 million, which is the same level observed in the second quarter of 2011.

The authenticity of such figures depends on how unemployment is defined. In South Africa unemployment is defined based on two groupings, those who are job-seeking and discouraged workers. Therefore South Africa's unemployment rate declined to 24.9% in the second quarter of 2012 from 25.2% in the first quarter excluding the discouraged workers. However if statistics covered the expanded rate, the unemployment rate would have also declined to 36.2% from 36.6% in the previous quarter. Furthermore employment increased by 0.2% or 25,000 between the first and second quarters of 2012 while unemployment declined by 0.3% or 56,000 persons during that period and the number of unemployed people now stands at 4.47 million while the number of employed people is at 13.447 million (Business report July 31 2012). However on the latest statistics the unemployment rate further increase from 25.2% to 25.5% (SA Statistics 2012)

Job losses have affected low-paid and insecure workers the hardest. In many cases only the Expanded Public Works Programme and social grants have

stood between many affected households and destitution. Two highly problematic factors are the shift towards the use of casual and subcontracted labour and a related decline in real wages for low-skilled workers (Marais, 2011). The low wages earned by many workers mean that access to paid employment does not protect workers and their households from poverty. Some 22.5 million people live on under R10 a day (2010 Presidency Report).

In the last few years there has been a massive transformation of the labour market in South Africa marked by job losses, casualisation and the growth of the informal economy. This transformation process has created a new class that Standing (2009) has called 'the precariat'. This applies particularly to the workers at Kusile power station as chapter 3 will demonstrate. The precariat are characterised by insecurity. They "flit between jobs, unsure of their occupational title, with little labour security, few enterprise benefits and tenuous access to state benefits. "They comprise a disparate group in non-regular statuses including casual workers, outsourced workers and agencies workers," (Standing, 2009:109). The vast majority of Kusile employees fall into this category.

The introduction of the local labour procurement employee requirement in all Eskom projects like Ingula Dam, Medupi power station and Kusile power station is aimed at reducing unemployment and develop new skills. This drive towards curbing unemployment and skills shortages could be spearheaded by the establishment of new built fabrication and training facilities in Nigel Boiler Membrane Wall Workshop and other facilities in Pretoria and Wadeville (Eskom's presentation to the committee on Labour and Public Enterprises 22 June 2011). On this occasion it was suggested by Eskom management that the construction together with the operations of Kusile power station will better the lives of almost 54800 people. The on-site construction of the project will create 7200 direct on-site jobs, supporting staff 2000 jobs, coal mine expansion 2000 jobs, transmission expansion 200 jobs, on-going operation 600 jobs and lastly indirect social services and local

business 1700 jobs all adding up to 13700 jobs. This figure if multiplied by 4 persons (a possible dependency ratio) it will equate to 54800 persons (Eskom's Presentation to the Parliamentary Committee Labour and Public Enterprises 22 June 2011). This if achieved would obviously help alleviate poverty and assist in the reduction of the unemployment crisis in South Africa.

2.3 THE CONSTRUCTION INDUSTRY OF SOUTH AFRICA

The local labour procurement policy is being applied mainly in the construction industry. Construction is expected to play a major role in creating 5 million new jobs in South Africa as part of the New Growth Path. According to The New Growth Path Framework document, "Public investment can create 250 000 jobs a year in energy, transport, water and communications, infrastructure and in housing, through to 2015" (Department of Economic Development, 2011: 27). "In the construction process most of the employment will arise in housing and public works" (Economic Development, 2011: 27).

Recently the construction industry has attracted a good deal of controversy. It has been described as "an industry rife with corruption, fraud, racketeering and collusion, all sanctioned by the leadership of South Africa's biggest construction companies (Gedye, 2013: 5). This is the view according to information obtained in 2011 by the Hawks and the National Prosecuting Authority from the construction firm Stefanutti Stocks Holdings (bid). The affidavits were leaked recently. Several of the major listed construction companies such as Grinaker LTA, Aveng, Basil Read, Murray and Roberts and Wilson Bayly Holmes-Ovcon rely heavily on local labour obtained through labour brokers. Recently South Africa's major listed construction companies have reported that they have had a difficult time in the past year. With few exceptions here and there, they have reported significantly lower earnings in the past few weeks. This has largely been attributed to an

extremely competitive domestic operating environment that has eroded profit markets and problematic contracts (Business Report 230.9.2012).

The construction industry is focused on infrastructural development. However Murray and Roberts said recently that despite the government's announcement that it planned to spend R4 trillion on infrastructures over the next 15 years, not a single tender has been issued for a major infrastructure project. There was big state investment in fixed capital for the Soccer World Cup three years ago, but since then the government has been slow to issue new tenders and has been tardy in the paying for the work done (Business Day 1.11.2012)

The construction sector is monopolistic in that it is dominated by 4 players: Murray and Roberts, WBHO, Aveng and Group 5. Wilson Bayly Holmes-Ovcon Limited (WBHO) is principally engaged in civil engineering and building contracting activities in South Africa and internationally. Its name resulted from the merger between two giant construction companies in 1995 namely; Wilson Bayly Holmes and Ovcon Limited. Since its merger, it has become one of the leading building and civil engineering contractors in Southern Africa. The Company's operating divisions include civil and building, roads and earthworks, industrial and property and concessions. The company had a total workforce of 6985 employees as of June 2011 of which 4892 were permanent employees and 2093 being Temporary Employment Services (TES).

WBHO is involved in the construction of the Kusile power station as a joint venture partner with four other giant construction companies of which Basil Read is one of them. Their partnership is called KCWJV (Pty) Ltd, a company registered in terms of the companies Act 2008 of South Africa (WBHO Integrated report 2011).

Basil Read Holding Limited is a South African-based construction company. The Company is engaged in the areas of civil engineering, road construction,

building, mixed integrated housing developments, property development, bitumen distribution, opencast mining, blasting and engineering, and project management solutions and so forth. Its subsidiaries include Basil Read (Pty) Limited, TWP Holdings Limited, Basil Read Contracting (Pty) Limited, Basil Read Share Incentive Scheme, African Road Maintenance and Construction. The company has a total workforce of 2193 employees. It contends that it enjoys a sound labour relations at all levels of management and ensures that its entire people understand the company's industrial relations policies and procedures, and that such are implement fairly and correctly. In recent years, the company has observed the importance of environmental considerations in planning projects (Basil Read integrated annual report 2011).

While at Medupi power station, Murray and Robert Construction in partnership with Grinaker LTA are the main construction companies involved in the construction of Eskom's Medupi project under Medupi Power Station Joint Venture (Pty) Ltd (MPSJV). As of 2011 its total workforce was 31390 employees. About 84% of the company's employees were South African-based black employees, while 16% of all employees were women. Approximately 50% of all levels designated as management in the domestic market are black, and of that 12% are women. Of the 31390 employees 25640 were local employees of which 1195 of that were TES employees and 5750 were foreign employees (expert).

The involvement of Murray and Robert Construction Company in this project created serious concerns as, according to one informant, this Medupi project was used as a shield by the company's HR department during the retrenchment of employees in 2011. The corporation argued that those employees were not protected by the contractual obligation governing the Medupi power station's terms and condition of their service agreement with Eskom. They further argued that the contractual terms preferred the recruitment of local labour employees employed on LDC terms and

conditions compared to those permanently employed by their respective construction companies.

One Vusumsi Vikintonga, interviewed worker in Rustenburg at Xstrata Alloys Mines (Smelter Plant) in Zinaville near Tlhabane and Noord suburbs had this to say about his retrenchment at Murray and Roberts Construction Company in 2011.

> I am one of the Murray and Roberts Construction Company employees who got retrenched from employment in 2011. I originally come from Tsolo in Eastern Cape and have a family of five. My family stays at home since construction work involves a lot of relocation. I started working for Murray and Roberts Construction Company in 2005 as a casual employee and later got registered permanently in 2007.
>
> In 2010 the company started consultation processes with our union (Building Construction and Allied Workers Union) about dismissals due to the lack of new project jobs. The company and the union at plant level had a collective agreement regulating the terms and conditions of employment inclusive of terms of reference regarding retrenchments. The agreement stipulated the selection criterion that was to be used whenever the company was faced with operational requirement problems.
>
> The agreement adopted the principle of Last in first out (LIFO) as envisaged by the provisions of section 189 of the LRA. This meant that whenever the company was to embark on the retrenchment process, they would consider the LIFO principle as the point of departure. However in this instance we were retrenched despite the fact that Medupi still had newly recruited employees. The company justified its action as influenced by their Medupi contractual obligation signed with Eskom. I really felt unfairly treated as the principle of justice was not taken in to consideration. This was made even worse by the fact that, newly recruited people at Medupi were to be employed as casuals and not permanent.

> I suffered heavily just after losing my job as my family did not easily adjust to the life after my retrenchment. After six months of job hunting l was then called by my former foremen to come for work in Rustenburg hence l am here. However the problem is that now I am earning less than what l used to earn prior to my retrenchment even though still working for the same employer (Interview, retrenched worker Murray and Roberts Rustenburg 18th of July 2012)

Various courts ruled on matters relating to dismissals due to operational reasons in particular with reference to the 'Last in first out' principle (LIFO). For example in the Labour Court matter between NUMSA and Timken SA (PTY) LTD held in Johannesburg under case number JS 460 / 04 before honourable Judge J. Molahlehi. The Court held that, the applicant, NUMSA had brought an application on behalf of six of its members, claiming that their dismissals due to operational requirements by Timken SA (Pty) Ltd was both substantively and procedural unfair. The relief sought by NUMSA on behalf of six of its members was that they should each be reinstated with compensation if their dismissal was found to be unfair as sought.

The Court in its Judgement relied on the principles governing the "bumping" as they were considered in the matter between Porter Motor Group v Karachi (2002) 23 ILJ 348 (LAC) and stated as follows; Bumping is contextualised within the LIFO system principle which in itself is rooted in fairness for well-established reasons. It took cognisance for longer serving employees who have devoted their considerable part of their working lives to the company and their experience and expertise as an invaluable asset. Their long service was an objective tribute to their skills in the industry and their avoidance of misconduct in the absence of other factors, to be enumerated hereafter. Their service alone was sufficient reason for them to remain and others to be retrenched as fairness required that their loyalty be rewarded. However at Murray and Roberts Construction Company the case referred to above

lagged behind and also the non-use of the existence of a collective agreement regulating retrenchments.

The construction industry of South Africa involves building and civil works. It operates under the guidance of the Construction Industry Development Board Act No 38 of 2000 (CIDB Act). This act as part of its enactment promotes the acknowledgment of the construction industry and its direct role in communities and the public society at large. It also promotes improved efficiency and effectiveness in the sector that will enhance quality, productivity, health, safety, environmental outcomes and value for money to South African society. The government through Eskom as a State Owned Entity and through projects like Kusile and Medupi power stations together with Ingula Dam have tried to provide work for the construction industry and at the same time providing employment for thousands of South African citizens.

Most contractors in the civil engineering industry belong to the South African Federation of Civil Engineering Contractors (SAFCEC). The industry nationwide does not have a Bargaining Council (BC) compared to the building part of the construction industry, said Danny Booyens (Interview, SAFCEC official 24th of October 2012). Bargaining Councils are formed by employers in a particular sector together with representative trade unions. It is therefore registered in terms of the Labour Relations Act No. 66 of 1995 (the LRA) as the dispute resolution arm for the respective sector. Besides facilitating dispute resolution processes, it also assists parties on their substantive wage negotiations by facilitating the discussions process and assist in the conclusion of a collective agreement in terms of section 23 of the act (LRA).

All bargaining councils in the republic operate under the guidance of the Commission for Conciliation Mediation and Arbitration (CCMA). The building division of the construction sector have five Bargaining councils operating on the following areas of jurisdiction; the Cape of Good Hope; Bloemfontein; East London; Kimberly; North and West Boland; and, Southern and Eastern

Cape. In Kwazulu Natal and Gauteng provinces, representative trade unions and employers formed voluntary bargaining forums. These forums occupied the role of a registered bargaining council. They have collective agreements regulating terms and conditions of their relationship. At these voluntary forums, they negotiate collective agreements that regulate terms and condition of employment governing their employment relations. Upon completion of the agreement, it gets sent to the Minister of Labour for promulgation purposes before becoming a sectoral determination (Labour Relations act 1995).

The construction industry is marred by proliferation of unions. There are many trade unions operating in this industry, but the majority of them are not recognised as representative trade unions. Very few workers in the construction sector belong to unions. One reason for this low density could be the high volumes of temporary workers in the construction industry. However the sector has two major unions with a significant membership that earned them recognition by the construction companies. These are, the National Union of Mine Workers, into which the former Construction and Allied Workers Union (CAWU) integrated, both being COSATU affiliates, and the Building Construction and Allied Workers Union, a NACTU affiliate. Of the two unions, National Union of Mineworkers is the dominant union in terms of membership and is perceived by management as a union likely to engage in strike activities unlike the Building Construction and Allied Workers Union (Roskam 2009).

2.4 THE CIVIL ENGINEERING INDUSTRY OF SOUTH AFRICA

Civil engineering is one of the South Africa's industries operating under the construction industry umbrella. The industry skills are very scarce in the country. According to the South African Institute of Civil Engineers (SAICE), South Africa has a ratio of one engineer to 3,166 citizens whereas Brazil has 227 and Malaysia 543 (Business Day 6.11.2012). The industry consists of both big established international companies such as Murray and Roberts

Construction South Africa (Pty) Ltd and small indigenous closed corporations. During the build-up towards the successful hosting of the 2010 world-cup by South Africa, the civil engineering industry played a very important role in the construction of the country's big soccer host stadiums. However many of these construction site involves serious allegations of corruption and even the assassination of whistle blowers. They also built South Africa's national roads in conjunction with the South African National Road Agency Limited (SANRAL) inclusive with the most controversial e-tolling system.

Of the employers in the industry about 103 belong to SAFCEC and 19 557 employees out of a total workforce of 90000 workers are members of two different unions NUM and BCAWU (employees association registered in terms of the Labour Relations Act), who jointly act on their behalf at collective bargaining negotiations. The majority of the employees that belong to a trade union are either members of BCAWU or NUM. Both these trade unions and SAFCEC in 1996 established a National Negotiating Forum (NNF) a central national bargaining forum for the sector. At this forum all terms and condition of employment pertaining to the civil engineering industry are negotiated. Agreements that are concluded at this level are forwarded to the Minister of Labour for promulgation purposes before becoming sectoral determinations (enactments). This arrangement of SAFCEC, NUM and BCAWU has been going on since 1996 and in the said period these parties have and are still trying to register a Bargaining Council. If the registration of the bargaining council succeeds, the NNF will be dissolved (Department of Labour's employment report for Civil Engineering 2010).

The role of NNF amongst other issues is that of defining and categorisation of employees' titles and job descriptions. If due to technology or whatever reason there is a need for a job classification and / or interpretation of a new title, the NNF negotiating team convene and negotiate such as it cannot just be imposed on other party without a joint consensus.

These institutions, employers association and trade unions are registered in terms of the Labour Relations Act. The purpose of their registration is purely to represent the interest of its members. The only link between these organisations is that of an employer–employee relationship. For employers apart from providing employment to employees, they also are members of an employers association on one hand and employees on the other hand apart from rendering employment services to their employers they equally also are members to a trade union organisation

The civil construction industry of South Africa can best be defined in terms of clause 2(1) of the Sectoral Determination 2 for the civil engineering sector and is defines as follows:

(1) The Civil Engineering Sector means the sector in which employers (other than local authorities) and employees are associated for the purpose of carrying out work of a civil engineering character and includes such work in connection with one or more of the following activities:

(a) The construction of aerodrome runways or aprons; aqueducts; bins or bunkers; bridges; cable ducts; caissons; rafts or other marine structures; canals; cooling, water or other towers; dams; docks; harbours; quays or wharves; earthworks; encasements; housings or supports for plant, machinery or equipment; factory or works chimneys; filter beds; land or sea defence works; mine headgear; pipelines; piers; railways; reservoirs; river works; roads or streets; sewerage works; sewers; shafts or tunnels; silos; sports fields or grounds; swimming baths; viaducts or water treatment plants;

(b) excavation work or the construction of foundations, lift shafts, piling, retaining walls, stairwells, underground parking garages or other underground structures;

(c) the asphalting, concreting, gravelling, levelling or paving of parking areas, pavements, roads, streets, aerodrome runways or aprons, premises or sites; and further includes:

(i) any work of a similar nature or work incidental to or consequent on any of the aforesaid activities; and

(ii) the making, repairing, checking or overhauling of tools, vehicles, plant, machinery or equipment in workshops which are conducted by employers engaged in any of the activities referred to in subclauses (2)(a), (2)(b) and (2)(c); but excludes:

(aa) "work in connection with any one or more of the activities specified in sub-clause (2)b where such work, when undertaken in connection with the erection of structures having the general character of buildings and irrespective of whether or not such work involves problems of a civil engineering character, is carried out by the employers erecting such structures".

(bb) "work in connection with any one or more of the activities specified in sub-clause (2)(c) when undertaken as an incidental operation in connection with the erection of structures having the general character of buildings or when undertaken by the employers erecting such structures".

(cc) "any work falling within the scope of the Iron, Steel, Engineering and Metallurgical Industries as defined in the Main Agreement of the Bargaining Council for that Industry".

2.5 THE SOUTH AFRICAN LABOUR REGIME

The post-apartheid labour regime was the outcome of the negotiated settlement achieved through protracted struggle (Marais, 2011). This

negotiated transition was a hard earned victory that involved mass struggle and worker militancy such as the Durban strikes of 1973 (Buhlungu 2003).

This post-apartheid South African labour regime was part of what Webster and von Holdt (2005) term a 'triple transition' meaning "political democracy, economic liberalisation and post-colonial transformation. "It was an attempt to correct the injustices which marred the apartheid workplace. Webster and von Holdt (2005), demonstrate that under apartheid, employment relations were characterised by racial practices favouring the white minority. After democratisation the recognition of worker and trade union rights was done through the introduction of a new labour relations dispensation in the new Labour Relations Act 66 of 1995, the Employment Equity Act 55 of 1998, the Affirmative Action act and the Basic Conditions of Employment Act inter alia.

These workplace changes were met with resistance from the employers who advocated neo-liberal reforms as the country entered the global market. The spread of informal employment through subcontracting and related outsourcing strategies followed. The spread of such employment practices was done through the use of labour brokers. This has made it difficult for the labour movement to organise these informal workers. In fact it could be argued that, to some extent the South African government has indirectly promoted non-core employment through the introduction of the local labour procurement policies in its state owned enterprises and projects such as Kusile.

The local labour procurement policy could also be argued to contradict the existing South African labour regime in certain respects in its effects. The principle of Section 189 of the Labour Relations Act 66 of 1995 promotes the 'last in first out principle'. The local labour procurement policy means that newly recruited local employees are being favoured over employees of the contractors. These employees would have been on employ for more than 5 years with their respective employers and but sacrificed and retrenched while newly recruited locals are left behind.

The South African labour regime can be divided into three types: first, the *colonial labour regime*, which operated at a national level as well as at some individual workplaces and was marked by "coercion, violence and the subjugation of the indigenous population" (Buhlungu 2010: 2). Secondly the statist, *"developmental labour regime"* which also operated in workplaces and at national level, emerged in the immediate post-independence period. According to Buhlungu (2010), it was driven by a new authoritarian state that envisaged social reconstruction and accelerated economic development in which the state would provide a wage in return for labour's quiescence especially in relation to political and macroeconomic issues. Lastly the *"market and neo liberal regime",* brought about by capitalist globalisation which advocated open market, deregulation and less state intervention (Buhlungu 2010: 6).

This neo-liberalisation has become a serious challenge for organised labour in the global arena as the power of transnational corporations (TNCs) and production networks has increased dramatically in recent years (Bieler, et al. 2008). It has brought divisions in workplaces as workers compete against each other to preserve their jobs.

Buhlungu discusses trade unionism in Africa but mainly focusing on South Africa as a case study. Trade union's involvement in the working class struggle, coupled with the drive towards collective bargaining and a new labour regime brought about not only working class liberation on work related rights, but also political and economic freedom to the black majority citizens (Buhlungu 2010). However Buhlungu (2010) maintains that the same leadership that led to South Africa's political and economic freedom has been absorbed by the ANC into government, political offices and some corporate sectors leaving behind a skill gap, often labelled as the "brain drain" (Buhlungu in [Webster and Adler 2000])

The South African trade union movement revolves around the Congress of South African Trade Unions (COSATU), the biggest federation of trade unions in the country with its membership currently pegged at 2.2 million members

and 231 affiliate members. The country has three federations of trade unions namely: the National Council of Trade Unions (NACTU), Federation of Unions of South Africa (FEDUSA) and COSATU. Of the three federations of trade unions, COSATU is the one that still has a strong political affiliation through its membership in the triple alliance including the ANC and SACP (Buhlungu 2010).

2.6 THE ROLE OF THE SOCIAL PARTNERS AT NEDLEC

South Africa's new democratically elected government in April 1994 opted for a social contract as the route towards industrial restructuring (Godongwana 1992). The main stake holders in this social contract are the social partners, namely government representatives that will be acting on behalf of the state, business representative acting on behalf of organised business employers, the community representatives from the civic organisations representing the civic society and lastly trade union organisations representing the organised labour movements. At these levels of negotiations all these representatives carry the mandate of their representative constituencies.

The National Economic Development and Labour Council (NEDLAC) is an important institution to note in understanding of the proposed changes to the labour legislation currently under discussion in South Africa. NEDLAC is an institution where all macroeconomic issues such as proposed employment and other legislation changes or amendments affecting the society are discussed before becoming legislation. At NEDLAC, Government (the state) is represented by the Department of Labour (DOL), together with organised business (the employers' organisation), organised labour (the trade unions) and organised community groupings (the civic organisations). They meet and discuss issues of a national nature such as economic policies that might have an impact on the society at large with an attempt to reach consensus on social dialogue as envisaged by (Godongwana 1992). This promotes inclusive decision-making that should enable economic growth and social equity.

Besides the DOL as the government department involved, there are also other government departments that are involved at NEDLAC such as the Department of Trade and Industry (DTI), Department of Finance (DF) and the Department of Public Works (DPW). These departments unlike DOL, they participate in these negotiations processes only if it involves their department.

Organised business is represented by Business Unity South Africa (BUSA), which brings together the Black Business Council (BBC), and Business Unit South Africa (BSUA). The President of BUSA is Futhi Mtoba and the Chairperson is Andre Lamprecht with the CEO being Jerry Vilakazi and Laurraine Lotter being the overall convenor for Business at NEDLAC. Organised labour is represented by the three main labour federations in South Africa namely COSATU, FEDUSA and NACTU, and Bheki Ntshalintshali as its overall convenor at NEDLAC. Civic society is represented by the South African Youth Council (SAYC), National Women's Coalition (NWC), South African National Civics Organisation (SANCO), Disabled People South Africa (DPSA), Financial Sector Coalition (FSC) and the National Co-operatives Association of South Africa (NCASA) with Lulama Nare as their overall convenor.

NEDLAC has an executive council consisting of Ministers and senior officials from the Government; General Secretaries and senior office bearers from organised labour, captains of industry and senior officials of the employer's organisation; and senior representatives of the NEDLAC community constituency for civic society organisation. It holds an Annual Summit (AS), which provides an opportunity to review the work conducted during the year and gives direction for the coming year. Its work is conducted in four chambers which discuss different aspects of social and economic policy. These are the Labour Market Chamber (LMC), the Trade and Industry Chamber (TIC), the Development Chamber (DC) and the Public Finance and Monetary Policy Chamber (PFMPC). They are also Sub-committees and task groups of the Chambers which are formed to deal with specific issues. At all these chambers all the social partners are represented and they report on

their progress to a Management Committee (MC), which oversees the work programme and administrative issues.

2.7 PROPOSED CHANGES TO THE LABOUR LEGISLATION

The New Growth Path promises a number of changes affecting labour including "legislative amendments to reduce workers vulnerability by addressing problems experienced in contract work, sub-contracting, outsourcing and labour broking and by including decent work considerations in the procurement process" (Department of Economic Development, 2011:52)

Government and its social partners singed a Local Procurement Accord on 31 October 2011 as an outcome of social dialogue on the New Growth Path. "The parties to this Accord recognise the important role of local procurement in promoting jobs and industrialisation". The social partners aspire to achieve a 75% localisation in the procurement of goods and services both by the public sector and private sector (DED, 2011:6).

There are four labour legislations changes proposed in the country (South Africa). These proposed changes have received fierce opposition from business as they feel the changes will destroy jobs considering the increase associated with employment costs the changes will involve.

The Amendment Bills (AB), were first proposed in 2010 and have been through protracted negotiations at NEDLAC for more than a year (Mail and Guardian 27 July 2012). The government through the Ministry of Labour insisted in July 2012 that the bills will be tabled before parliament for approval despite differences at NEDLAC. However Democratic Alliance (DA) MP Andricus van der Westhuizen told reporters in Parliament that, "If passed in their current form, the labour amendment bills will exacerbate the unemployment crisis" (Sowetan 23 Jul 2012). BUSA based on the survey conducted by Small Business Project (SBP) on Regulatory Impact Assessment (RIA), argues that the proposed provisions will increase the costs of employment. It also further argues that wage-employment elasticity

as estimated would be at 0.7%. In other words, an increase in the cost of hiring an atypical worker based on a total package of R183.00 per annum to employees that would have been employed for more than six months on wages and benefits equates to 1% and is likely to imply a decrease of 0.7% in employment. Therefore given these assumptions, the estimate is that at very minimum, 215150 jobs will be lost as a direct consequence of the amendments.

2.8 THE LABOUR RELATIONS ACT

South Africa emerges from a history where, workers, and in particular Black African workers, were excluded from enjoying labour rights when compared to whites (Buhlungu 2003). Particularly, the right to strike without consequences was permitted only to the white minority workers (Buhlungu 2003). Participation in industrial action by black African workers was treated as a transgression or even a criminal offence by employers and the state during the apartheid period and the employer could dismiss striking employees at will. On the other hand white minority workers enjoyed the right to industrial and political citizenship. However slight relief came in 1979 when the apartheid government acknowledged that worker militancy could no longer be contained through worker repression alone. The apartheid state then adopted the Wiehahn Commission's recommendations to unify the labour relations dispensation into one law, the Labour Relations Act (Buhlungu 2003).

This Labour Relations Act was later amended when the country held its first democratic election and introduced a constitutional democracy. The Constitution then introduced a Bill of Rights in terms whereof the right of every employee to form and join trade unions and to participate in its activities and programmes and to strike was embedded. Section 27 of the Constitution provides that national legislation shall be enacted to give effect

to its purpose and to regulate labour matters, hence the Labour Relations Act of 1995 (Myeza 2009).

The purpose of the Labour Relations Act of 1995 was:

- To change the law governing labour relations and, for that purpose to give effect to section 27 of the Constitution;
- To regulate the organisational rights of trade unions; to promote and facilitate collective bargaining at the workplace and at sectoral level;
- To regulate the right to strike and the recourse to lock-out in conformity with the Constitution;
- To promote employee participation in decision-making through the establishment of workplace forums;
- To provide simple procedures for the resolution of labour disputes through statutory conciliation, mediation and arbitration (for which purpose the Commission for Conciliation, Mediation and Arbitration is established), and through independent alternative dispute resolution services accredited for that purpose;
- To establish the Labour Court and Labour Appeal Court as superior courts, with exclusive jurisdiction to decide matters arising from the Act;
- To provide for a simplified procedure for the registration of trade unions and employers' organisations, and to provide for their regulation to ensure democratic practices and proper financial control;
- To give effect to the public international law obligations of the Republic relating to labour relations; to amend and repeal certain laws relating to labour relations; and to provide for incidental matters.

2.9 PROPOSED AMENDMENT TO THE LABOUR RELATIONS ACT

In 2010 proposed changes to the Labour Relations Act were tabled for discussion at NEDLAC, an institution comprising of representatives from

different social partners as outlined above. The first version of the bill was submitted to Parliament in March 2012 but is unlikely to be passed before the end of the year 2012 *(Business Day* 15.11.2012). Most relevant to this research is the *"atypical employment relations"*. This type of employment refers to the *Outsourcing* and *sub-contracting* of core and non-core business activities of any particular company, it can be defined as externalisation. This can also be achieved through *labour broking* or the utilisation of a *temporary employment service and or* through *franchising* (Kenny and Bezuidenhout 1999).

The proposed amendment bills based on discussions at NEDLAC relates to section 198: Temporary Employment Services (TES); Section 21: Organisational Rights; Collective Bargaining; Essential Service employees; Sectoral Determinations and the Right to Strike in terms of the LRA.

2.10 TEMPORARY EMPLOYMENT SERVICES

The director of the National Labour and Economic Development Institute (NALEDI) has pointed out that "temporary employment and labour broking remained a serious problem in South Africa and continued to place workers at a disadvantage." (Dicks cited in *The Mail and Guardian* 4.12.2012)

Workers employed in terms of local labour procurement policy are considered temporary workers. Frequently their jobs are obtained through labour brokers and their role is particularly contentious. Many of the employees at Kusile obtained their jobs through this route. Since the Labour Relations Amendment Bill (LRAB) was tabled, the ANC has been adamant that labour brokers would be regulated, sidestepping calls for an outright ban of the practice from COSATU. COSATU has pushed hard for a total ban on labour broking. On the proposed amendment to the Labour Relations Act 66 of 1995 (the Act), social partners failed to reach a compromise on key issues inclusive of section 198. Section 198 of the

current Act alludes to atypical employment relationships. Organised labour (COSATU and NACTU) staged a series of industrial actions and protest marches advocating for a total ban of Labour Brokers.

This received fierce contestations from business representatives who argued that if labour brokers were to be banned, business would apply to the Constitutional Court challenging such. In recent years "labour flexibility" has become the buzzword in business circles. Employers and institutions promoting neo-liberal ideologies argue that labour laws should not unduly constrain employers' ability to make decisions that enable them to be responsive to markets and remain competitive (Bamu and Shane 2009).

Subsection 1 paragraph (a) of section 198 proposes the definition of TES to read as; "any person who, for reward, procures for or provides to a client other persons; who perform work for the client; and who is remunerated by the temporary employment service". It further proposes that 'temporary services' would mean; work for a client by an employee: for a period not exceeding 6 months; or as a substitute for an employee of the client who would be temporarily absent; or in a category of work and for any period of time which is determined to be temporary services by a collective agreement concluded in a bargaining council, a sectoral determination or a notice published by the Minister, in accordance with the provisions act (NEDLAC discussion paper. Theme 1: Atypical Employment Relationships 17.01.2012).

Workers in this category are extremely precarious. For example at the CCMA in the matter between Mangali v Robserve on case number WE 13242-06, award dated 12 September 2006. The applicant employee got injured at work while working for the client of his employer. The client decided that due to the injury sustained, he could no longer execute his duties and as such was dismissed. When the applicant sought the assistance of the Courts to adjudicate the dispute, the CCMA arbitrator found that the dismissal of the applicant was unfair and ordered reinstatement. The problem was the precariousness of the job in question regarding who the actual employer is

was (the TES or the Client to the TES). It was found that the employee was not employed by the secondary employer, but instead was employed by the primary employer, in this case the labour broker, (Robserve). This resulted in the employee being left helpless to obtain redress. (Harvey 2008).

The numbers of TES employees in recent years have increased while permanent employment has declined. The total number of people employed in South Africa is at 10 947 000 of which 7 875 000 are permanent, 685 000 fixed term contract 1 360 000 temporary, 888 000 casual and 81 000 seasonal workers of which 33, 57% of people employed in the agricultural sector are on a temporary or casual basis. TES can be defined as an atypical type of employment while most authors have defined it as informal employment.

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Most of the Foreign Direct Investment (FDI) companies doing business in South Africa prefer the option of using labour brokers or TES employees as defined in the LRA. The use of labour brokers by employers has now come under the spotlight in the past few months with recent strikes staged by the trade union movement. Diverse views have been expressed by stakeholders, including the government. Certain government ministers aligned to the trade union movement have called for labour brokers to be banned, stating that it is “modern-day slavery”. In addition COSATU and NACTU have called for an outright ban on the use of labour brokers. COSATU has argued that labour brokers are a “form of slavery” which results in deteriorating working conditions and the reduction of benefits as part of the salary is taken by the labour broker (COSATU Press 10.2.2013). However, certain employer bodies have argued that: a total ban on labour brokers is unrealistic, contend that there is adequate legislation already in place covering any abuse (Harrison 2010).

COSATU AND NACTU have brought forward a proposed amendment based of section 8A that at least three months prior to the coming into effect of this

section, the Minister must by notice in the Government Gazette invite representations from the public on which categories of work should be deemed to be temporary service. Business on the other hand contends that the proposed six month period is too short and there is no provision for bona fide project work or works where there is a temporary increase in the volume of work. They further contend this will lead to fewer opportunities for job creation. They propose a process of Regulatory Impact Assessment (RIA) to determine the impact of this proposal and also the factors that justify the use of fixed-term contracts must be included to the RIA's report as they both address flexible work.

Business clearly prefers informal employment. Their alternative proposal is that six months be extended to 12months and to also include project work and provision for a temporary increase in the volume of work as provided for in the proposed fixed term contract provision; *'that of an employee engaged on account of a temporary increase in the volume of work which is not expected to endure beyond 12 months'* (Theme 1: Atypical Employment Relationships 17.01.2012).

Section 198 subsections 2 deals with what constitute an *"employer"* of a temporary employment services employee and the confusion around the term *"deemed severally liable".* The proposed amendment defines the employer of the temporary employment service as: any person whose services have been procured for, or provided to a client by a temporary employment service to be an employee of that temporary employment service, and the temporary employment service is that person's employer; and or if the employee is not performing temporary services for the client, the employee is deemed to be the employee of that client and this client is deemed to be the employer (Theme 1: Atypical Employment Relationships 17.01.2012).

However this *"deemed severally liable"* violates the ILO's Declaration on Fundamental Principles and Rights at Work (1998) as it does not define the employer. Therefore if the difference between who employs who in terms of

temporary employment services is not aligned, employees would be deprived of their right to freedom of association and effective recognition of the right of collective bargaining; the elimination of all forms of forced and compulsory labour; and then lastly the elimination of discrimination in respect of employment and occupation (van Steeden 2008).

The proposed changes in law seek to protect vulnerable TES employees from the ambiguity of the TES interpretation cited above. The intention is to try and prevent employers from evading collective agreement concluded in a bargaining council that regulates terms and conditions of employment; or in binding arbitration awards that regulates terms and conditions of employment; and or in sectoral determinations. If properly defined this will enable TES employees to institute proceedings against either the temporary employment service or the client or both by a labour inspector acting in terms of the BCEA; and manage to enforce an order or award made against a temporary employment service, the client or both.

2.11 ORGANISATIONAL RIGHTS

The organisational rights in terms of section 21 of the Labour Relations Act 66 of 1995 relates to the recognition of Trade Unions in a particular workplace based on their representativeness. Enshrined in such agreements, is the right for one to join or choose to affiliate to any union of his/her choice. Without trade unions, individual workers are weak and cannot negotiate successfully for better wages and conditions of employment with their employers. The union gives them the strengths and confidence and allows them to confront and negotiate with management on an equal power basis guided by a collective agreement concluded in terms of section 23 of the LRA (Kgosana 2012)

The labour laws of many African countries mostly contain excessive restrictions on trade union rights (Annual Survey of violations of trade union rights 2011). However in South Africa a dispute mechanism in the form of

CCMA was put in place to adjudicate disputes about registered trade union in respect of exercising their rights.

The current proposed changes requires a representative trade union to approach the commissioner of the CCMA if there is a dispute regarding organisational rights issues and the commissioner would in an attempt to resolve the dispute consider; the nature of the workplace; the nature of the one or more organisational rights that the registered trade union seeks to exercise; the nature of the sector in which the workplace is situated; the organisational history at the workplace or any other workplace of the employer; and the composition of the workforce taking into account the extent to which there are employees assigned to work by temporary employment services, employees engaged on fixed-term contracts, part-time employees or employees in other categories of non-standard employment. However business in conjunction with FEDUSA contends that, this is unfair to them as the proposed changes introduces a new factor in favour of labour (Theme 1: Atypical Employment Relationships 17.01.2012).

The government further proposed that if a trade union sought to exercise rights conferred by section 21 in respect of the employees of a temporary employment service, it may seek to exercise those rights in a workplace of either the temporary employment service or one or more clients of the temporary employment service, and if it exercises these rights in a workplace of the temporary employment service, any reference in this section to the employer's premises must be read as including the client's premises. Business contends the provision complicates organisational rights and employment thereby increasing the administrative burden. They contend this undermines the principles of majoritarianism and sufficient representation and disregards the role of the TES. Also part-time employees are not in the same mould as TES and fixed-term contracts. Business contends that organisational rights should appropriately be left for engagement between the parties as it is the intention on the underlying principle of the LRA (NEDLAC discussion paper Theme 3(a) collective bargaining 17.01.2011).

2.12 PROPOSED CHANGES ON STRIKE CONDITIONS

Due to the recent nature of violent strikes in South Africa government through NEDLAC proposed changes to the following clauses in the current labour laws governing strikes and picketing processes (Theme 3(b) violence in strikes 17.01.2012). The government proposes to amend section 64 of the Labour Relations Act 66 of 1995 and the proposed suggested changes are that prior to embarking on a protected strike or picketing process:-

- The trade union or employers' organisation, as the case may be, must conduct a ballot of its members in good standing who are entitled to strike or lock-out in terms of this section in respect of the issue in dispute;

- A majority of the members in good standing of the respective trade union or employers' organisation who voted in the election process have voted in favour of the strike or lock-out; and

- That a certificate issued by the Commission, a bargaining council or an accredited private election agency must ensure that a trade union or employer's organisation has conducted a ballot in compliance with the act and there is proof thereof that the trade union or employers' organisation has complied with those provisions.

The proposed changes are typical of many African countries such as Algeria, Egypt, Kenya, Senegal and Swaziland where labour laws contain excessive restrictions on trade union rights often recurring limitations imposed on free organising, the right to strike is commonly very restricted and, as a consequence, lawful strikes are difficult to call Where workers do go on strike, repression often follows in the form of violence, arrests, harassment and dismissals (Annual Survey of violations of trade union rights 2011).

Business concurs with the government proposal as this will be in their favour considering the proliferation of unions in a particular industry or sector as reaching consensus among different trade union with different political background would not be easy. They further propose an additional clause that will provide a picketing agreement as a further requirement for a protected strike. While some unions disagree with the proposed changes FEDUSA concurs with the proposal (Theme 3(b) violence in strikes 17.01.2012).

Furthermore government proposes that a registered trade union may authorise a picket by its members and supporters for the purposes of a peacefully demonstration in support of any protected strike or in opposition to any lockout. The rules established by the CCMA may provide for picketing by employees in a place controlled by a person other than the employer, if that person has had an opportunity to make representations to the Commission. The picketing must be at their employer's premises if the Commission is satisfied that the employer's permission has been unreasonably withheld (Theme 3(b) violence in strikes 17.01.2012). However this poses a concern to organised labour as seeking permission from the employer of the employee's right to picket defeats the purpose of section 23 of the Bill of Rights that guarantees the right to strike and Section 64 (1) of the LRA which gives effect to this Constitutional provision (CCMA Indaba 2010).

2.13 PROPOSED CHANGES TO THE BASIC CONDITIONS OF EMPLOYMENT ACT

The proposed changes in the Basic Condition of Employment Act are in terms of section 68 of the principal Act relating to the powers of the Labour Inspector. It proposes that a labour inspector who has reasonable grounds to believe that an employer has not complied with any provision of this Act *"must and or may"* endeavour to secure a written undertaking by the employer to comply with the provision (Theme 3(a) BCEA 17.01.2011).

The labour movement however proposes that since the purpose of this undertaking is to promote compliance and enforcement, this should therefore be a mandatory step in the process and not to make it voluntary or discretionary. The Labour Inspector should be obliged to attempt to secure an undertaking from the employer as it is the current position in the law (Theme 3(a) BCEA 17.01.2011).

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For compliance purposes, a labour inspector who has reasonable grounds to believe that an employer has not complied with any provision of the Act may issue a compliance order and it must spell out:-

- The name of the employer, and the location of every workplace, to which it applies;

- Any provision of this Act that the employer has not complied with, and details of the conduct constituting non-compliance;

- Any amount that the employer is required to pay to an employee;
- Any written undertaking by the employer in terms of section 68(1) and any failure by the employer to comply with a written undertaking;

- Any steps that the employer is required to take including, if necessary, the cessation of the contravention in question and the period within which those steps must be taken;

- The maximum fine that may be imposed upon the employer in accordance with Schedule Two for a failure to comply with a provision of this Act.

- The date by which the employer should serve any representations it may wish to make with the Department and the Labour Court;

- The date on which, if the employer does not comply with the order, application may be made without further notice to the employer to have the compliance order made an order of the Labour Court in terms of section 73.

- A labour inspector must serve a copy of the compliance order must be served on the employer named in it, and to each employee affected by it or, if this is impractical, a representative of the employees.

- The failure to serve a copy of the compliance order or any employee or representative of employees does not invalidate the order.

- Also that the employer must display a copy of the compliance order prominently at a place accessible to the affected employees at each workplace named in it; and

- The employer must comply with the compliance order within the time period stated in the order unless it objects in terms of section 71.

However business has opposed this on the grounds that it would impose delays in dispute resolution and extra costs in doing business. Business attempted to curb such proposed changes on section 55 of the BCEA that seeks to prohibit or regulate task-based work, piecework, homework, the placement of employees by temporary employment services, sub-contracting and contract work (Theme 1: Atypical Employment Relationships 17.01.2012).

The government's proposal was accepted by two trade union federations NACTU and COSATU while FEDUSA aligned itself with business. Business argue that the proposal undermines the entire structure of the proposals under Atypical Employment on section 198 of the LRA as outlined above and that it was inconsistent with what is set out in that regard. They would however concur with such proposal only if such prohibition or regulation

complied with the relevant provisions under section 198 of the LRA and / or the Employment Services Act. They contend it will create inconsistency and uncertainty (Theme 1: Atypical Employment Relationships 17.01.2012).

A proposal with regard to the capacity building of the inspectorate was suggested in an attempt to drive compliance. Government reported that the ILO is dealing with the professionalization of the inspectorate and proposed that the Inspection Enforcement Services and the ILO should be invited for a presentation on the labour inspectorate to the Labour Market Chamber (Theme 3(a) BCEA 17.01.2011).

Other deficiencies noted by the ILO include weak or non-existence of the labour law enforcement due to lack of investment on labour inspection through training (Annual Survey of violations of trade union rights 2011). Government has however stated that a Code of Conduct had been developed for inspectors, and the inspectorate was in the process of liaising with Universities on the development of a curriculum for inspectors. It emphasised the point that an inspector and a Commissioner performed different functions and that an inspector is a public service employee whereas Commissioners working under the auspices of the CCMA are an independent institution though funded by the State through DOL. Business concurred with the Government proposed ratification of ILO Convention 81 on inspection services in order to promote the professionalization of the inspectorate and build capacity. Business supports this proposal as part of professionalising the inspection services (Theme 3(a) BCEA 17.01.2011).

2.14 PROPOSED CHANGES TO THE PUBLIC EMPLOYMENT SERVICES ACT

The proposed amendment to the Public Employment Services Act (PESA) relates to the proper definition of what constitute an essential services person and the rights of that person with regard to the right to strike as enshrined in section 23 of the country's constitution. The South African

National Defence Force (SANDF) was recently plagued by sporadic clashes between organisational political leadership and trade unions. The culminating point was their memorable march to Union Building that led to physical clashes between the police and unionised soldiers (Kgosana 2012).

The government proposes that in the event of a dispute regarding what constitute an essential services employee, a panel must be appointed by the essential services committee to considered written and oral representations from the concerned parties and present it to the essential services committee for ruling (Theme 3(c) Essential Services 17.01.2012).

Business, concerned about illegal strike action by essential service workers proposed to insert a sub-clauses providing for a service to be declared essential by an urgent Court application. However labour disagreed with this understanding claiming that the intention of the proposal is to deprive workers of their constitutional right to strike in terms of section 23 (Theme 3(c) Essential Services 17.01.2012). However Kusile power station workers are not defined as essential service employees.

2.15 PROPOSED CHANGES TO THE SECTORAL DETERMINATION

Most of the employees at Kusile are employed under the terms and condition of a sectoral determination for the Civil Engineering sector. Sectoral determinations are regulated by the BCEA, therefore government through this act proposed the amendment on the definition of the sector and proposed it should refer to an industry or a service or part of an industry or service and in respect of a sectoral determination made in terms of section 55 meaning employers and employees covered by that sectoral determination (Theme 3 (a) Collective Bargaining 17.01.2011). Business however disagrees and contends that the proposed change if acceded to would work against job creation. They believe Employment Commission Committee (ECC) has the power to make determinations on any vulnerable sectors as the law currently stands. ECC should first do an analysis of which sectors are not covered by sectoral determinations and councils before

any proposals of this nature are contemplated (Theme 3 (a) Collective Bargaining 17.01.2011).

2.16 COLLECTIVE BARGAINING

The right to collective bargaining is a fundamental freedom in a democratic society. That freedom is enshrined in our Labour Relations Act 66 of 1995 and our Bill of Rights. In South Africa "historically, the right of workers to organise, form a union and negotiate collectively are almost the same thing" (Frans Baleni, General Secretary of the National Union of Mineworkers cited in *The Star* 7.11m 2012) The right to collective bargaining is enshrined under the ILO in its Declaration on Fundamental Principles and Rights at Work (1998)

The recent strike actions on the platinum belt have led several labour relations experts to call for collective bargaining reform. It has been suggested that there is a need to re-examine the role of the state in regulating industrial relations and recognise the expectations of low-paid workers who may not feel adequately represented in the present collective bargaining framework. (Kahn cited in *The Star* 17.11.1012)

There are different types of collective bargaining. Some collective bargaining processes are conducted at different bargaining councils representing a particular industry in a particular province or representing a particular sector or at national level as alluded to above in the construction sector. Some collective bargaining is conducted at company level with a representative trade union or trade unions acting jointly. Collective bargaining processes conducted at company levels are regulated by a collective agreement concluded by a representative trade union or trade unions acting together with that particular employer. While those conducted at bargaining councils are regulated by a registered constitution for that particular bargaining council as registered in terms of the Labour Relations act 66 of 1995. However some collective bargaining can be conducted

through a collective agreement involving a group of different employers and their organisation in a particular sector and different representative trade unions organising in that particular sector in terms of section 23 of the act such as collective bargaining at Kusile power station.

Collective bargaining at Kusile power station in relation to all matters of remuneration and conditions of employment of employees within the Bargaining Unit (BU) is undertaken at industry bargaining forums. No collective bargaining in relation to any such issue is conducted at Site/Project level. The PLA affirms consent from the parties to the agreement acknowledgement that because of differing Industry Agreements and individual contractor employment arrangements, it would impossible to standardise and obtain consistency with regards to wage rates for specific jobs. As such no contractor would however pay less than the remuneration prescribed in the Industry Agreements for any specified job category at the project (Kusile project labour agreement 2012).

When determining whether parties to the bargaining council are sufficiently representative in terms of the LRA, the Minister may take into account the composition of the workforce in the sector, including the extent to which there are employees assigned to work by temporary employment services, employees engaged on fixed-term contracts, part-time employees or employees in other categories of non-standard employment (Theme 3 (a) Collective Bargaining 17.01.2011).

However business's proposal is that this would be detrimental to small business and also that it fails to take into account competitive issues they are faced with. Business thereof proposes the deletion of employees engaged on fixed-term contracts, part-time employees or employees in other categories of non-standard employment. Alternatively, they proposes that when determining whether parties to the bargaining council are sufficiently representative in terms of the LRA, the Minister may take in to account the number and size of employers and the competitive forces in operation in that sector. Therefore business's concern in principle is that minority parties

would bind the majority with extensions which would threaten the viability of businesses, particularly small businesses and, by implication, the job security of these small business employees (Theme 3 (a) Collective Bargaining 17.01.2011).

On the amendment of section 43 of the principal act the government's proposal seeks to amend is that if a statutory council concludes a collective agreement in respect of any matter referred to by subsection 2, the provisions of sections 31, 32 and 33 would apply, read with the changes required in the context (Theme 3 (a) Collective Bargaining 17.01.2011)? However business contends this would be unsound and unfair to enable a body, which is not a voluntary body, but a statutory body, to be forced upon an industry (without agreement) and comprising a minority of the parties in the industry to have the right to determine terms and conditions of employment for the majority of the industry. They affirm it would be contrary to the accepted principles of democracy and self-determination as embedded in the Constitution (Theme 3 (a) Collective Bargaining 17.01.2011).

While business disagrees with the proposed changes, labour on the other hand has different opinion. COSATU and NACTU agree with the proposed changes but FEDUSA aligns its self with business opinion. They contend there are only three Statutory Councils in existence and do not see the need to have collective agreements extended to non-parties. The Act envisaged that parties to Statutory Councils could extend their limited powers to include other issues they specifically agree to between themselves and which is included in their Constitution. It was never the intention that those specifically agreed to issues, could be extended to non-parties. They however, feel that "Centralized Bargaining" must be encouraged and if the text could be reworded to achieve that, they would consent to the proposed change (Theme 3 (a) Collective Bargaining 17.01.2011).

This chapter has located the temporary workers employed at Kusile power station in the context of the unemployment crisis in South Africa, which is marked by job losses, particularly in mining, manufacturing and agriculture. While the local labour procurement policy which informs employment practices in state owned enterprises creates some jobs for local people, their temporary nature means they are characterised by the insecurity which defines the 'precariat' in Standing's (2009) conceptualisation.

In the following chapter the proposed changes described above will be shown to contribute to the confusion expressed by several of the Kusile workers interviewed.

CHAPTER III

EMPLOYMENT POLICIES AND PRACTICES AT KUSILE POWER STATION

3.1 BACKGROUND

This chapter focuses on employment policies and practice at Kusile power station governed by the Project Labour Agreement (PLA) signed in 2012. It gives some indications of the living and working conditions of employees at the Kusile project power station. The understanding of this collective agreement requires employees and employers to act and see themselves as a group seeking the same objectives that holds its own challenges (Holtzhausen 2012). The chapter outlines the nature of the Project Labour Agreement, its controversial nature, how it is applied and the response from some of the workers and employers who were interviewed.

3.2 PRINCIPLES AND PROCEDURES OF THE PROJECT LABOUR AGREEMENT

The intention of the Project Labour Agreement (PLA) was to create a unified approach on all labour related matters on the Kusile Construction Project. This collective agreement was negotiated between representatives of employer associations and trade unions that have had, or may have had members who are or who will be engaged on the Kusile Construction Project. The agreement was endorsed by the client (Eskom) in terms of its industrial relations policy and is contractually binding on all employers and employees working on the project, whether they are members or not of the unions or employer associations. The Project Labour Agreement is binding on all contractors and employees already engaged on the project.

The PLA gave recognition to all relevant South Africa labour legislation to apply to every employer and its employees on the project site and also all applicable industry agreements, unless otherwise specified. Also contained in the PLA is that it applies to any person, visitor or supplier who comes on to the Project. It further affirms that any person employed on the Project must agree to the PLA terms via the relevant contractor as the conditions contained within the PLA will be contractually binding.

The Project Labour Agreement governing Kusile is to be reviewed after every thirty six months by the signatories to the agreement who constitute the Contractors Consultative Forum (CCF). Eskom has to ensure that all parties understand their contractual obligations to abide by this agreement and that all stakeholders engaged in the Kusile construction project are required to give full commitment and cooperation to the effective implementation and on-going management of this agreement.

The purpose of a collective agreement in any workplace might reach beyond an immediate interest in protecting trade union members in the short term. It might also be to establish a floor of rights for all employees in a particular company regardless of a trade union affiliation or not, thereby becoming an alternative function to a statute (Malmberg 2001). However the concern raised by the majority of the interviewees is that the PLA is not always adhered to at all time by majority of the construction companies involved.

Informants reported a considerable level of confusion regarding how jobs were obtained and who their employer was. This confusion relates to the contradictory practices involving recruitment agencies such as Backhousia Recruitment Services (BRS) and labour broking firms as well as to the practice in the construction industry of operating through sub-contractors.

3.3 RECRUITMENT

Local employees at both Medupi and Kusile are typically insecure, temporary workers who obtain their jobs through a specific company, Blackhousia Recruitment Services or through labour brokers or corrupt local authorities

especially at Kusile. According to Hilary Joffee, spokesperson from Eskom, “contractors at Kusile generally use labour brokers to recruit people from the area”. This is contrary to the recruitment policy enshrined in the project labour agreement. According to James Dutch, this practice is different from Medupi where the contractors tend to work through the dominant tribal authorities (Personal communication 5.11.2012). This research suggests that the practices in the two sites are very similar and involve a great deal of confusion on the ground.

A labour broker is one type of a type of subcontractor. A subcontractor takes a portion of a contract from the principal contractor or from another subcontractor. When an individual or a company is involved in a large-scale project, a contractor is often hired to see that the work is done. The contractor, however, rarely does all the work. The work that remains is performed by subcontractors, who are under contract to the contractor, who is usually the designated prime contractor. Subcontractors may, in turn, hire their own subcontractors to do part of the work that they would have been contracted to perform.

A labour broker refers to a 'temporary employment service' employee as defined in Section 198 of the Labour Relations Act (LRA) to mean a person who, for reward purposes, provides another person to provide services to a client for remuneration in return. The crucial point is that the labour broker provides employees to a client and is remunerated by the client for doing so. The labour broker is then responsible for the remuneration of the employees. In essence the two – both labour broker and subcontractor employees- could be classified as informal workers.

Informal workers include part time, temporary, labour broker workers, casuals, home workers and contract workers. They are often unskilled, vulnerable to abuse and exploitation, largely not unionized and are often not covered by any collective bargaining “(Patel, 2011: 24). These employees are often deprived of the benefits of labour legislation because their contracts normally state that if the client no longer needs their work, the contract of

employment automatically terminates. The contract is designed as a fixed-term contract with the termination date linked to the client's requirements (Patel, 2011: 24).

One NUM shop steward John Khumalo interviewed at the project had this to say;

> I was seconded to this project in 2009. Employment practices in this project are different from the industry norms. Workers in the construction industry are recruited from the gate as per norm unlike here where the project has appointed one company called Backhousia Recruitment Services for recruitment purposes. According to the recruitment policy contained in the PLA, recruitment is to be conducted through this appointed recruitment firm. However the practice to a certain extent does not conform to this requirement. Former and current ANC office bearers are working as labour brokers at the project. They employ people directly from the townships. Only companies operating directly under the supervision of Kusile Civil Works Joint Venture (KCWJV) does comply with the official recruitment policy. These labour broking companies are owned by former and current ANC office bearers and are mainly the ones violating the provisions of the PLA and applicable legislation that governs the project's terms and conditions of employment (Interview, NUM shop steward Kusile power station 5th of July 2012)

The PLA established a policy on recruitment procedures. The crucial point is that the policy gives preferential treatment to the employment of locals living within a 60km radius from the project compared to other citizens.

At the inception of the project in 2008 the project appointed a recruitment company, Backhousia Recruitment Service, as its sole recruitment source. This is not a labour broker but a human resource staffing company. All the Recruitment in this project should be done through Backhousia Recruitment Services. This company focuses on sourcing qualified permanent and contract based staffing personnel for different institutions within the

Mpumalanga Province, specifically in the Nkangala Region. It is a 100 % black female owned recruitment agency in Witbank. It has its Headquarters in Witbank, and also has satellite offices in Delmas, Wilge and Phola. This company has only two years of full operational experience. They only began recruitment work through their involvement with Eskom at Kusile power station. However it has since obtained a level one qualifying small enterprise BBBEE verification status based on their certificate issued by Empowerdex (an economic empowerment agency) on the 12th of November 2012. The firm has a total workforce of 25 employees employed on a full time basis and only has its official office at Witbank besides Eskom's engineered satellite offices for the project's local recruitment purposes. The informant interviewed could only provide the information for the period January 2012 to December 2012 on successful recruitments done Backhousia Recruitment Services. During this period the firm has successfully placed 2287 local people to the project on various occupations. Of the successful placements of people on the project, 17 were office bound workers, 124 being boiler makers, 50 concrete hands, 39 electricians, 62 drivers / operators, 4 safety officer, 195 shutter hands, 52 steel works, 36 welders, 222 riggers and 1055 general workers only to mention the few occupations, said Daniel Lewis (Anonymous interview Backhousia informant 13.12.2012)

The terms and conditions of recruitment in terms of the PLA are that:-

- Backhousia Recruitment Services will be sole responsible company for the recruitment of all locally recruited employees on the project.
- That the recruitment firm will recruit within the magisterial district of Bronkhorstspruit, Ogies, Phola, Delmas and Witbank in accordance with the criteria established by Eskom as the client to the project contractors and also regulated for in the project labour agreement (PLA).
- That the recruitment firm will introduce satellite offices in the magisterial district of Bronkhorstspruit, Ogies, Phola, Delmas and Witbank to spearhead the recruit of local employees.

- That the this firm will be allocated office space within either the department of labour (DOL) offices or the municipality offices as its centres of operating their satellite offices. (The Project Labour Agreement, 2012).
- That the firm will obtain its recruitment needs for the project through the Project Industrial Relations Manager (PIRM).

This firm recruits all employees in the project, including managerial employees. According to a Backhousia source they get their staffing requirements directly from Eskom Project Industrial Relations Manager (PIRM) and not from the project contractors (Telephone interview 12.12.2012). Informants approached at Backhousia during the course of this research refused to discuss how they obtained this appointment as the sole recruiting agency and whether the correct tender procedure was followed. The manager employed at Kusile to liaise with Backhousia also refused to be interviewed.

As a result of this policy the local area of Kusile including Delmas, Wilge, surrounding farms, Ogies, Phola, Emalahleni (Witbank), the rest of Inkangala communities and THE PROVINCE at large have provided 6022 out of 12050 total people employed at the project representing a 50 % of locally procured employees at the project. However this research indicated that inconsistency has marked most of this recruitment standing policy rule in that:-

- Most locally supported contractors do employ people on their own using their own means of recruitment and not in accordance with the standing PLA procedure (employing through the elected recruitment company namely Backhousia Recruitment Services) as they employed people directly from the townships.
- The majority of these are being employed at a constituency level by their councillors. Quite a number of these councillors have vested interests in these local construction companies through operating (and sometimes owning) labour broking firms.

These recruitment practices mean that a high proportion of Kusile and other construction workers may be classified as being in precarious employment. This part of the 'precariat' is due to the taking into account both the lack of employment security and their overall conditions of work. Among the workers interviewed during the course of this research, there was no clear view on who their employer was and who had the overall responsibility for either recruitment or working conditions. This is partly due to the multi-layer nature of the subcontracting arrangements commonly found in construction involving a number of intermediaries, as opposed to just one when compared with the more standard labour broking arrangement (COSATU press statement, august 8 2012)

http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71656?oid=317836&sn=Detail&pid=71656

The policy defines all employees employed by the project as Limited Duration Contract (LDC). All the workers, even top management, are employed as Limited Duration Contract (LDC) workers. The crux of the PLA is the preference given to the local labour. The agreement affirms that employment opportunities on the project is given to individuals closest to the site and who possess the necessary skills, training and qualifications for particular positions.

This is contrary to the principle of equal opportunity to all those seeking employment as advocated for by the Employment Equity Act 55 of 1998, and discriminates against job seekers from other geographical areas of the country (Sooklall 2007). It means that local applicants have the first option for any vacant position, followed by applicants from other areas within the province in which the site falls (in this case Mpumalanga). Thereafter the opportunity gets extended to South Africans nationally, and finally to foreign nationals who will be expected to comply with the provisions of the necessary legislation regarding work permits (Department of Home Affairs).

A recruitment officer appointed by the Kusile Execution Team (KET) assists with the recruitment of local labour. The recruitment officer contacts Backhousia Recruitment Services once he has obtained information on how

many different categories of workers are needed. The rules that govern recruitment must be complied with and feedback on the recruitment officer's activities be given to the Contractors Committee Forum (CCF) on a regular basis.

Eskom requires 60% of the recruitment of employees in the project to be recruited locally. This was confirmed by one NUM shop steward Thulani Dube and he stated as follows;

> I am a shop steward for the NUM at the project since its inception in 2008 and reside in Delmas. The terms and conditions of employment on the project are derived from the PLA, sectoral determination, LRA, BCEA and the Employment Equity Act plus any other employment legislation in the country. The terms and conditions of employment here are different from those applicable in the construction sector. Here we are entitled to site specific benefits derived from site collective agreements such as site project bonus. The majority of benefits here are derived from the PLA where as in the construction sector, theirs are governed by the sectoral determination and as well as the legislation governing employment.
>
> All employees on the project are not permanent including me. The recruitment threshold as put by Eskom is that 60% of the employees recruited in this project must be from the local community and also must be employees living within the radius of 60 km from the project. The other 40% would be employees seconded to the project or either those that possess a skill that could not be obtained within the required magisterial district.
>
> Every employee in this project is entitled to similar benefits save only for the seconded employees who are entitled to accommodation due to the fact that they originally don't belong to the area. The project also provides transport to and from work and lunch for every employee who is in the bargaining unit (Interview, NUM shop steward Kusile power station 5th of July 2012).

Several informants maintained that recruitment processes are being violated on the project, especially by the labour brokers or the so called local

contractors. Workers should be employed through the recruitment agency Backhousia but this is not always the case as it is not consistently applied. There are also allegations of corruption and nepotism on the part of local ward councillors. This was illustrated by one interviewee Julius Khuphe who responded as follows when the question "for how long have you been in this project and how were you recruited" was put to him:

> "I have been in this project for more than two years now. I reside in Witbank and was recruited by a local councillor who owns a labour broker company called Indlamama Project cc. He brought me and my other colleagues to this project. We were employed from the Witbank township and our salaries are lower than those paid by other contractors working in this project (Interview, general worker Kusile power station 4th of July 2012).

This illustrates the inconsistencies in the recruitment process. All employees at Kusile are - in terms of the policy – supposed to obtain their jobs through Backhousia Recruitment Services. The Project Labour Agreement has put in place the structures, processes and procedures that must be followed by all parties on site in order to facilitate sound labour relations practices. The Project Labour Agreement makes provision for a regular dialogue and discussion on matters of common interest between contractors, employees and their trade unions at CCF meetings. However not all employees, particularly the TES employees, are accorded their rights, probably because most of them are subcontractor or labour broker employees and do not belong to a trade union.

The Project Labour Agreement confirms that the substantive terms and conditions of employment negotiated at industry level in terms of the Metal Engineering Industry Bargaining Council (MEIBC) Main agreement and the substantive agreement between the South African Federation of Civil Engineering Contractors (SAFCEC), the National Union of Metalworkers (NUM) and the Building, Construction and Allied Workers Union (BCAWU) will apply on the project and also specifies the substantive terms on specific

site issues, not covered by the industry agreements, and how these are to be applied at the Kusile construction site.

The PLA seeks to regulate the employment conditions and vulnerability of the Temporary Employment Services employees (TES) as well as fixed term and temporary work employees, as opposed to workers on permanent contracts. One reliable source that preferred to remain anonymous had this to say when interviewed;

> I am Dumakade Jubane one of the managerial employees employed at the project and the information regarding the labour brokers in this project is very sensitive. The project has used a substantial number of labour brokers of which I can't remember the total figure. All what I can say is that, the project has since banned the use of labour brokers. The project has replaced labour brokers by promoting the usage of local contractors with whom concerns have been raised that they belong to ANC's former and current councillors. The project now has two labour broker companies who used to employ many people, namely Roshcon and Rotec. However currently since the 2010 strike the two companies have merged into one labour broker, Rotec and the number of its employees has been reduced to less than 50 workers (Interview, anonymous worker Kusile power station 23rd of November 2012).

However those employed through TES complain that their employers do not abide by either industry level agreements or the project site specific agreements. The majority of these workers are unskilled or work in sectors with limited trade union organisations leaving them vulnerable to exploitation (Fourie 2008). In as much as workers at the project should obtain employment from the Backhousia Recruitment Services situated at Witbank, Delmas, Phola and Wilge, this has being ignored on many occasions. There are some noncompliance with the collective agreement governing terms and conditions of employment at the project, said one Ndlovu Luke, employee from the local community:

> I am an adult person residing at Hlalanikahle extension 2 in Witbank. Currently I am on employ at the project through the labour broking firm Indlamama project cc (a subcontractor under SSBR) doing some work at the project. I have been on employ with the company for the past four months. I was recruited to work at the project by a former ANC councillor for our area in the name of Maduna. He took me and other 10 of my other colleagues from the township for medical entrance and that was how l got to be employed at the project. This was contrary to the standing rule on recruitment. It is required that all job seekers must submit their curriculum vitae to Backhousia Recruitment Services (Interview, community resident Kusile power station 4th of July 2012).

However it should be noted that attempts to interview the labour broking firm Indlamama were – despite repeated attempts – unsuccessful. One Kholisani Ncube, interviewed worker also working for Indlamama project cc has this to say with regard to his employment at the project, contrary to policy;

> "I am one of the employees employed at the project by one labour broker company called Indlamama and have been working in this project for more than a year now. I was recruited by one former ANC councillor known to me as Maduna. My rate of pay per hour is R12.50 as a general worker but other general workers working in this project doing the same civil engineering job as I are earning more than I do (interview, general worker Kusile power station 5th of July 2012)".

3.4 THE SOCIAL CHARACTERISTICS OF KUSILE CURRENT EMPLOYEES

The pattern that emerged from the official documents the researcher was given access to, as well as from the interviews conducted at Kusile power station is as follows:-

- The total number of employees at the project is 12050. Of this total workforce 93% are male employees with 11206 employees and 7% are female employees equating to 844 employees in total.

- All employees at the project are employed on limited duration contracts including managerial employees. This is a standard requirement of the project labour agreement (PLA) signed by Kusile Civil Works Joint Venture (KCWJV) and the representative trade unions.

- NUM has a total membership of 1434 members at the project compared to BCAWU with 1309 members whereas NUMSA has 903. The other trade unions represented at the project are the South African Transport and Allied Workers Union (SATAWU) with 75 members followed by United Association of South Africa (UASA) with 68 members, Solidarity with 25 members and United People's Union of South Africa (UPUSA) with only one member. Therefore the total union membership at the project as of November 2012 is 3815. A total of 55 employers at the project belong to Business Unity South Africa (BUSA) (reliable source Kusile power station 23. 11. 12).

  The collective union membership is quite low at the project with 3815 employees belonging to different trade unions and the majority of these are seconded employees. This leaves about 6574 eligible members that fall within the bargaining unit unorganised and collectively adding to a total workforce 10389 that could belong to a trade union. The National Union of Mineworkers is the majority union at the project with a slight edge of 125 members more than BCAWU.

- The project has a total workforce of 1661 employees employed in the category of supervisory and managerial positions representing 14% of the project's total workforce, while the skilled workers at the project

contributed 60% of the project's total workforce totalling to 7255 employees.

- The majority of employees falling under the bargaining unit receive their wages as per their respective industry level agreements as put on different tables bellow.

- The majority of employees interviewed are satisfied with their working conditions at the project except for those that were employed outside the scope of the PLA like those employed from the townships. This is because most of their employers do not abide by either industry level agreement or the project terms and conditions like the Indlamama project cc.

- The living arrangements for core and temporary workers at Kusile are very different. In terms of the Project Labour Agreement, locally recruited employees are not provided with accommodation. The logic behind this is that having been recruited locally, one must reside locally and as such he/she would have accommodation whereas seconded employees need such provision.
- However transport to the place of work is provided to every employee at the project. There are buses hired for specifically transporting the project employees. Also the project does transport all seconded employees to Johannesburg's Park Station every month end to enable them visit their traditional home.

On that note one Bukhosi Thabekhulu general worker interviewed had this to say;

> I am a general worker at the project and got recruited to this project through the recruitment agency called Backhousia Recruitment Services. We were informed about these recruitments and employment opportunities at ANC gatherings where our councillors addressed us

> and said; “we told you that ANC will find you jobs, look and see what it has done, you will now all be employed and afford to raise your families and buy properties, all thanks to the ANC”. We were also told that since ANC has found us employment, we then must vote for it when elections come and as such when we get to the project we must belong to trade unions that are in support of the ANC (Interview, general worker Kusile power station 4th of July 2012).

However one informant Justice Mandla Mkhabela expressed happiness at the introduction of this project’s local labour procurement policy on recruitment of local employees and said;

> My name is Justice Mandla Mkhabela, I reside at Emalahleni extension 11 (one of the local residents working at Kusile power station). I have more than a year working at this project. I was employed through Backhousia Recruitment Services at Witbank information centre. I work under Group 5 Construction Company and my recruitment at this project was different from other recruitments in different construction sites. On other construction sites people got employed direct at gate sites, contrary to the practice at this project.
>
> My employment at this project has been of much help for me and my family. This job opportunity came at a time when I was not employed and loafing at home as I was tired of working for the subcontracting companies earning lower wages even at the same project. This was when I had been employed by former ANC councillors owning subcontracting company working at the project. The difference I got this time was because I submitted my application to Backhousia Recruitment Services that then sourced me employment to a big construction company in South Africa (Group 5) and at this stage I was properly recruited using the recognised recruitment firm hence the decent wage I earn.
>
> My employment at group 5 has changed my life and I can now afford to earn a living from my salary. I can now afford to take my children to school and afford to pay the school fees without any hassle. My wife can now afford to

> do the shopping and buy clothes like any other woman does in the townships.
>
> My suggestion is that people must boycott the employment opportunities spread by the ANC councillors as they are remunerating less than what the established companies pay at the project and at the same time distorting the purpose of the local labour procurement policy (Interview, general worker Kusile power station 5th of July 2012).

3.5 WORKER PROFILE (SECONDED EMPLOYEE)

Thulani Thandani, a 42years old man who earns a gross salary of R12000.00 per month. He has dependents in that he's married with 4 children, (3 boys and a girl 6years old). The wife is unemployed and the eldest son works as an apprentice employee at ISCOR as a trainee fitter and turner while the other two are at school. His wife and children lives in Sebokeng in the Vaal area of Vereeniging and he visits them every month end. He owns the house where the family lives in.

He matriculated in 1989 and also has a crane operator's qualification obtained from Stein Muller Cranes in 1992. He has been employed since 1992 when he started working for Stein Muller Cranes and later the same year got certified as a crane driver operator. He thereafter joined Stefanutti Stocks Construction Company, the then Stocks and Stocks, where he has now completed 7years. At this company he has worked at more than six projects including Kusile power station.

Before he got seconded to Kusile project, he was based at Dobsonville hostel after having returned from Rustenburg's Xstrata Dams Projects. At Kusile he resides at Tuscan Village in Bronkhorspruit. This is a company provided accommodation, provided for by the project for the entire duration of their secondment to the project. These structures contain warm water bathing facilities, a TV room, a fridge, comfortable chairs and sofas. Workers share

one room, but each has his own bed. Overall though he misses his wife and children, he is happy with his working conditions and is a member of BCAWU.

3.6 WORKER PROFILE (LOCAL EMPLOYEE)

Tapelo Dlomo, a 23years old who lives at number 694 Moloja Street Botlang Delmas. He earns a gross salary of R4700.00 per month and is not married, but has two dependents - a son (his biological child) that he looks after and his grandmother. He separated with the mother of his child and got the child custody. His parents also divorced and he was brought up by his grandmother to whom he now looks after. His grandmother is 65years old; she has no source of income and relies on Tapelo's salary.

He lives at the above home address with his son and grandmother and regards himself as the family bread winner. Without this Kusile project work, he does not know how he could look after the son and his grandmother. He did not matriculate and only schooled up to grade 11 at Botleng Secondary School in Delmas. In 2009 he obtained a Dump Truck Driving Certificate from Kempton Park Dump Truck Training Institute in Johannesburg.

He has been employed for the past 3years at the project as a general worker. He was recruited to the project as a subcontractor employee, since then he gradually developed as he now holds a supervisory position. Currently he supervises for Erosion Control Earth Works. He does manual work preparing the ground for grass vegetation at the project and is a member of Metal, Electrical Workers Union of South Africa (MEWUSA).

While this locally recruited worker is generally content with his work situation at the project, there has been discontent among workers at Kusile power station. However this has not occurred on anything like the scale of discontent expressed at Medupi power station.

3.7 GRIEVANCES AT MEDUPI POWER STATION

The Project Labour Agreement sets out the rights of trade unions and full time shop stewards as well as contractors rights. However the 600 LDC protestors in Medupi power station in 2012 called for the full time shop stewards to be removed, (NUM Full Time Shop Steward) (Wait 2012). Informants reported that employees in Medupi have lost faith and trust in the trade union leadership of NUM. However such has not been experienced at Kusile power station, even though the majority of workers belong to NUM and in addition to BCAWU.

Some informants suggested that being retrenched (what Eskom termed 'demobilisation') challenged people's deep loyalties to the ANC and to the labour movement. One Vilakazi Madlanduna, shop steward at Medupi had this to say when a question was put to him regarding protests.

> I will only refer to the protestations that had tangible reasons that occurred in Medupi. The protest in question was triggered by the employment of foreign national experts from the Asian countries (Thailand). The project required the services of qualified welders and claimed that such services were not available locally and the surrounding neighbouring countries. They then together with NUMSA concluded a collective agreement permitting the employment of such. The collective agreement was concluded by Hitachi Murray and Roberts Joint Venture and NUMSA. However reliable sources allege this was not communicated to NUMSA members hence the protest.
>
> In Medupi power station, the employment of foreign nationals was marred with serious contestations from the local employees despite Hitachi Murray and Roberts Joint Venture having adhered to the provisions of the PLA together with a collective agreement governing same. This collective agreement was concluded between Hitachi Murray and Roberts Joint Venture and NUMSA. They have so far employed a total workforce of 420 expatriate

> employees from Thailand in 2011 using the provisions of the agreement in question.
>
> NUMSA's signature to the agreement on the employment of welders from outside South Africa has generated criticism from its members and now NUMSA wants to withdraw from the Project Labour Agreement at Medupi (Interview, anonymous worker Medupi power station 24th of July 2012).

One Thandamanga Ndosi, anonymous shop steward who observed these protest had this to say when he was asked about the recruitment of foreigners;

> NUMSA concluded a separate collective agreement regulating the employment of foreign welders mainly from the Asian countries (Thailand). This collective agreement was concluded outside the PLA hence other trade unions were not involved. This collective agreement has led NUMSA to become an unwanted entity by the employees at the project and it has also lost fame and trust from the employees. In this aspect, NUMSA in its attempt to revive its trust and regain back members lost to the rival union MEWUSA. It has threatened to withdraw from the Project Labour Agreement (PLA). NUMSA in the past 3 months has threatened to pull out of the PLA citing noncompliance as the main reason for its withdrawal, but we all know that their concern is that of not having answers to their separate agreement with the Hitachi Murray and Roberts Joint Venture (HMRJV).
>
> In all our Constructors Consultative Forum (CCF) meetings, questions have been raised by other unions in particular MEWUSA and BCAWU regarding the foreign welders. However Constructors in their response refers us to an agreement with NUMSA hence it has now decided to withdraw from the PLA. It is not a healthy-looking atmosphere for NUMSA at the project currently; they cannot absorb pressure from the unhappy employees.
>
> Their application for withdrawal tabled before the commissioner of the CDR on the 19th of October 2012 was vehemently objected by the Contractors as baseless. The commissioner who facilitated the process could not

agree with NUMSA that the dispute be treated as a mutual interest issue. Consent to the treatment of the dispute as a mutual interest dispute would have permitted NUMSA to go on strike in case they do not agree on a solution.

A certificate of non-resolution of a dispute was issued by the Commissioner on the 19th of October 2012 directing parties to approach the Labour Court for a ruling declaring it an ad-judicable matter. NUMSA had contended that it would want their dispute with the project be adjudicated in terms of the provisions of the LRA and not the PLA, but SAFCEC and the MEIBC challenged NUMSA's opinion. Both parties later agreed to adhere with directives on the certificate of non-resolution issued by the CDR Commissioner. This then meant that the matter was to be referred to the Labour Court. SAFCEC on behalf of contractors then submitted its urgent Court Application papers on the 22nd of October 2012 to the Labour Court and the matter was set for a Court hearing on the 27th of November 2012 under case number J2847/12. The court's judgement was handed on the 19th of December 2012 and nullified NUMSA's withdrawal notice of the basis that it does not comply with the provisions of section 23 subsection 4 of the Labour Relations Act. It ruled that NUMSA should give other parties to the collective agreement six months' notice of its intention to withdraw from the project labour agreement (Interview, anonymous worker Medupi power station 28th of December 2012).

In October 2012 NUMSA sent a memorandum of demands to Eskom protesting about the "appalling working conditions and deteriorating working conditions at Medupi project" and had this to say:-

- We have noted a sharp increase in the number of unprotected industrial actions over the past two years, in both the civil construction and metal construction of the project.

- Medupi contractors continually exploit workers, in particular workers from the magisterial district of Lephalale by employing them as general workers with no prospects of training and development, thus culminating in vulnerability during the demobilization process, leaving them no better off than before the project.

- Medupi contractors continue to sow divisions between workers on basis of regionalism and provincialism reminiscent to the apartheid era style tactics of fuelling tribalism and ethnicity amongst workers.

- Medupi contractors, through the repressive project labour agreement (PLA) which NUMSA has pulled out of, continue to entrench a downward variation exercise on industry provisions contained in the MEIBC agreement, thus subjecting workers to longer hours without compliance to exemptions procedures laid within our industry agreement.

- Workers continue to earn poverty wages; in particular general labourers are paid a meagre wages of R16-00 - R17-00 per hour culminating in their relegation to extreme shadows of impoverishment and inevitably brewing labour unrest in the project.

- The Medupi project, under the captaincy of the Murray & Roberts-led cartel, condones nepotism and racism of the highest order as currently only whites and immediate relatives of the cartel bosses occupy senior positions across various contractors on site, equally previously disadvantaged people are reduced to the lower order of the project value chain system which defeats the spirit of transformation in totality.

- Workers are forever intimidated in their daily routines due to the presence of the rented democratic republic of Congo (DRC) mercenaries and former rebels of the Congolese war that are on site

disguising as security personnel, whom continues to instil fear in our members, both on site and at their hostels as they illegally search rooms while workers are at work.

- There is no formal training and skills development policy and programmes for workers in the project and no recognition of prior learning. This gives workers little opportunity to gain or have proof of skills when seeking future employment after the demobilization process. General workers are the most affected by the lack of these programmes.

- There is wide spread project wage rate discrepancies and wage disparities across metal construction contractors on site, which only serve to divide workers and is a recipe for wild cat strikes and other related forms of labour unrest.

- Contractors utilizes services of labour brokers who fail to pay workers on time and also directly contravening relevant industry agreements, for example the REBAR-JV package, were workers had to embark on an unprotected industrial action to get paid.

- Owing to the high concentration of workers within the Lephalale territory, we are witnessing the re-introduction of the compound system, akin to conditions during the eighteenth century discoveries of both gold and diamonds, as black workers are accommodated in crowded hostels, whilst their white counterparts live in houses or posh lodges and hotels in town.

- NUMSA believes that Eskom and the Medupi contractors must be responsible for the high level of alcoholism in the workforce as workers have no recreational facilities. This is also affecting the social fabric of surrounding communities bringing along social ills, usually associated with mine sites.

- NUMSA further notes workers from the outlying villages also experience similar challenges owing to long hours of work and long travel to and from work, resulting in unbearable fatigue.

In light of these developments NUMSA demands the following:-

- Since the PLA is the source of the deteriorating state of industrial relations on site, we demand immediate intervention of Eskom to stabilize the sub-human conditions prevalent on and off site, regarding working and living conditions as well as transport.

- Eskom must compel Medupi contractors to roll out worker training and skills development programmes as promised during the bidding process of the project.

- We demand the complete eradication of the poverty rates given to workers across different industries so that workers are paid their deserved living wage.

- Eskom must disband the racist and untransformed Medupi execution team (met) and establish a union inclusive monitoring structure, which will enable labour integration and participation on site operational matters.

- Eskom must compel and monitor compliance of Medupi contractors with due regard to their corporate social responsibilities to Lephalale villages, committed to during the initial bidding process of the power station.

- Eskom must immediately terminate the contract of the Vetus Schola Security Company which employs Congolese mercenaries to

traumatize and intimidate workers and establish meaningful safety and security for workers.

- Eskom must build recreational facilities in order to address alcoholism and other social ills associated with mining towns and further endeavour establishing relevant structures to ensure materialization of recreational programmes for workers and economic opportunities especially for women in the surrounding communities, to address high levels of prostitution.

- We further demand building of equipped medical facilities on site to enable workers to undergo regular check-ups on a variety of illnesses and not limited to chronic illnesses.

No clear analysis was provided by informants as to why there has been far more labour unrest at Medupi compared to Kusile. Several informants mentioned hostility towards NUMSA at Medupi because of allegations that it was too close to management. Other factors mentioned by informants include the different duration of the labour agreements at the two power stations. The Kusile project labour agreement calls for an amendment of the terms and conditions of the agreement once after 3 years, whereas the Medupi's one requires the amendment of same within a period of 12 months. A NUMSA informant suggested that this difference in time periods created more discontent and instability.

At Medupi amendments to the agreement are referred to the Contractors Consultative Forum (CCF) meetings. This body has been marked by constant disputes and operates to bring workers dissatisfactions on a range of issues to the fore. (Interview, anonymous worker Medupi power station 28th of December 2012).

According to a NUMSA informant Thanduyise Ndlalifa, on being questioned as to why the same issues and expressions of worker dissatisfaction have not been raised at Kusile power station, his response was that, Kusile power station is not at the level of Medupi power station in terms of the construction progress. He contends it is still at the initial stages.(Interview, NUMSA head office. 5.1.2013). This official blamed the NUMSA's regional secretary for signing the project labour agreement without the mandate of the National office. He said it was the responsibility of the NUMSA's national office to sign the agreement.

The issue is complicated by allegations that NUMSA National Office signed a secret agreement with the project management permitting the recruitment of foreign nationals. This was done by NUMSA without the consent of its members. The result is that workers at Medupi are very bitter and angry with NUMSA. At a meeting in 2011 the researcher witnessed a NUMSA official running for his life, with workers behind him in hot pursuit.

Kusile experienced a series of wild cat strikes during the period 2010-11. These strikes were as a result of the non-payment of project bonuses by one labour broker contractor (Roshcon) and some other mutual interest disputes. This strike lasted almost two months and the entire project was closed. KET then decided to engage over and above the PIRM, a team of industrial relations professionals to act as advisers to the PIRM. Despite these efforts to curb noncompliance to the PLA, the research reveals that such noncompliance still exists. This could maybe be caused by the lack of punitive measures put in place for transgressors in terms of the collective agreement.

3.8 LABOUR-MANAGEMENT RELATIONS

As part of the drive to secure productive sound labour and employment relations, Eskom introduced a Kusile Execution Team (KET) to the project. KET requires all contractors and sub-contractors to adopt a common

approach to Industrial Relations and Health, Safety and Environmental matters on the project. In order to affirm sound industrial labour relations KET appointed a full time Project Industrial Relations Manager (PIRM) to ensure compliance with the PLA and other relevant legislation.

The PLA established disciplinary and grievance procedures as well as procedure for the review and negotiations of site specific terms and conditions. It would appear that Medupi and Kusile power stations terms and condition are negotiated by the same parties and one would expect the terms and conditions governing these projects to be the same. However one Nduna Zondi, anonymous managerial employee interviewed differed with this assumption and said;

> The terms and conditions governing the two projects are different despite being negotiated by the same parties. The conditions regarding long weekends at Kusile power station are different from Medupi power station. Medupi power stations provide for 6 long weekend days whereas Kusile power station has 5. Also despite both projects providing accommodation for the employees, a Kusile power station contractor has of late began building village houses for their employees whereas a Medupi contractor does not. Further also despite both PLAs being reviewed, a Kusile power station's PLA gets reviewed after thirty six months compared to Medupi's that gets reviewed every year and / or even during the running period.
>
> Constructors Consultative Forum (CCF) can effect some changes on the PLA even before the lapse of 12 months. However what is common on these projects is that Eskom provides transport for its employees to and from work regardless whether one lives in a hostel or local township. They also provide breakfast and supper for employees living in hostels. At these hostels employees live in pairs. At both projects hostel accommodation is provided for seconded employees only (Interview, anonymous worker Kusile power station 23rd of November 2012).

The Project Labour Agreement also established dispute resolution mechanisms and procedures for the resolution of all labour disputes that may arise on the project and puts in place rules relating to procedural and

un-procedural strike action. However some employers felt that, these procedures when it comes to strike related disputes are not effective as one Dungeni Zulukandaba, managerial employee commented and said;

> "Employees in this project do as they desire, they can just decide on putting the tools down at any given time if they so wish and very little will be done to them as the project agreement permits such by the insertion of the cooling time period clause offered to them" (Interview, manager Kusile power station 4th of July 2012).

The project requires that all site or project specific conditions that are agreed as applicable to the project for the construction and commissioning phase and any amendments to site or project specific conditions must be addressed in terms of the procedures at the Constructors Consultative Forum (CCF) once per annum. The establishment of the CCF was for the purpose of consultations regarding the fair and consistent application of the terms and conditions of the PLA and the applicable industry agreements (Medupi project labour agreement 2012).

Grievances and disputes that would arise from time-to-time regarding the interpretation or application of the collective agreements, industry agreements, legislation and / or any other disputes arising at the Contractors Consultative Forum (CCF) shall be dealt with solely in terms of the dispute resolution procedures contained in the PLA. The responsibility and authority for managing, executing and maintaining appropriate discipline on site is vested on the management of the contractors and sub-contractors. To ensure consistency, all contractors, sub-contractors and their employees, trade unions and their members must comply with the terms and conditions contained in the project labour agreement. This is promoted by the schedule 8 code of good practice contained in the act (LRA 66 of 1995) (Kusile project labour agreement).

Disputes over project bonuses sparked series of wildcat strikes that hit the project during the period 2010-2011. A project bonus equal to 15 hours wages at normal rate accrues to each employee for each completed month

worked on the project for an individual contractor. Payment of any portion of the project bonus on 'demobilisation' (referring to the termination of the contract) is to be calculated at the rate of pay applicable on the date of such demobilisation. One Zondumqashi Kaziwa, general worker asserted his unhappiness of the process and had this to say;

> As one of the employees in this project, I really appreciate the introduction of the project bonus payments. However the problems that we are faced with due to this project bonus is that some contractors are discriminating amongst employees that are to qualify for bonus payments. Even if one submits the sick leave notes, it does not get captured and at the end one then does not qualify for the bonus as points would be docked due to the company's failure to capture the sick notes. Who then deserve the punishment, the capturer or myself (Interview, general worker Kusile power station 5th of July 2012).

The project affirms that unprotected industrial action shall not result in the individuals losing their project bonus. However rolling unprotected industrial action (where employees embarking on unprotected industrial action return to work only to go out on further unprotected industrial action as a result of the same event) would result in the individuals losing their project bonus in terms of the PLA.

In the event of unauthorised absence, or refusal to work on a working Saturday or work contractual overtime, the employee would forfeit 100% of his/her project bonus for that month in which the unauthorised absence occurred. On an annual basis, 50% of the accrued project bonus (for that year) ending November of the year in question would be paid out together with the December payment while the remaining 50% of the payment for that year would be accrued and paid to the employee concerned on demobilisation. All the above terms and conditions are contained in the site collective agreement and as such could not be applicable to the construction industry at large in other parts of the country (Project Labour Agreement 2012).

3.9 LOCAL LABOUR

The PLA affirms that contractors must give preference to the employment of local labour on the project. This condition impedes the country's attempt to effectively eradicate employment barriers in terms of Employment Equity Act, 55 of 1998 (EEA). Furthermore employees (applicants for employment) are protected against unfair discrimination by virtue of the Constitution and the EEA. However the project does not conform to the Act in that it discriminates against work seekers from other provinces and areas. The project requires that all recruitment and engagement of local labour for the project must be processed through the Recruitment Office (RO), established by the project at an appropriate location and venue.

However the role of councillors and labour brokers is unclear in the practice. The PLA affirms that employment must be through the local recruitment stations. (In this case the local recruitment station is Backhousia Recruitment Services and its satellite offices). No alternative recruitment of labour is permitted within the immediate vicinity of the site, or from the local settlement and surrounding area. This has generated resentment. Two respondents Hluphekile and Hluphile Dukuza, residing in the nearby settlement raised their frustration and hatred of the project as they were not able to obtain employment even though having gone through the local recruitment centre and had this to say;

> "We were one of the first applicants that applied at the gate of the Kusile power station for job opportunities at the project but we were not considered for any position. On enquiry we were informed by reliable sources who would not want their names published that the reason why we have not been successful in all our attempted applications is because we came directly to the gate and that there is a standing rule that prohibits such. This was when we had tried to confront the authorities claiming that we are the only community ever closer to the site (round 500m) away from the project but still have

> not yet benefitted from the construction of the project yet it is so nearer to our compound and we inhale the dust from the project due to its construction activities (Interview, community residents Kusile power station 4th of July 2012).

This comment illustrates the confusion the policy has created in the minds of local people. The lack of success reported in the quotation above relates to their failure to apply for jobs through the local recruitment centre and not to their proximity to Kusile.

3.10 LIMITED DURATION CONTRACT (LDC) EMPLOYEES

All employees on the project, (including management) are employed on a limited duration contracts of employment. The employment letter sets out the terms and conditions of employment that apply to the limited duration contract of employment between the employee and the contractor (the LDC contract). The contract states that upon acceptance of an offer by the employer, it should be noted that such an offer does not confer permanent employment and that the period of employment is temporary. Therefore, by conclusion of the LDC contract period, the employee would have declared and confirmed that he/she would not have any expectation of permanent employment or any renewal or extension of his/her temporary employment with the contractor beyond the termination date. This blocks the reasonable expectation of the renewal of the contract of employment as enshrined in terms of the (LRA 66 of 1995).

The contract stipulates the specific task for the employee and that it would automatically terminate at the completion of such task. Despite the LDC contract being of a limited duration, the contract states that, the contractor reserves the right to terminate the employee's employment at any time during the operation of the LDC contract, for any reason recognised in law as sufficient, including the employee's incapacity or misconduct or the contractor's operational requirement, in which event the contractor would abide by the provisions of the relevant legislation applicable to the

circumstances of such termination such as schedule 8 code of good practice of the (LRA 66 of 1995)

3.11 SECONDED LABOUR

Seconded labourers are employees from their respective contractors who by the requirement of their skill on the project get seconded or transferred to the project. The construction companies on their own do employ core or permanent workers, but at Kusile they are also employed on LDCs. The utilisation of such seconded labour (core and LDC) from other regions in South Africa must however comply with the objective of maximising the usage of local labour. Core and LDC refers to employees of a particular contractor, who have been with that company for a long period of time and would have been transferred from one project to another (Sectorial Determination 2004).

The density of core employees in the construction industry is declining. One among those employees interviewed out of Kusile power station on the 17th of July 2012 Bheki Kunene criticised the introduction of the local labour procurement policy of employees and stated;

> "I am the victim of this local labour procurement policy. I started working for Murray and Roberts Construction Company as an LDC from 2005. In 2007 when 1 got confirmed permanent, I started receiving benefits such as the provident fund contribution towards the Construction Industry Retirement Benefit Fund (CIRBF). This was a move towards the right direction because it enabled me to save money towards my retirement. However in 2010-11 at the beginning of the year, the company experienced recession as new projects were becoming elusive. The company started the retrenchment consultation processes with our union (BCAWU). The union contended that the company must first terminate all LDC it had employed on other sites and replace them with permanent employees. The company objected to the proposal claiming that those remaining LDCs left are at Medupi power station would not be retrenched. They claimed it was impossible to terminate their service and

> replace them with the permanent employees as they were protected by the contractual obligation signed between the company and Medupi power station client (Eskom). The contractual obligation required that 50% of the total workforce at that project to be recruited from the local community. The company therefore could not retain us and we were retrenched despite the union's effort to save our jobs (Interview, retrenched Murray and Roberts employee 17th of July 2012).

This retrenchment of permanent employees is in direct conflict with the provision of the Labour Relations Act 66 of 1995 section 189. The act promotes the 'last in first out' (LIFO) principle to be adhered to whenever an employee's termination is based on the employer's operational reasons (Tshifura 2009). If these provisions were applied, it would have meant that those LDCs employed in terms of the local labour procurement policy would have to be terminated first prior to the dismissal of the permanent employees.

Some core or permanent employees of various construction companies involved in Kusile were retrenched so as to enable the company to comply with the local labour procurement policy. For example Murray and Roberts Construction Company did this. According to informant David Khumalo from BCAWU (Murray and Roberts shop stewards chairman), his company has retrenched 923 core employees since 2010. Yet it still retained LDC employees on other projects such as Kusile and Medupi power stations recruited in terms of the local labour recruitment policy. These retrenched employees most of them had been confirmed permanent by the company in October 2007 (Interview, Shop steward Murray and Roberts employee 7th of January 2012). In terms of the Labour Relations Act of 'last in first out' (LIFO) these permanent employees should not have been retrenched. In this sense the Labour Relations Act is being violated by the local labour procurement policy.

Furthermore, based on the interview conducted with Khuzwayo Mzwandile an NUM shop steward the company Grinaker LTA civil division retrenched

174 core employees and left behind newly recruited LDCs. The company and the union (NUM) in January 2013 got involved in section 189 consultation processes and concluded the retrenchment of theses 174 employees from its Sasolburg Wax Plant. The retrenchment of these core employees got approved despite the existence of plus-minus 250 LDC employees employed on the project. The company contended that their contractual obligation with the client prohibited the retrenchment of these LDC employees recruited in terms of the local labour procurement policy at the project. (Interview NUM shop steward 6.2.1213)

According to the union official from NUM's PWV region Thabiso Kubheka, when he engaged Grinaker LTA management during the consultation process with regard to the LIFO principle and argued that the company should consider retrenching LDCs first based on last in first out, the company disagreed. They argued that the proposed retrenchment of LDCs was impossible as they were protected under the contractual obligation signed during the tender procurement processes between the project and the company. While this occurred at Sasolburg, and not at Kusile it indicates how the local labour procurement policy is undermining permanent, core workers.

Based on the interviews held with one Human Resources Manager for the Murray and Roberts Construction Company and one Director at Wilson Bayly Holmes-Ovcon (WBHO), the local labour procurement policy does contribute to the loss of employment of core employees. The manager for Murray and Roberts reiterated the retrenchment of all employees that had been confirmed permanent by the company effective October 2007 as allude to above by their shop steward chairperson.

This was the result of the company's failure to acquire new contracts while at the same time other projects such as Gautrain's Sandton station and Bombela Joint Venture, just to mention the few, were coming to completion. All these core employees that could not be placed elsewhere were retrenched. During these retrenchment processes the union as usual raised concerns in

that the company must first retrench the LDCs that the company employs in other projects to be in line with section 189 on LIFO. However the company argued that it could not do such due to the tender's contractual obligation on various projects. This then became obvious that the retrenchment of core employees alluded to above was unavoidable. Therefore all the other remaining employees in other projects were to be retrenched as and when their projects came to completion. These were employees from projects such as Gautrain's Sandton Station, Gautrain's Bombela Joint Venture, South Deep Mine, Seikwegaat, Sasolburg and Bulfour Pipe projects in Mpumalanga (Interview, manager Murray and Roberts 7th of February 2013).

For WBHO, the company did not experience much of a problem as the company still could accommodate all the employees in other projects. This was made possible due to the fact that they had secured projects that could still accommodate all their employees. However the director reiterated the same concern in that, had it been they had nowhere to place these core employees, the company was to be compelled to retrench their core employees and leave behind the newly recruited LDCs to be in line with the local labour policy (Interview, manager WBHO 7th of February 2013).

Several informants maintained that the local labour procurement hinders progress due to the lack of skills on the part of locally recruited employees compared to the dismissed permanent employees. One Madoda Khumalo, manager for Bateman Africa (Pty) Ltd when a question was put to him regarding the recruitment processes said;

> "Of course I am aware of the recruitment policy that prefers recruitment of the untrained and inexperienced local employees at the expense of the trained and experienced permanent employees. Employees get recruited through a company called Backhousia Recruitment Services. This is very unfair to the retrenched employees due to this policy and also unfair to the company considering it would have spent money, resources and time training the retrenched employees only to lose them at the expense of the inexperienced workers purely for the sake of this local labour

> procurement policy. This is very unfair and discriminatory in nature" (Interview, manager Kusile power station 4th of July 2012).

The PLA on recruitment policy requires that a contractor must only utilise seconded labour from other regions in South Africa for the purposes of providing core skills to the project provided; the required skills are not available in the local region; the required skills are available but not in sufficient numbers; the required skills are available but are otherwise occupied (i.e. not readily available). Under no circumstances may a seconded labour be employed on the site without the written permission of the KET, and must not be mobilised until such time as written approval is granted.

3.12 EXPATRIATE EMPLOYEES

The policy further allows for the employment of foreign nationals (expatriates) by contractors. The project permits employment of such only after the contractor has developed a plan showing the skills levels required. The crucial point is that, utilisation of expatriate labour from other countries must comply with the objective of maximising the use of local labour in terms of the provisions of the recruitment policy. The contractor must only utilise expatriate labour from other countries for the purposes of providing core skills to the project only under circumstances where; the required skills are not available in the local, provincial or national regions. It is also permitted only if the skills required are available but not in sufficient numbers or the required skills are available but are otherwise occupied elsewhere (i.e. not readily available).

Exceptional skills permits can be granted by the Department of Home Affairs (DHA) to candidates who possess special expertise or know-how in relation to the market in which they operate. In principle, a company can employ an unlimited number of foreign workers, provided they each does have appropriate work permit (Hartstein 2007). One must, however, bear in mind that in each work permit application, the applicant contractor will need to

indicate why it needs to employ a foreigner. The policy provides that if the contractor intends to utilise expatriate labour from outside the borders of South Africa, the contractor must first inform the KET of its intentions prior to the recruitment of such labour and provide reasons thereof. No expatriate labour may be employed on Site without the written permission of the KET, and must not be mobilised until such time as written approval is granted and no non-South African labour may be employed on the Site without a valid passport with a work permit.

3.13 LABOUR BROKERS AND TEMPORARY EMPLOYMENT SERVICES

The use of TES has recently received fierce opposition from the labour movement. COSATU and NACTU have been calling for a total ban of the TES (what labour brokers are called in terms of the Labour Relations Act) and have staged national strikes in an attempt to force government to take note of their call. Instead the government has proposed the regulation of labour broker employees instead of a total ban, therefore calling for the amendment of the LRA with regard to the TES. The proposed bill is now under discussion at NEDLAC as already been alluded to in chapter 2 above. The proposed amendment is to try and reduce the vulnerability of TES employees.

However when the Kusile power station project started, the employment of TES had not been contested and was incorporated in the PLA. The project requires a contractor to first obtain prior written permission from the PIRM before engaging the services of a TES provider. It requires TES companies to be registered with the relevant labour broking divisions at industry level, the Department of Labour, as well as the South African Revenue Services (SARS) and must be approved by the PIRM to be used at the project.

The project further requires that all employees employed by TES who falls within the bargaining unit be subjected to the full provisions of the PLA's terms and conditions and country's employment legislation. However there is a significant problem with employers with regards to compliance in terms

of the existing labour legislation. Therefore to conform to this requirement, the CIRO together with PIRM would have to audit contractors and TES regularly to ensure compliance.

According to the majority of informants interviewed during the course of this research this is not happening. Some informants allege that there is corruption in the recruitment process. For example one Khuzizinja Mfanenkomo, interviewee had this to say;

> "I got to be employed at this project in 2010, I sent my curriculum vitae direct to a company called Mogotsi Construction cc. I then received a call directly from the company which invited me to come to the project. When I got here, I was taken through the induction process and medical entrance fitness test and I was employed. I knew of the recruitment places such as Wilge, Delmas, Phola and Witbank, which is where l submitted my curriculum vitae but up to now I have not been called.
>
> There is serious corruption in these recruitment centers. People pay money to get jobs hence they get employed while we remained. They're people whom I know who submitted their application after I had already submitted mine but have already been called through this same Backhousia Recruitment Services and now work for the project. It is not a matter of qualification why they got called earlier, if so, how come I have now been called, yet still using the same qualifications as reflected on my curriculum vitae sent to the recruitment firm. The councilors are the ones that informed us that the project must first employ the local employees before attempting to source from outside the local areas (Interview, community resident Kusile power station 4th of July 2012).

3.14 THE REMUNERATION POLICY AND PROCEDURE

The PLA is governed by all industry agreements regarding terms and conditions of employment. The Constitution (1996) of South Africa protects fundamental collective rights, and the entire Labour Relations Act in the

promotion of centralized bargaining. Also besides negotiating wage earnings, collective bargaining has the potential of reducing conflicts through the introduction of negotiated labour disputes procedures contained in such collective agreements, and can promote workplace democracy and ensure the recognition and protection of the worker's rights (Khabo 2008).

At Kusile the correct payment of wages remains the sole responsibility of the contractor or sub-contractor, though the CIRO or PIRM has the right to audit any contactor or sub-contractor on a regular basis to ensure correct compliance. The PLA prohibits any exemption application regarding any remuneration matter by the contractor, sub-contractor or principal contractor.

Given the magnitude and duration of the project, in order to attract the right calibre of workers, the planners attempted to bring consistency to the project site by standardising the site employment conditions through a project labour agreement. The applicable rates for the project are indicated below, per industry, and the percentage escalation as agreed to at industry level would apply on an annual basis as per the industry bargaining council processes or industry collective bargaining agreements. The seconded employees would remain on their parent-company wage structures and conditions provided therein are the minimum entry rates for the project as specified below (Project Labour Agreement 2012).

Despite setting wages at the benchmark based on respective industries, not all contractors adhered to such benchmarks. There are discrepancies in remuneration as one Pikinini Zulukababa, general worker confirmed:

> I am employed by one labour broker company, 1 have been working on this project for more than a year now. I was recruited by one former ANC councillor known to me as Maduna. My rate of pay per hour is R12.50 as a general worker but other general workers working on the project doing the same civil engineering job as me are earning more than 1 do (Interview, general worker Kusile power station 5th of July 2012).

3.15 THE CIVIL ENGINEERING JOB STRUCTURE AND PROJECT WAGE RATES

Table 3.1 (Kusile PLA 2012).

Grade	Occupational group	Job Title	Industry Wage Rate (1 September 2010	Industry Wage Rate (1 September 2012 March 09)
Task Grade 1	General Worker	General worker	R 18.97	R20.50
Task Grade 2	Artisan Aid	Artisan Aid	R19.07	
	Construction Hand Grade IV	Structures Construction Hand		
		Premix Paving Checker		
		Steel Bending Machine Operator		
		Civil Construction Bricklayer Grade II		
	Operator Grade V	Boom Scraper Operator		
		Pedestrian Roller Operator		
		Piling Auger Machine Operator		
	Checker	Checker		

	Chainman	Chainman		
Task Grade 3	Construction Hand Grade III	Shutter Hand Grade III	R 19.60	
		Concrete Hand Grade II		
	Operator Grade IV	Track Rig Operator (general)		
		Bore Pile Operator		
		Continuous Flight Auger Operator		
		Drilling Supervisor		
	Site Support	Junior Clerk		
Task Grade 4	Construction Hand Grade II	Shutter hand Grade II	R 20.27	
		Reinforcing Hand Grade II		
		Concrete Hand Grade I		
		Fence Erector		
		Guard Rail Erector		
	Operator Grade III	Concrete Mixer Operator		

		Batch plant Operator		
		Concrete Dumper Operator		
		Concrete Pump Operator		
		Tower Crane Operator		
		General Premix Roller Operator		
		Milling Machine Operator		
		Paver Operator		
		Excavator Operator		
		Front End Loader Operator		
		TLB Operator		
		Dozer Operator		
		Grader Operator (general)		
		Gunite Nozzle man		
	Driver Grade II	Motorcycle Driver		

		Tractor Driver		
		Light Motor Vehicle Driver		
		Driver Operator Heavy Duty Driver (rigid)		
		Extra Heavy Duty Driver (rigid)		
	Site Support	Material Tester		
	Building Skills	Semi-Skilled		
		Light Motor vehicle driver		
		Hoist Operator		
		Driver (Code 9)		
Task Grade 5	Construction Hand Grade 1	Shutter hand Grade I	R24.25	
		Reinforcing Hand Grade I		
		Pipe layer Grade I		
		Kerb layer Grade I		

		Civil Construction Bricklayer Grade I		
	Operator Grade II	Mobile Crane Operator		
		Screed Operator		
		Scraper Operator		
	Driver Grade I	Heavy Duty Driver (articulated)		
		Extra Heavy Duty Driver (articulated)		
	Site Support	Assistant surveyor		
	Building skills	Journeyman's assistant		
		Heavy Duty driver (Code 10)		
		Crane Operator		
		Machine Minder and Sawyer		
		Mechanical Handling Equipment Driver		

	Electrical Construction	Electrical Construction Operator		
Task grade 6	Building Skills	Artisan/Journeyman	R27.54	
	Electrical Construction	Electrical Tester for single phase		
		Artisan Unlicensed		
Task Grade 7	Building Skills	Artisan journeyman with N2	R31.54	

3.16 THE INDUSTRY WAGE RATES FOR SMEIP (STEEL, METAL, ENGINEERING INDUSTRY PROCESSES)

Table 3.2 (Kusile PLA 2012).

Cat	Project Rate	Rigging / Structural	Painting / Driving / Admin.	Welding	Pipe Fitting	Scaffolding	Electrical	Instrument Mech.	Mechanical
5	R 48.98	Artisan Rigger		Artisan Welder – 6G	Artisan Pipe Fitter		Artisan Electrician	Artisan Instrument Mechanic	Artisan Boilermaker Artisan Mech. Fitter

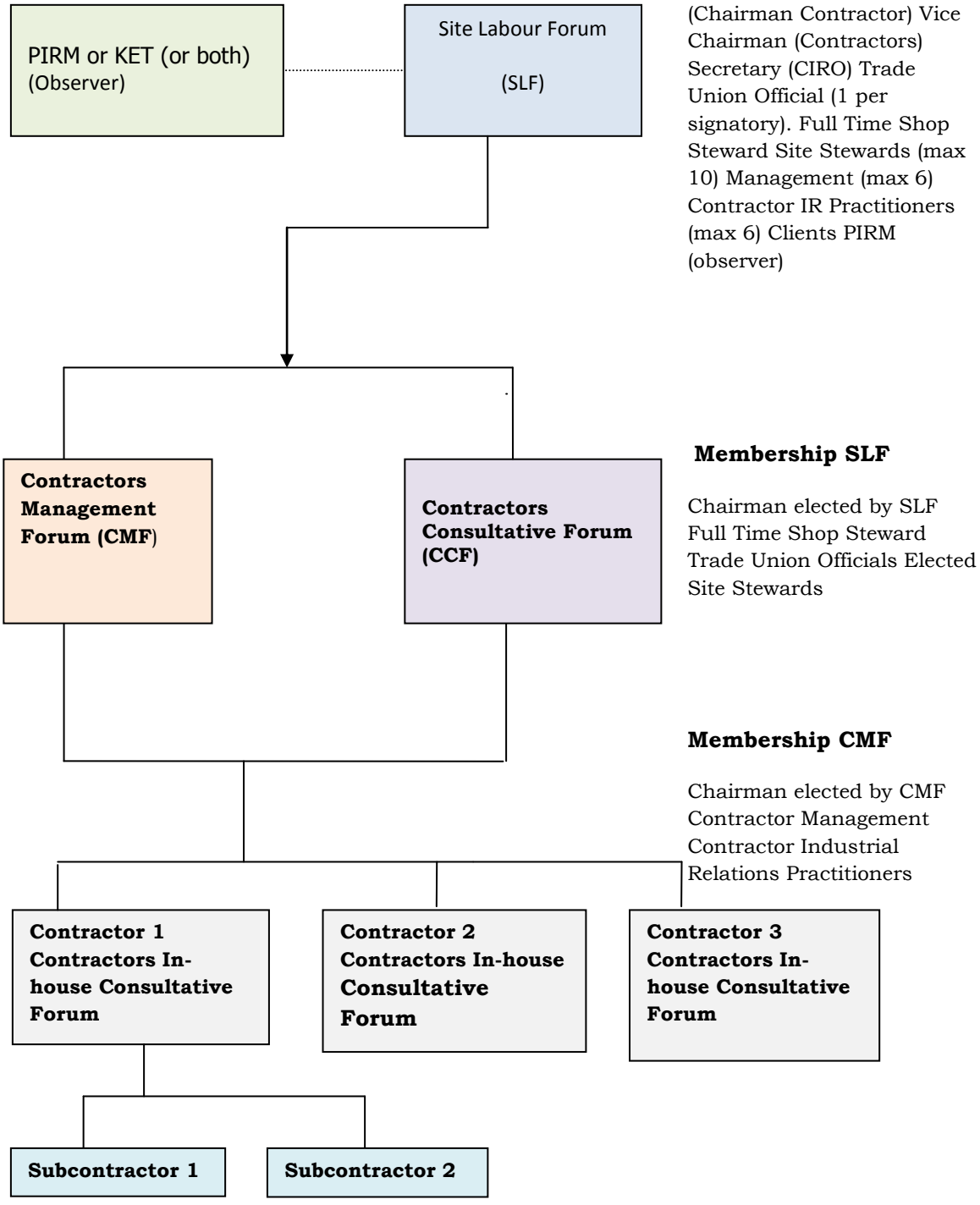
4	R 44. 57	Erection of structural steel utilising drawings and cranes under supervision. Carry out on site modifications. Use of Theodolite	Supervise painting Operating crane over 25T	Welding subject to ultrasonic and radiographic examination.	Pipe Fitter Levelling and installing pre-prepared pipework and fittings using drawings		Termination of cables including soldering and including harnessing wires to pre-prepare schedules	Install small bore tubing – Termination of ends to pre-prepared schedules, running of harnesses and installation of terminal blocks.	Installing, setting out and install to drawing. Carry out on site modifications. Fabricate to drawings.
3	R3 8.2 3	Supervise cladding. Complete H/rail installation. Assys/work to drawings. Supervise Cat 1&2. Drill including sharpen. Use dumpy level. Sorts/work to drawing.	Supervise Cat 1 & 2. Stores attendant. Clerical Assistant. Operating crane up to 25T. Truck Driver Site Clerk Store man	Welding 2G to 5G.	Setting and aligning pipes and joints. Drilling including sharpening	Supervision of erection of scaffolding utilising drawings.	Mounting of junction boxes and auxiliary equipment including trays/racks/panels. Drilling Glanding	Install air supply tubing. Install brackets, frames and wire-ways. Install control panels, equipment and instruments under supervision.	Assembly, Assembly of pre-fabricated components.

2	R3 1.2 9							Laying of cables in prepare d routes / trenche s / ducts / racks includi ng binding and strappi ng.	

The communication within the project follows complicated procedures as illustrated in the diagram below as per the project labour agreement.

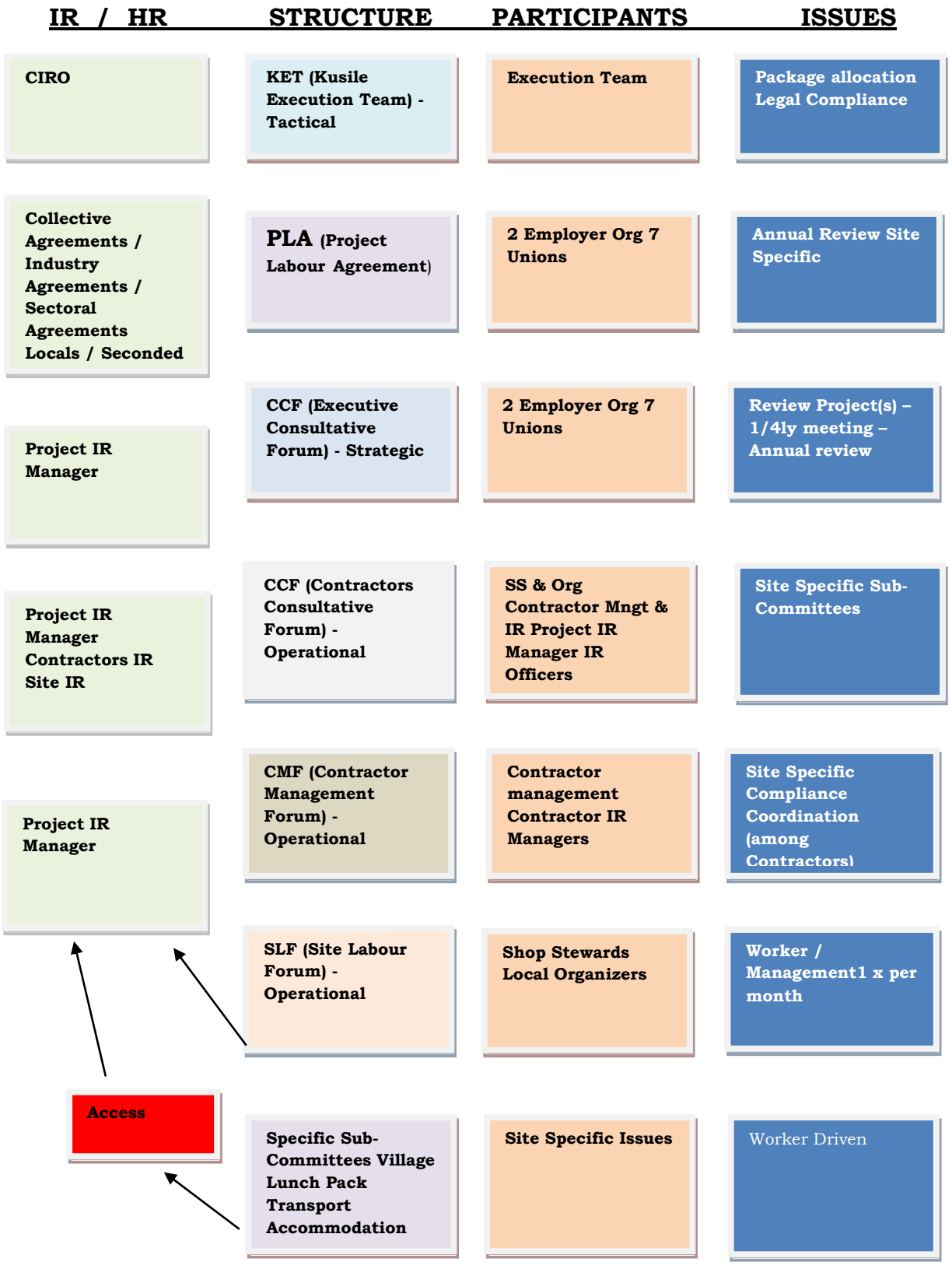
3.17 THE COMMUNICATIONS PROCEDURE AND POLICY

Table 3.3 (Kusile PLA 2012).



3.18 COMMUNICATION STRUCTURE

Table 4.4 (Kusile PLA 2012).



3.19 DEMOBILISATION PROCEDURES AND POLICY

At both Kusile and Medupi power stations, retrenchment is called 'demobilisation'. According to one Zulomkhulu Mandlenkosi, informant, "the employers are trying to mask the term 'retrenchment' as defined in the Labour Relations Act section 189 because this means paying retrenchment entitlements and benefits" (Interview, Kusile, 18th of September 2012). The purpose of the demobilisation procedure at Kusile power station was to provide for a smooth process of mobilisation (meaning recruitment) and demobilisation (meaning retrenchment) of the contractor's labour at the project guided by the PLA. The demobilisation process of employees in the project is conducted under the guidance of the PLA and to some extent in conjunction with the provisions of section 189 of the LRA.

The project has had seven demobilisation disputes that went to the project CDR since its inception, (10th of November 2010 to the 1st November 2012). The first case was raised with the CDR during the same period as mentioned above relating to demobilisation procedure was the dispute between NUM/BCAWU on behalf of members and the Kusile Civil Works Joint Venture (KCWJV). The dispute was however withdrawn by the parties on the 24th of January 2011 and it had appeared before the CDR under case number CDR/K10/03 (meaning that it was the third case since the inception of the CDR at the project). Of the other remaining six demobilisation cases at the project all were on procedural aspect of the process and also were all held during the period 2011 / 2012. All these seven disputes were concluded with five having been mutually settled while the other one getting dismissed due to the fact that the applicant employee was not an employee covered by the PLA and the last dispute being dismissed due to the fact that the CDR lacked jurisdiction (MEIBC Statistics 2012).

Benjamin (2011) maintains that the weak bargaining power of trade unions at the times of mass lay-offs has meant that this provision is seldom used to

take strike action against retrenchments. However this was the cause of the recent strike action at Medupi power station as alluded to above (Wait 2012). One Mzondeki Mdaka, demobilised worker had this to say in this regard;

> I am a former employee of the Kusile power station. I was demobilised together with other group of employees at the project after the completion of the task that we had been employed for. We were employed as assistants to builders that were building and plastering a certain portion of the project. After the completion of the task we got demobilised and those seconded builders returned to their primary companies and we were left behind. I think this was unfair of the project to treat us in that manner considering the project still had a lot of work to be done and was still employing new people at the time we got demobilised. Of the other workmates that I worked with, some were re-hired back by the project but I and other few were not and this is unfair. What criteria did the project use in re-hiring those back (Interview, community member Kusile power station 4th of July 2012).

According to the PLA the demobilisation process is only evoked if the portion/section of work where the employee(s) are involved is completed and there is no any other work that the employee(s) can be assigned to perform. The project contractor must then institute the consultation process with a representative trade union to which its majority employees belong to. If there is no such majority union in that particular workplace, the project constructor must consult directly with the affected employees. If in a workplace there is a majority representative trade union, such consultations would be conducted with that particular union and the decision arrived at would be binding on all affected employees (Kusile project labour agreement 2012).

The selection criteria used at the project is done in recognition of Limited Duration Contracts as all employees working at the project were employed on LDCs. Seconded employees upon completion of their task on the project are returned back to their primary employers as their period of secondment

would have come to an end. However locally recruited employees become redundant and as such get demobilised, but some employees instead of being demobilised, get transferred to other areas within the project. This is what was challenged by the 600 MPSJV locally recruited employees that protested their demobilisation in Medupi power station Project in 2012 (Wait, 2012).

In the event the project cannot accommodate the redundant employees the demobilisation process would then unfold and the selection will be based on; the date of appointment, completion of the portion/section of work where the employee(s) were involved, operational requirements, skills and suitability and if there is a need to choose between two or more employees with similar skills and service, the contractor will decide on who should be demobilised. This is in direct contradiction to the provisions of the LRA as the onus is left to the employer to choose who to retrench and who not to. Such decisions should involve a process of consultation with either the trade union or the employee concerned (Medupi project labour agreement 2012)

3.20 STRIKES

The project has had only one strike-related dispute that was brought to the Centre for Dispute Resolution (CDR). This then implies that majority of the disputes were handled at the CCMA or got resolved during the cooling off period provided for in the PLA. This case that was brought before the CDR related to a misconduct by an individual who was charged for incitement of an unprotected strike. This alleged offender was a member of NUMSA at the time of the charge and was subsequently represented by his union at the enquiry. Parties in the dispute were cited as NUMSA on behalf of S Manqane (the applicant) and Iqembu (the respondent) under case number CDR/K12/106. This was case number 106 since the inception of the CDR at the project. The matter had been set down for arbitration on the 25th of September 2012 and was postponed *sine die* (meaning indefinite postponement) (MEIBC Statistics 2012).

However on procedural strikes the project established rules that regulates any picket staged by striking employees employed on the project. This procedure is intended to facilitate the proper and orderly expression of the rights of employees to picket. The right to strike for the purposes of collective bargaining is one of the fundamental rights enshrined in section 23 of the South Africa's Constitution (Brand 2010). The purpose of the picket is to peacefully encourage non-striking employees and members of the public to support striking employees to encourage employees not to work during the strike and to dissuade replacement labour from working through the persuasion of members of the public or other employers and their employees not to do business with the contractors.

Fafuli (2012) maintains that the right to strike contained in today's labour relation act was one of the key principles NUM fought for and is a great achievement for the mineworkers. The right to strike is protected by law in such a manner that dismissal of people participating in a protected strike is viewed as an automatic unfair dismissal and as such warrants maximum compensation if one is found guilty of same by the Courts (Bhorat and Cheadle 2007). The PLA accords the right of employees to strike and those striking employees to picket if they so desired to.

During picketing the union supporters are obliged to comply with the project security requirements of the site. This security requirement would have been discussed with employees during induction process upon mobilisation. The union supporters in respect of whom permission has been granted by the employer get provided with written authority by the union to picket in its support and such written permission must be carried by the supporters at all times.

However this provision is contrary to the requirements of the right to strike in terms of the LRA. Once a certificate of no resolution to a mutual interest dispute has been issued by the commissioner of either CCMA or BC for the

respective industry or either after the lapse of a 30days period from the date the dispute was declared in terms of the act, it does not require the permission of the employer for the strike to commence. Instead the union is obliged by law to give 48 hours' notice of their intended strike action and or 7days notice for a secondary strike in support of the primary strike.

The PLA requires that picketers conduct themselves in a peaceful, unarmed and lawful manner. It permits them could carry placards, chant slogans, sing and dance if they so desire. However they are prohibited from physically preventing members of the public, including customers, other employees and service providers, from gaining access to and or leaving the project site premises. They are also prohibited from committing any action which is or may be perceived to be violent, threatening, intimidating or physically assaulting non-striking employees and / or prevent employees who wish to work from commencing work or continuing with their work activities.

The project agreement further deters management and picketers from using inflammatory or derogatory language, or placards or otherwise, with the intention of insulting or provoking other employees or persons. It also refrains picketers form any behaviour which is provocative or could incite violence. Discriminate against or victimisation of any other employees or persons is prohibited. It discourages the carrying of weapons of any kind by any person who would be picketing or by any member of management or persons appointed by management. However one Ushaka Dingani, villager who works at the project when the question was put to him regarding the prohibition of carrying of weapons such as knobkerries during picketing had this to say;

> I am one of the employees working on the project and residing at Wilge. We have had quite a sizable number of strikes in this project, protected and some not protected. In all these occasions, the regalia have been that of a warrior, we always carry shields "iHawu in isiZulu" and "induku" in iSizulu or "Intonga" in

> iSixhosa (meaning a stick similar to a "walking stick"). Therefore depriving me of such is like depriving me of my birth right. As a Zulu man when we grew up, it was taboo for men not to carry "induku" and I can't imagine one going for a strike without such. I have just become accustomed to it (Interview, general worker Kusile power station 5th of July 2012).

3.21 PROHIBITION OF STRIKE ACTION

When any issue is governed by arbitration as provided for in the PLA neither party shall be entitled to resort to an industrial action in respect of the issues which are covered by that arbitration. Should either party embark on industrial action in respect of any of the issues covered by this agreement, it will be considered unlawful and/or unprotected in which case, either party may take any steps deemed necessary at law to bring to an end the strike action.

3.22 GRIEVANCE POLICY

The objective of the grievance policy and procedure in terms of the PLA is to provide individual employees with an effective method of lodging a grievance, complaint, problem, dissatisfaction or feeling of injustice regarding the work situation to more than one level of management and to enable a grievance to be settled as close to its source as possible. The project has had two grievances raised by the employees against their superiors since the inception of the project CDR. On both of these disputes employees were represented by their respective trade unions. The first dispute was BCAWU on behalf of Prince Thobela under case number CDR/K12/126 against a company called ACC and the second one was NUMSA on behalf of Seun Mkhawane under case number CDR/K12/127 against Kusile Fabrication (MEIBC Statistics 2012). The purpose of implementing the procedure as contained in the PLA is to prevent such grievances from accumulating and/or festering to such an extent that they are expressed in some sort of conflict and to protect the interests of management and employees.

A grievance in terms of the PLA refers to a complaint expressed formally which triggers the formal procedural machinery to bring to the employer's attention of any dissatisfaction or feeling of injustice relating to an employee or group of employees' work situation. It is an employee's feeling of dissatisfaction or injustice within a workplace on work related issues. The grievance procedure allows an employee to formally discuss and resolve any complaint that he/she may have and to provide a channel for the equitable settlement of complaints and grievances. It serves to bring employee problems to the notice of the employer so that it becomes aware of the employee frustration, problems and expectations before they become a dispute. However employees still feel that the grievance process is not effective, instead it is selectively applied. One Khumbulani Mkhaliphi, employee interviewed had this to say in this regard;

> I have been on this project for almost 4 years. I reside as Hlalanikahle extension 2 and have a wife and two kids. I once had a grievance with one of my superiors when 1 had come to work late. This was due to the fact that I had taken my kid to crèche since my wife was not feeling well. When 1 got to work, one white manager said to me "blacks will always be blacks", even though the project provides you with transport you still come to work late. You prefer to use your "skorokoro cars" meaning un-serviced vehicle. He further went on to say whites knows how to maintain their cars as they are used to such and that is why I will not see a white person riding on a transport bus provided for by the project. I felt so angry about his remarks and raised a grievance against him to the top management, but up to until now nothing has been done about it. Had it been that it was a black African worker he / she would have been taken to a hearing and maybe dismissed (Interview, general worker Kusile power station 4th of July 2012).

It is mandatory that internal grievances must be adhered to at all cost before one seeks the intervention of the outside institutions, Albany Bakeries Ltd v Van Wyk & Others (2005) 26 ILJ 2142 (LAC). The grievance procedure in

accordance with the PLA is intended to deal with individual and collective grievances such as wages and working conditions, which are normally not covered by the appropriate collective bargaining machinery. There are four stages of the grievance procedure where an employee can air his or her concerns in terms of the PLA. The employee raises the grievance verbally with the immediate supervisor who then to the best of his/her ability, listens to the employee in private, probes the employee to express the grievance freely and openly obtain all relevant facts about the grievance and distinguish the facts from opinion (Kusile project labour agreement 2012).

The PLA calls for a supervisor to endeavour resolving the grievance as quickly as possible and within, at most, three clear working days. If the supervisor's decision is unacceptable to the employee, level two becomes effective and the supervisor advises the employee of the subsequent stages of the procedure and of the employee's right to seek the assistance of a site shop steward or employee representative. If the grievance relates to the supervisor or manager concerned, the grievance would then be raised with the next level in terms of PLA structure. Any employee making use of the grievance procedure has the right to nominate a site shop steward or employee representative from within his/her work area to act as a representative during the proceedings of levels two, three and four. The employee, with assistance of the site shop steward or employee representative, would again raise the grievance verbally with the immediate supervisor. If the supervisor's decision is unacceptable to the employee, level three is evoked.

At level three the employee who have elected to continue with the grievance, with the assistance of the site shop steward or employee representative, record the relevant details on the grievance form. The signed form will thus be handed to the supervisor whose findings get recorded on the grievance form and be returned to the employee to proceed to level four, if so desired. At level four the employee forwards the grievance form and all facts pertaining thereto to the senior manager, who then hold an enquiry into the matter within two clear working days of receipt. The enquiry will be

attended by the senior manager, the supervisor, the employee, the site shop steward or employee representative and/or a trade union official. A record of the enquiry will thus at all times be kept. The senior manager will pronounce the verdict, where practical within one clear working day of the enquiry. The senior manager's decision gets recorded on the grievance form and a signed copy handed to the employee.

The project established a Centre for Dispute Resolution (CDR) under the auspices of the MEIBC's guide lines. The role of the CDR process is to drive the speedy resolution of disputes that would have not been resolved at grievance and / or enquiry level of the project. All project based cases are handled at the CDR and the process is no different from the CCMA processes. The project has had 127 since the inception of the project CDR (10/11/10 – 01/11/12). Commissioners presiding over project cases are accredited by the CCMA even though being administered by the Tokiso Dispute Resolution Centre (TDRC). Tokiso is a privately owned dispute resolution centre for mediation and arbitration purposes. If the grievance remains unresolved, the PLA requires an employee, with the assistance of the site shop steward or employee representative to submit the grievance to the PIRM who will assist the parties to refer the matter for a compulsory arbitration at the CDR. The project appointed a Centre for Dispute Resolution Officer (CDRO) to be based on the project. The anonymous representative to the CDRO (Doctor Ndiweni), interviewed and had this to say;

> I am the representative CDRO for the project, my role and responsibility is to ensure that, cases not resolved at company or project level, if escalated to the CDR they get given the urgency they require. I was seconded to the project from my primary employer like any other employee on the project. My role is similar to that of a case management officer at the CCMA. I receive CDR referrals and process them the same way 7:11 forms at the CCMA are done. I schedule case as they come to the CDR and start allocating it to commissioners.

> CDR Commissioners are commissioners accredited and certified as commissioners by the CCMA. Their arbitration rulings are treated the same as those issued by the commissioners of the CCMA. Most of the cases that have been coming to this CDR are the individual cases where an employee either challenges the alleged unfair treatment by the employer or dismissal. We sometime deal with mutual interest cases involving trade unions and the KCWJV (the contractors) and mostly such cases are settled prior to employees engaging on protected strikes or sometime gets referred to the CCMA's National Office. However strikes do occur but in most cases, majority of those strikes are not protected, they are more of a reaction towards what they perceive to be wrong coming from management mainly relating remuneration. (Interview, Officer Kusile power station 4th of July 2012).

3.23 DISCIPLINARY PROCEDURES AND POLICY

The project has four types of disciplinary measures, depending on the circumstances regarding the severity of the alleged transgression, the PLA's disciplinary code and procedure guides on which category a case can be applied. These include counselling, verbal warning, written warning, final written warning, dismissal (formal enquiry/arbitration). These processes are called progressive discipline earmarked at correcting an individual's un-becoming behaviour.

All disciplinary warnings are cumulative. For example, an employee who was already in receipt of a verbal warning for a particular offence and who commits any other offence of a similar nature within the prescribed time period would be subjected to the next step in the disciplinary procedure, i.e. written warning, final written warning and / or dismissal, depending on the nature and severity of the second offence. If during a 12 months period an employee, who would had a final warning, commits another offence whether linked to others or not, a hearing would be held and if found guilty, a final written warning for generally unsatisfactory behaviour will be issued.

Should there be a further offence during the validity of this warning, then that offence shall be subject to disciplinary enquiry that may lead to dismissal at a formal disciplinary hearing or arbitration.

3.24 FORMAL DISCIPLINARY ENQUIRY / PRE-ARBITRATION

Even though the project has processes in place to handle all disputes internally before revoking the CDR process. It must be noted that up to date the project has failed to resolve 127 disputes internally for the period 10th November 2010 to 1st November 2012. Among cases that project has failed to resolve them internally are, interpretation of collective agreement, unfair labour practices, demobilization procedure processes, job grading, unfair discriminations, unfair dismissals, constructive dismissals, breach of collective agreement, serious safety transgressions, gross insubordinations, incitement to violence, fraudulent time keeping, dagga intoxication while on duty, providing a false medical certificate, absenteeism, being under the influence of alcohol, organisational rights, fighting and assault at work, unauthorised use of company property, desertion from work, sexual harassment, travelling allowance and disregarding specific instruction just to mention the few (MEIBC Statistics 2012).

The project agreement provides for a formal disciplinary enquiry or pre-dismissal arbitration. This gets evoked only if progressive discipline would have failed. Progressive discipline refers to the subsequent issuing of written warnings for performance or behavioural related transgressions. The CIRO would ensure that all records of the proceedings enquiries are kept. In the event the matter is escalated to the level of arbitration, a pre-arbitration process is required. The purpose of this procedure is to replace the disciplinary enquiry with a pre-dismissal arbitration in all instances of misconduct and incapacity which may result in the employee's dismissal.

In this process an arbitrator gets appointed from the panel of arbitrators contained in the PLA. The employee will within five working days, be

furnished with the details of the charges against him/her where after, the pre-dismissal arbitration will be convened. The pre-arbitration commissioner will determine whether there is a fair reason to dismiss the employee or not. The arbitrator will, with regard to any facts which he/she deems relevant to arriving at a correct decision including the facts of the case, require the employee's disciplinary record, mitigating and aggravating circumstances and the employer's disciplinary code and procedure (Kusile project labour agreement 2012).

The PLA also gives the arbitrator powers to decide upon the procedure that would be followed during the hearing with due regard to the minimum of legal formalities if necessary to ensure a proper and fair adjudication of the issues. After consideration of all relevant facts, the arbitrator will issue an award within 5 days from the day of the hearing. However this condition does not correspond with the provisions of the LRA as read with the rules of the CCMA. These conditions require that the commissioner makes available to the parties an arbitration award or his / her findings within 14 days. The costs of the process is seen as part of the dispute settlement process and therefore become the responsibility of the project. In accordance with section 188A of the Labour Relations Act 66 of 1995, the arbitrator's decision on sanction is final and binding on the parties and the matter does not require any referral to the CCMA or relevant bargaining council for a rehearing as powers vested on these two processes are equal. The applicant party and/or responding party retains the right to refer the matter for review to the Labour Court.

3.25 DISCIPLINARY CODE

The project requires that disciplinary procedure guideline ("the code") established in terms of the PLA must have a formal framework for disciplinary action. It would set out rules and regulations with which employees are required to comply with. It is based on the principles of fairness and the right of management to take disciplinary steps against any

employee who acts in a manner conflicting with the interests of the project and or company. The project and or company recognize the difference between mandatory and non-mandatory offences. The company further recognize the right of the employee to appeal against any disciplinary measure considered unjust or unfair. The list of offences contained in the disciplinary code offences table are not necessarily exhaustive and instead are regarded only as the guideline as each case is dealt with on its merits. The disciplinary action taken can be of a lesser (or even greater) severity depending upon, for example, the degree of the seriousness of the offence and whether or not it was committed deliberately and aggravating.

3.26 DISCIPLINARY CODE OFFENCE TABLE

Table 3.5 (Kusile PLA 2012).

CATEGORY	NATURE OF OFFENCE	FIRST OFFENCE	SECOND OFFENCE	THIRD OFFENCE	FOURTH OFFENCE
Timekeeping Offences	Late for work or leaving early without authorisation	Verbal warning	Written warning	Final written warning	Dismissal
	Absence from Place of work without authorisation reason	Verbal warning	Written warning	Final written warning	Dismissal
	Desertion: Absence from work for five working days without good reason or without notifying a senior manager during the period of absence. A medical certificate must be produced if the absence is for medical reasons. NOTE: It is the responsibility of every employee to communicate immediately with his/her senior manager during any period of absence.	Dismissal			

	Fraudulent time-keeping, including clocking in using other employee's clock cards and allowing another to clock in using one's clock card	Dismissal			
Work output offences	Sleeping on duty	Written warning	Final written warning	Dismissal	
	Unlawful refusal to work	Dismissal			
Quality of work offences	Poor maintenance of vehicles or machines for which employee is responsible	Verbal warning	Written warning	Final written warning	Dismissal
	Wastage of materials	Verbal warning	Written warning	Final written warning	Dismissal
	Damage to equipment or materials	Written warning	Final written warning	Dismissal	
	Injury to another through negligence or horseplay	Final written warning	Dismissal		
Social offences	Under the influence of alcohol or drugs at work	Dismissal			
	Unauthorized consumption of alcohol and/or the administration or possession of drugs for non-medical purposes on site premises	Dismissal			
	Serious Safety Breach	Final written warning	Dismissal		
	Failing to adhere to client fatal protocols	Final written warning	Dismissal		
	Causing serious injury to fellow workers	Final written warning	Dismissal		
	Assault	Dismissal			
Social offence	Threat of Assault	Final written	Dismissal		

s continued		warning			
	Possession of dangerous weapons at work or on site premises	Dismissal			
	Intimidation or incitement to violence	Dismissal			
	Harassment (Sexual or Bullying)	Dismissal			
	Committing unsanitary acts, such as urinating on site	Final Written Warning	Dismissal		
Attitudinal offences	Breach of employee's duty of good faith	Dismissal			
	Failure to carry out a reasonable and lawful instruction	Final written warning	Dismissal		
	Failure to observe site, security and security card transgressions	Final written warning	Dismissal		
	Use of abusive and/or derogatory and/or offensive language and signs	Written warning	Final written warning	Dismissal	
	Gross insubordination, serious disrespect, impudence and insolence	Dismissal			
	Gross negligence	Dismissal			
Other offences	Wilful damage to materials, equipment, possessions or property	Dismissal			
	Theft	Dismissal			

	Unlawful possession of Contractor property	Dismissal			
	Driving company vehicles or operation machinery without authority	Final written warning	Dismissal		
	Disclosure of confidential information	Dismissal			
	Fraud and dishonesty	Dismissal			
	Deliberately supplying incorrect or falsified information	Dismissal			
	Unauthorised use of telecommunication equipment or breach of RICA policy	Final written warning	Dismissal		
	An act or omission which for any other reason in law is sufficient ground for Dismissal	Dismissal			

3.27 DISPUTE PROCEDURE ON ARBITRATIONS

The PLA provides procedures that must be applied in respect of all disputes at the project. These disputes may relate to proposed changes to terms and conditions of employment, benefits and other matters arising out of the employment relationship. The project as already alluded to above has had 127 cases since the inception of the project CDR. In all these disputes, the only participative labour movements were NUM, BCAWU and NUMSA despite the project having other unions in the form of solidarity and the like.

NUM and BCAWU acting jointly has had four cases since the inception of the project and all these cases relates to the project labour agreement. These disputes include interpretation of the PLA, demobilization process, breach of collective agreement and failure to comply with the payment structure as per the PLA.

BCAWU alone besides their joint case with NUM, have had 30 dispute cases referred to the CDR, whereas NUM has had 27 and also for the same period, NUMSA has had only dispute cases. What these states then imply is that, 62 dispute cases that went before the CDR were submitted by individuals without the help and / or assistance of any trade union. This therefore qualifies the testimony of the CDRO allude to above that the majority of the dispute cases at the project were brought to the CDR by employee in person (MEIBC Statistics 2012).

CHAPTER FOUR

4.1 CONCLUSIONS

The central argument of this research report is that the local labour procurement policy is promoting temporary, informal employment and specifically casualisation which is in contradiction to the ILO decent work agenda. The policy was introduced to contribute to the reduction of the growing unemployment crisis in South Africa. It has largely failed for complex reasons which relate to the current political, social and economic context in South Africa.

4.2 THE CURRENT CONTEXT

This research report has emphasized the context within which the local labour procurement policy was introduced. This context has three key features:

Firstly, the post – apartheid labour regime established new protection rights for working class. The Labour Relations Act 66 of 1995 (the LRA) and the Basic Conditions of Employment Act 75 of 1997 (BCEA) have been instrumental in setting out the parameters under which workers can be employed and organised. The BCEA establishes clear rules about overtime, working hours and remuneration, while the LRA allowed legal strikes and industrial action for all workers for the first time. The Employment Equity Act 55 of 1998 (EEA) is the key affirmative – action legislation. However all these legislation are currently under review at the National Economic Development and Labour Council (NEDLAC).

Despite the introduction of this progressive legislation, the last 18 years have been marked by job losses resulting in increasing poverty and unemployment. This crisis is deepening: according to the latest report from Statistics South Africa, compared to a year ago, unemployment

has increased by 6,1% (257,000 people). Low wages and the increasing trend towards casualization and temporary employment have resulted in higher levels of insecurity and precarious working conditions.

It is now widely acknowledged that the government's target of creating 5 million jobs by 2020 is unlikely to be met because of a range of factors, including labour unrest and the strained relationship between the state and big business, according to Economic Development Deputy Minister Hlengiwe Mkhize. (*Business Day 12.12.2012*) Government spokesmen are claiming that the private sector has not contributed enough to the drive towards localization, which is central to the government's push to industrialise and expand the domestic economy. According to Trade and Industry Minister, Rob Davies, much stronger processes were needed "to secure private sector commitments to local procurements in key sectors, such as mining, construction, health, retail and so forth. " (Reported in *Business Day* 18.12.2012

All these three factors mean that the local labour procurement policy is operating in a very difficult environment, characterized by violent, illegal strikes, threats to retrench workers and to mechanise production. All these factors mitigate against the New Growth Path which envisaged creating 250,000 new jobs in agriculture, 140,000 in mining and beneficiation, and 225,000 in tourism, 50,000 in business services and 30,000 in the green economy by 2020. That would result in unemployment being reduced to 15%. .

4.3 THE IMPACT OF THE LOCAL LABOUR PROCUREMENT POLICY

This report raises doubts about the claims made by Eskom in its presentation to parliament on 22. 6.2011 in that construction and operation of Kusile power station would improve the lives of almost 54 800 people. The local labour procurement policy has not dented the unemployment crisis. While a limited number of jobs have been created

for local people, this has to be balanced by the number of retrenchments of core employees.

It is arguable that the main beneficiaries are the construction companies involved in that they could reduce their labour costs as core employees – especially skilled workers - are more expensive. The researcher has received the strong impression that the construction companies are hiding something and are reluctant to divulge information. This could explain the difficulty of obtaining the relevant figures on the retrenchment of permanent, or core employees experienced during the course of this research. The policy compelled construction companies to retrench core employee on the one hand and to recruit on the other hand local labour employees. This has led to the retrenchment of about 1200 core employees at Grinaker LTA, Murray and Roberts Construction and Concor since 2010. These core workers have been retrenched while newly recruited local employees are retained. Overall the introduction of the local labour procurement policy has created a trend for the construction companies to prefer the employment of local labour on temporary contracts so as to save the expense involved in maintaining core employees during periods when project contracts are not available.

At the same time it must be acknowledged that the retrenchment of these 'core' workers could have had negative effects for the construction industry. According to several sources the policy lessened the skills available to the contractors as they were forced to retrench some skilled workers and replace them with inexperienced, unskilled persons. Furthermore the construction companies had to bear the cost of training newly hired employees.

In one sense the policy and practice of the local labour procurement at Kusile and Medupi project power stations are in direct contradiction to the existing labour legislation in particular section 189 of the Labour Relations Act 66 of 1995 in relation to retrenchments. The act establishes the principle of 'last in first out' whereas at Kusile what

Eskom call 'demobilization' instead of 'retrenchment' and applies when the particular project or part of its section comes to an end. The local labour procurement policy meant that the contractors in the form of construction companies involved in building Kusile power station were able to retrench some of their permanent workers (core employees) in order to conform to the policy for accommodating the procurement of local people. Thus fairness in the application of section 189 of the labour relations act is denied. LIFO requires that for fairness of a retrenchment process, the last to be recruited should be the first to be retrenched and not the other way round like it is done when employers are bound by contractual obligations of local labour procurement policies. This compels employers to retrench employees with more length of service at the expense of the newly recruited local employees.

One of the main findings of this research is that 50% of the 12,050 employees at Kusile were employed in terms of the project labour agreement on local labour procurement policy, meaning half of the employees at the project were recruited locally and the majority of them are inexperienced. These locally recruited employees at Kusile power station clearly benefited from the policy. This meant the recruitment of workers around the magisterial districts of Bronkhorstspruit, Witbank, Ogies, Delmas and the province at large. Newly employed members of the working class could now provide for their families in this poor province. In addition to jobs and income they acquired skills (for example in plastering, welding and building) and exposure to the construction industry besides wage related benefits.

However the introduction of this policy promoted atypical employment, informal work. While benefits were obtained through temporary LDC contracts, workers were denied several benefits with regards to the key ILO indicators of decent work; namely security, lack of collective bargaining powers for the informal workers and Temporary Employment Services (TES), stability and security of work and fair treatment of workers whether TES or Core employees. This means that the local procurement policy did not promote decent work. Furthermore this policy eroded the principle of a decent

salary as those newly recruited were not paid an equivalent salary to those retrenched. In addition this policy failed to consider what will become of these locally recruited people when the project comes to an end. This insecurity was behind some of the serious protests and labour unrest. Clearly these workers form part of the 'precariat' as Standing has defined it.

In terms of community benefits, the increased local employment also stimulated local economic activity, and in this sense brought benefits to the area, particularly to locally owned shop owners. Local sub-contractors, such as Indlamama Project cc also benefitted from the policy. Many of these sub-contracting companies were owned by local councillors who enriched themselves in this process through the preferred use of local constructors by Eskom to do subcontracting work at the project.

The local labour procurement policy also might have lessened the hostility to 'foreign' workers which was part of the xenophobic violence which occurred in South Africa in 2008. In this sense it has been a stabilizing factor.

At the same time an unintended consequence is that local councilors from the ANC gained political mileage through the manipulation of this local labour procurement policy. They made claims that the policy confirmed how the ANC was committed to creating employment opportunities to the local people. This made them to be seen as having provided for needy, unemployed people and enhanced their political popularity.

Despite these benefits, the hardship imposed by this local labour procurement policy as illustrated by the case of Bheki Kunene described in chapter 3 is significant. He, together with some of his workmates who were core employees, were retrenched by Murray and Roberts Construction Company in 2011 paving the way for the recruitment of newly hired local labour.

This research report has been flawed by many difficulties in terms of access to the relevant information. Its central argument – that the local labour procurement policy has promoted casualisation - raises the question of whether COSATU should have agreed to this policy in view of its priority commitment to obtain decent work, meaning permanent and secure work. Further research on the number of retrenchments and the skill levels involved are necessary to establish whether at the end of the day the major beneficiaries of this policy are the construction companies involved in infrastructural projects.

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LIST OF RESPONDENTS INTERVIEWED AND DATES OF INTERVIEWS

PEOPLE INTERVIEWED FOR THE PURPOSE OF THIS RESEARCH				
Name	**Position**	**Institution**	**Place**	**Date**
Julius Khuphe	General employee	Kusile Power Station	Kusile	04.07.2012
Zondumqashi Kaziwa	General employee	Kusile Power Station	Kusile	05.07.2012
Pikinini Zulukababa	General employee	Kusile Power Station	Kusile	05.07.2012
Zulomkhulu Mandlenkosi	General employee	Kusile Power Station	Kusile	18.09.2012
Mzondeki Mdaka	Retrenched employee	Murray and Robert	Kusile	04.07.2012
Ushaka Dingani	General employee	Kusile Power Station	Welgie	05.05.2012
Khumbulani Mkhaliphi	General employee	Kusile Power Station	Hlalanikahle	04.07.2012
Hluphekile Dukuza	Community	Residents	Surrounding Kusile	04.07.2012
Hluphile Dukuza	Community	Residents	Surrounding Kusile	04.07.2012
Ndlovu Luke	General employee / Community	Kusile Power Station	Hlalanikahle	04.07.2012
Kholisani Ncube	General employee / Community	Kusile Power Station	Witbank	05.07.2012
Bukhosi Thabekhulu	General employee / Community	Kusile Power Station	Phola	04.07.2012
Justice Mandla Mkhabela	General employee / Community	Kusile Power Station	Hlalanikahle	05.07.2012
Tapelo Dlomo	General employee / Community	Kusile Power Station	Delmas	05.07.2012
Bheki Kunene	Retrenched employee	Murray and Roberts Construction	Mogale City	17.07.2012
Dumakade Jubane	Human Resource Manger	Kusile Power Station	Kusile	23.11.2012
Doctor Ndiweni	Human Resource Manger	Kusile Power Station	Kusile	04.07.2012
Dungeni Zulukandaba	Human Resource Manger	Kusile Power Station	Kusile	04.07.2012

Nduna Zondi	Human Resource Manger	Kusile Power Station	Kusile	23.11.2012
Thulani Thandani	BCAWU Full time Shop steward	Kusile Power Station	Kusile	04.07.2012
John Khumalo	NUM Full time Shop steward	Kusile Power Station	Kusile	05.07.2012
Thulani Dube	NUM Shop steward	Kusile Power Station	Kusile	05.07.2012
Khuzwayo Mzwandile	NUM Shop steward	Medupi Power Station	Medupi	06.02.2013
Vilakazi Madlanduna	NUMSA Full time Shop steward	Medupi Power Station	Medupi	24.07.2012
Thandamanga Ndosi	Trade Union Officials	Medupi Power Station	Medupi	28.12.2012
David Khumalo	BCAWU Shop steward	Medupi Power Station	Medupi	07.01.2013
Danny Booyens	Employers' Association Officials	SAFCEC	Johannesburg	24.11.2012
Thabiso Kubheka	Trade Union Officials	NUM	Johannesburg	06.02.2013
Thanduyise Ndlalifa	Trade Union Officials	NUMSA	Johannesburg	05.01.2013
Daniel Lewis	Recruitment Officials	Backhousia Recruitment Services	Witbank	13.012.2012
James Dutch	Eskom Representative	Eskom	Johannesburg	05.11.2012
Vusumsi Vikintonga	Retrenched Employee	Murray and Robert Construction	Rustenburg	18.07.2012
Bigboy Msebenzi	Human Resource Manger	WBHO Construction	Johannesburg	07.02.2013
Zonkizizwe Makhosonke	Human Resource Manger	Murray and Robert Construction	Johannesburg	07.02.2013
Madoda Khumalo	Human Resource Manger	Bateman Africa (Pty) Ltd	Kusile	04.07.2012

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INTERVIEW GUIDE

Interview questionnaire for, the HR Mangers, Full time Shop stewards, Employers' Associations and Trade Unions

1. What is your name?
2. What is your position in the organisation?
3. What the name of your company?
4. For how long have you been with this company?
5. What is the total workforce of the company in this project if you may know?
6. Where are the terms and conditions governing the employee and employer relations derived from in this project?
7. Are they different from those applicable to this sector industry, if yes explain how?
8. How do you classify or categorise your employees, permanent or not permanent
9. Among the category of employees you have given, how many of them are casual employees.
10. What is the purpose of having casual employees in your own opinion?
11. Do you think having casual employees is a good idea [Yes/No] and why.
12. What type of casual employee do you have, seasonal, limited duration contracts [project based], fixed term etc.

13. For what period of time are casual employees employed for.
14. In your own opinion, what causes casual employment?
15. Is it beneficial to have casual employees and if so, whom does it benefit
16. How are these contract employees recruited in this project?
17. What informs the recruitment of employees in this project?
18. Is there any recruitment policy that you are aware of [Yes/No], if yes what is it called and at what point in time does it get used?
19. When did this policy or practice come to operate in this project and why was it introduced if you may know.
20. For how long has this policy or practice been applicable in this project?
21. Who is responsible for the administration of this policy?
22. Are they any challenges in the administration of this policy and if yes, what are they?
23. Who introduced the policy to the project?
24. How was this policy communicated to the workers at this project?
25. Were all employees in this project employed through this policy in this project?
26. Is it mandatory that this policy must be adhered to?
27. What is the overall view of this policy by employees both permanent and contract?
28. Who amongst these types of employees prefer this type of employment policy?

29. What impact does it have on permanent employees and on contract employees in this project?
30. How does this policy relate to the employment practices in the construction industry?
31. Do trade unions and employers associations have a role at any stage in this policy and what is it?
32. How do trade unions and employers association view this policy?
33. What are the effects of this policy in the employment arena and to the lives of individual employees and their extended families in the republic in the construction industry of South Africa?

Interview Questionnaire for general employees

1. What is your name?
2. What is your position in the organisation?
3. What is the name of your organisation?
4. For how long have you been with this company?
5. Are you aware of the recruitment policy?
6. How is it administered?
7. How are employees employed in this project? Are they employed through this policy or not explain?
8. Is this policy's recruitment practice different from the normal employment practices in the sector, if so, to what extent?
9. How has the introduction of this policy benefited you, explain?
10. How has this policy been viewed by the total workforce and how has it affected the workers in general in this project.
11. Are you aware of the local labour employees, if yes, who are they and how were they recruited into the project.
12. What are the conditions at which they are employed under and what informed this type of employment? Explain.
13. Who are the parties involved in the recruitment of these local labour employees?