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Challenges faced by Labour Inspectors

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A research report submitted to the faculty of Management, University of the Witwatersrand, in partial fulfilment of the requirements for the degree of Master of Management (In the field of Public and Development Management)

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Abstract

The post apartheid South Africa is moving into a phase of policy implementation in terms of governance. The period preceding the democratisation of the country has realised the enactment of various policy prescripts fundamentally meant to grow the development index of the country. Indirectly, this will also contribute to economic growth.

It has since emerged that at implementation level, there are a number of problems. This study explored a component of some of the implementation challenges faced, in particular, by policy implementers. The study focused on the implementation of the Employment Equity Act no 55 as administered by the Department of Labour.

Ten Inspectors and one manager were interviewed in the Mpumalanga Province. It was established that there is a large degree of non-compliance by employers. It was also found out that there are management and policy barriers that stand in the way of effective implementation at the Act.

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Declaration

I declare that this report is my own, unaided work. It is submitted in partial fulfilment of the requirement (in the field of Public and Development Management) in the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination in any other university.

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AGNES MOILOA

OCTOBER 2005

Dedication

With thanks to my husband, Oageng and my three beautiful children: Oagiloe, Oratiloe and Omphile

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Last, but certainly not least, to the Lord God almighty who is my enabler.

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List of Abbreviations

1.	BCEA	-	Basic Conditions of Employment Act
2.	CEE	-	Commission for Employment Equity
3.	COSATU	-	Congress of South African Trade Union
4.	DOL	-	Department of Labour
5.	DOE	-	Department of Education
6.	EAP	-	Economically Active Population
7.	EEA	-	Employment Equity Act
8.	ILO	-	International Labour Organisation
9.	LRA	-	Labour Relations Act
10.	NEDLAC	-	National Economics Development and Labour Court
11.	OHSA	-	Occupational health and Safety Act
12.	PMS	-	Performance Management System
13.	RPL	-	Recognition of Prior Learning

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Chapter 1

1. INTRODUCTION

The study has as its point a departure, policy implementation shortfalls. To narrow it down, the whole study will focus on challenges faced by the inspectors in the Department of Labour (DoL), as labour law enforcers. The writer has been employed in the Department of Labour for the past 8 years. During this time, extensive knowledge was gained in the core business of Department of Labour, including the administering of all the Labour Laws. It has been more and more apparent that inspectors face a lot of implementation challenges. Those have compromised the degree to which compliance has been attained with labour laws in general. The study will focus specifically on implementation challenges around the Employment Equity Act. The methodology as to how the researcher will set out on data collection, will combine both the quantitative and qualitative elements. The author has used a structured questionnaire to interview respondents. The report in its entirety, will focus firstly on the literature review. The literature review will provide for the justification of a study of this nature. I will utilise literature to position the study in the policy implementation debate. The chapter on research findings will present the data collected in relation to questions asked. There will be a chapter dedicated to analysis and interpretation where after recommendations and a conclusion will be provided.

2. BACKGROUND

The study will be focusing on the cruciality of policy implementation. This will be happening against the backdrop of the importance of policy impact. Unless there is effective implementation, the desired impact will not be realised.

The study is located in the policy implementation phase of the Department of Labour. The DoL has a mandate to drive and administer legislative prescripts that are, institutionally, committed to them. Since one has to narrow down the research process, only one policy will be looked into, namely, the Employment Equity Act (EEA).

The department of Labour is one of the national government departments. In and around the period of 1994, DoL promulgated a number of labour laws, including the Basic Conditions of Employment Act (BCEA), the Occupational Health and Safety Act (OHSA), the Labour Relations Act (LRA), the Employment Equity Act (EEA) as well as the Skills Development Act (SDA). DoL's programme of action is aimed, inter alia, at the protection of vulnerable workers, contribution to employment creation, promoting equity and reducing industrial health and safety incidents. (Department of labour's programme of action 2004 – 2009).

3. METHODOLOGY

3.1 Nature of study

Although the study was mostly qualitative, there were elements of quantitative data collection one. By nature, qualitative studies focus on a particular human problem and tend to look into the whole picture. It takes experiences into consideration and occurs in a natural setting (Leedy, 1997).

A quantitative study is a systematic mechanism to gather data of high quality. As far as quantitative studies are concerned, actual measuring is done during the data collecting process. In this instance, there is no predetermined hypothesis (Lawrence and Neuman, 2000). They further put forward that comprehensive studies usually utilise both the qualitative and quantitative approach.

3.2 Pre-test phase

A pre-test phase was conducted wherein labour inspectors were interviewed. Although pre-testing is extensively utilised in quantitative research, one can argue that there certainly is room for it in qualitative research. According to Bless and Higson-Smith (2000), pre-tests are very useful in measuring accuracy. They also believe that this phase can assist in ensuring that error is avoided.

In this particular study, the pre-test phase assisted in ensuring that questions are specifically formulated. That is, they do not border on ambiguity and that they are more likely to elicit the expected response.

3.3 Sampling

In this case, probability sampling was used. More specifically, random sampling was employed.

According to Lawrence Neuman (2000), when a random sampling approach is adopted, there must be a sampling frame. He defines this as a list that has all the elements in the population.

The project leader secured a list of all the inspector in Mpumalanga Province. This served as a population since it was inclusive of all inspectors.

Thereafter, every 5th person on the list was selected. All in all, there were 10 inspectors that were selected. However, the unit of analysis consisted of 12 persons. Bless and Higson Smith (2000) define a unit of analysis as a person from whom data is collected.

3.4 Actual data gathering

The researcher utilised the following tools to gather data:

- ☞ Structured questionnaire
- ☞ Telephonic interview
- ☞ Exploratory interviews

In their argument, Bless and Highson-Smith (2000) posit that questionnaires are desirable because they are easy to standardise.

They are economic and efficient and they require little training of researchers. However, they also argued that there might be a bias as far as responses are concerned.

For this reason, a standardised questionnaire was designed to be utilised in conjunction with telephonic interviews.

All in all, five researchers were involved excluding the author. One person acted as a project leader. The researchers were taken through the briefing sessions to inter alia, expantiate on the objectives of the study and to thoroughly discuss the questionnaire. It is important to do this. As put forth by Bless and Higson-Smith (2000), there has to be uniformity on the interpretation of a questionnaire.

The five researchers that were involve are hugely exposed to labour legislation in its enterity.
In this regard, an in-depth telephonic interview was conducted with ten inspectors in the Mpumalanga Province.

On the other hand, exploratory interviews do not impose some structure. They are more flexible in terms of questions posed. They are extremely useful in accessing feelings since by nature, they provide room for extensive probing (Bless and Higson-Smith, 2000).

To this end, the author had an intense, one on one interview with the Provincial Business Unit Manager (Inspection and Enforcement Services). All in all, twelve people were interviewed.

The interviews with the manager was more spontaneous. There was no structured questionnaire that was used. The manager was led to speak on implementation challenges around the Employment Equity Act.

3.5 **Data consolidation**

Mouton (1996) believes that data needs to be aggregated into a manageable size from which patterns and themes will be identified. As a starting point, data was aggregated. This was largely done through Excel. Categories as well as themes were determined for ease of data presentation.

4. PROBLEM STATEMENT

Brynard (2000) argues that policy implementation is crucial, however, it gets underplayed by other policy issues.

In his state of the nation address (May 21, 2004), President Mbeki emphasised the importance of policy implementation. Almost immediately, DoL responded by deciding to strengthen the implementation muscle. There had to be a strategic shift in this regard. For instance, DoL entered into private public partnership agreement with various companies. This was meant mostly to strengthen the systems and processes of DoL. In the same breath, the research and planning branch of the DoL undertook several research in the area of impact of legislation. The focus was primarily on the labour market with a view to determine the extend to which labour laws have intervened in addressing problems in the labour market.

The Department of Labour has not undergone any focused research around the implementation of employment equity.

The study is meant to make some strides in closing this gap. It is going to interrogate problems that are faced by inspector in their day to day function of implementing policy.

These activities are by and large triggered by complaints. However inspectors do undertake self initiated inspections. At the tail end, inspectors have to enforce compliance. They have powers to issue undertakings, compliance orders and prohibition notices. In essence, this is a matter of policy implementation.

5. RESEARCH PROBLEM/QUESTION

Having put the argument on implementation challenges, it is now incumbent of one to marry this to the uppermost research problem. For policy to be outcome/impact oriented, one would argue that implementation is critical.

The Department of Labour has several policies that it administers one of which is Employment Equity Act. Although administrative reports have shown that there is a procedural compliance level of over 70% (quantitative report, Mpumalanga), there has not been any movement as far as substantive compliance is concerned. As a matter of fact, substantive compliance talks directly to impact.

At this stage, it is necessary to differentiate between the two forms of compliance. For a company to comply procedurally, they need to have a plan in place showing the intention to move towards particular equity figures. This plan should also encompass things, inter alia, such as the training plan, the establishment of the Employment Equity forum and regular reporting.

When the full plan is brought into action, the company is said to be complying substantively. The argument is, little has been achieved in this regard. The problem can be placed back on implementation. This study has chosen to specifically look at challenges faced by policy implementers, in this case labour inspectors. The question of this research is: “What are the hurdles faced by this group of people?”

Once this was established, an analysis was made which will naturally be followed up by recommendations. The recommendations should assist policy makers and managers to try and close implementation gaps that will be brought forth. Undoubtedly, this will add to the amount of knowledge that exist on policy implementation. Something which will stand the policy making and management area in good stead. More specifically, it will have a positive influence on effective implementation of the EEA.

Chapter 2

2. LITERATURE REVIEW

2.1 Concepts of Policy formulation and implementation

The dawning of democracy in South Africa culminated in, arguably, the most progressive constitution in 1996. The constitution is the supreme law in the country. It was adopted to heal the divisions of the previous regime and to put in place a society that is based on democratic values, social justice and fundamental human rights. Also, a country that is able to improve the quality of life of all its citizenry. Beyond that, be able to free every person's potential (the constitution, RSA, 1996).

Government departments in particular, exist to ensure that the ambitions enshrined in the constitution are realised. In other words, the existent of any department should be justifiable through its mandate to be able to deliver on national constitutional aspirations.

Since the study is focusing on one of the labour laws instituted and administered by the Department of Labour, it is necessary at this stage to state the vision on the Department of Labour:

"The Department of Labour will strive for a Labour Market which is conducive to economic growth, investment and employment creation and is characterised by rising skills, equity, sound labour relations respect for employment standards and worker rights".

Furthermore, the Department of Labour committed, through its mission statement to play a significant role in reducing unemployment, poverty and inequality through putting in place policies and programmes in consultation with the social partners (strategic plan, Department of Labour, 1996).

The above undertaking clearly demonstrate the indispensable role that the Department of Labour is mandated to play to actualise constitutional ideals. To harness a focussed approach, the Department of Labour embarked in a conscientious mission to set down prescripts on how to achieve this. This birthed an era of policy formulation.

The fundamental function of any state is to protect its citizenry. Especially the most vulnerable (Olowu, 2001). According to Hughes (1998), it is government's responsibility to produce policy. He defines policy as the government's intention to solve problems at hand.

Furthermore, it is through this process that government is able to distribute goods and services to all the citizens (Hughes, 1995). The policy formulation process is never complete if there is no mention of implementation. Subsequently, implementation should be followed by monitoring and evaluation (ibid).

According to Patton (1990), evaluation is very critical. It should be preceded by a clear and concise vision. In view of the above, I agree with Cloete and Wissink (2000) that policy is meant to solve existing problems. In essence, policies are just a set of theories that should be translated into programmes. These programmes will then form a backbone of implementation of policy (Cloete & Wissink, 2000)

It is imperative therefore to understand that labour laws were put in place as a direct response and an attempt to address all sorts of social injustices in the labour market. Their effective implementation should liberate the worker's voice through a fostered communication. There should be an assurance that the workforce will be placed in safe and healthy working conditions. Furthermore, there should be enhancement of the human capital by putting in place training and development mechanisms as required by the Skills Development Act. Also, effective implementation will make strides in redressing imbalances in the workforce that resulted from past discrimination.

Invariably, the policy formulation process is dynamic in nature. There is nothing as static as change. Inevitably, a change in policy almost always result in a change in implementation. Through its recommendation, this study has argued for some changes, at policy level, of EEA. This changes will undoubtedly, influence implementation.

Cloete & Wissink (2000) postulate that there are several issues that lead to policy change. These could be social, economic, cultural, political, technological etc. Change in the needs and demands of citizens does lead to policy change. Also, a change in (political) leadership invariably leads to a change in policy (ibid). They mentioned a number of other factors that influence change.

The period prior to 1994, the Department of Labour was known as the Department of Manpower. Up until 1994, the Manpower Department mostly focused on payment of the Unemployment Insurance Act. Developmental and active policies were either non existent or severely limited. When change came, the Department not only changed its name, but also altered their modus operandi. All the seven labour laws that are administered by the DoL, were promulgated between 1996 and 2001. Arguably, these are some of the most progressive laws that the DoL has seen. My belief is that the implementation strategies need to be such that they produce the desired impact. This study is arguing for the beefing up of implementation with specific reference to EEA.

The basis of this research is the whole issue of the promulgation of a set of labour laws that emerged post the democratic process in South Africa. Government at large and the Department of Labour in particular engaged in an exercise of formulating novel policy.

2.2 P**olicy Making Environment**

The pre-labour legislation SA was marked by extensive inequalities, poverty and discrimination.

The International Labour Organisation review of 1996 pulled out the following issues as the most important labour market problems in South Africa:

- ☞ Poverty
- ☞ Income inequality and interracial inequality
- ☞ Unemployment
- ☞ High labour costs and low productivity (Barker, 2003)

The policy making environment in the 1996 period, was happening against the backdrop of the above-mentioned problems. It was therefore necessary that any attempts to put legislation in place, should address inter alia, these labour market problems. The Department of Labour embarked in a policy formulation period extensively between 1996 and 1998.

As aptly put by Booysen (no date) the most powerful policy generating body in SA centres completely around government top brass. The thrust of policy formulation in this instance is to address socio-economic issues that present as fundamental challenges, inter alia.

South Africa has a unique policy formulating environment in that social dialogue is valued as an inclusive tool in this process. The National Economic Development and Labour Council (NEDLAC) was instituted to foster and influence policy formulation, implementation and review. The influence herein however depends on the extent to which major role players are willing and able to assert their interest in participating in the policymaking (Booysen, no date).

There is a generally held belief in SA that NEDLAC, as a custodian of social dialogue, has not been as effective as it could be. Suffice to say that during the initial era of policy formulation, this structure was meant to accommodate various view points and present an assurance that prior to promulgation, labour laws in particular, are extensively debated.

The fact that SA had reached a turning point in terms of Governance in the period post 1994, is quite significant. Invariably, this turning point necessitated a crucial shift in political decision making and public policy making (Booysen, no date). Booysen continues to state that during this period, there was a novel emergence of emphasising on democracy. Resultantly, any policy formulation process had to be aligned towards grappling with issues of inequality and inequity amongst others, that resulted from the past regime.

When the then, minister of Labour, Tito Mboweni, delivered his budget vote on 19 May 1997, he reflected on the work and challenges that continued to face the Department of Labour.

The period 1994 – 1998, in Department of Labour terms, was significant in the sense that it attempted to define the policy climate and to begin a process of promulgating labour legislation.

The pieces of labour legislation were meant to be a process of undoing past injustices that were introduced by the Apartheid system. Mboweni further mentioned that enactment of legislation was indeed an attempt to build and transform the labour market climate. In his undertaking, he mentioned the following as crucial labour market challenges:-

- ☞ High unemployment and underemployment rates
- ☞ Low rates of productive employment opportunities
- ☞ Poverty amongst the employed and non employed

- ☞ Extreme degrees of inequality in terms of income and access to income generating assets
- ☞ Low skills base
- ☞ Tense labour relations

In essence, this echoed the findings of the International Labour Organisation review of 1996.

Mboweni reiterated that it was not the Department of Labour's job alone to address the glaring labour market problem. However, department of Labour had a role to play with regard to providing a conducive environment that will contribute, inter alia, to economic growth and fostering equality.

The president instituted a comprehensive Labour Market Commission to interrogate the labour market environment. The commission presented its findings and recommendation in June 1996. The ILO review report was also incorporated. The commission suggested a framework for labour market policy that enhances economic growth, including protection of people against unfair discrimination (Mboweni, 1997).

Mboweni, concluded by saying that the underlying and guiding principle in policy formulation should include the certainty of contributing to the realisation of the vision of government and alignment to broader government policies. The argument about government activities overarching the constitution, firmly holds here.

2.3 Labour Market Environment

Inherent to the central vision of Department of Labour, is the paramount issue of promoting economic growth. In this instance, it is important to understand some of the economic and labour market dynamics within which the labour laws in general were promulgated.

Barker (2003) defines the Labour Market as an imaginary space where labour is bought and sold. The principle of buying and selling by nature, thrusts on economic principles. Also, the provision of labour is characterised by demand and supply. In other words, the more there is a demand for something, the higher the supply needed.

However, the purchasing of labour in the Labour Market environment is not as clear cut as is the case with goods and services. There is an added uniqueness due to the incorporation of the human factor. For instance, where people's labour is bought, things such as fairness, equity etc. come to play. In these type of transactions, fairness is not always ensured (Barker, 2003).

By nature the relationship between employer and employee is about power. Arguably, the employer is in a stronger power position. Legislation such as the Labour Relations Act came in to afford employees the right to unionise for the sake of collective bargaining. Also, this law was meant to encourage long term employment relation through negotiations.

In reality however, there is still a large cluster of employees who work in an extremely poor unionisation climate. By and large, they remain vulnerable. The Department of Labour has a duty to ensure the protection of vulnerable workers through the Basic Conditions of Employment in general, and specifically through the sectoral determinations.

Sectoral determinations offer varied regulations for specific vulnerable sectors, such as farm and domestic workers.

It is important to understand the economic factors in the Labour Market to have an appreciation of what labour laws in general were meant to achieve. Barker, (2003) maintains that the Labour Market has both an allocative and distributive role. Allocation, in this instance, means the allocation of human resources to alternative users. That is, in terms of sector, location and occupation. The distribution of income depends inter alia on sector, location and skills base.

By nature, people exchange their skills for an income. The labour market therefore assist to distribute the income. The income sharing arrangement also determines poverty levels (Anker, 1994).

According to Sawyer (1995), the labour market has played a critical role in distributing income unequally. Apparently, markets have failed to produce a fair and equitable distribution of income. This is where labour laws, as promulgated by government, need to play a role.

Sawyer (1995)believes that the labour market should contribute to:-

- ☞ Efficiency, in terms of the management of income and output.
- ☞ Equity, with regard to equality in opportunity in terms of access to jobs, training and remuneration.
- ☞ Social Justice, that is the minimisation of negative effects and potentially harmful working conditions.
- ☞ Growth, which is an increase in employment through economic growth.

The promulgation of the labour laws in general was meant to attain the balance between the security of the workforce whilst promoting efficiency in the labour market. For instance, the Skills Development Act was fundamentally meant to skill the workforce through training and development initiatives. Both on the job and outside the working environment. This should indirectly push the economic growth up.

The Occupational Health and Safety Act was meant to promote a safe and healthy working environment, primarily to preserve the workers in the country. This should also help in retaining experienced labour and to push the productivity index upwards.

Barker (2003) argues that until 1980, most countries focused on mechanisms that were meant to stimulate economic growth through macroeconomic policies. Social insurance policies such as the Unemployment Insurance Act, are meant to temporarily alleviate the hardships of unemployment.

In the same breath, active labour market policies focus all interventions around the reduction of unemployment and underemployment and to maximise quality employment. They are also aimed at returning displaced workers back to productive jobs.

In fact, Standing et al (1996), said that since 1994, government has been trying to foster regulated flexibility for both equity and distributive justice. Mainly flexibility in terms of cost of labour and allowance. I think it is for this reason that the Minister of Labour has authority to provide variations within the statutes themselves. Labour Laws also provide guidance on labour standards.

As put by Standing, et al (1996), these laws have the following function:-

- Labour Market security: this is meant to increase employability and lower unemployment. Various laws such as the LRA do provide labour market security, however, active labour market interventions such as the Skills Development Act are more proactive in ensuring that secured labour continues to be more skilled and increasingly retainable.

- Employment Security: this type of security prevents arbitrary dismissals. The Labour Relations Act makes provision for adequate notice to be given. It also lays out retrenchment procedures.

- Work Security: this relates to regulation of working hours, general Occupational Health and Safety as well as provision of leaves. The promulgation of a law such as the Basic Conditions of Employment Act has ensured that these things are not left to chance.

- Job Security: refers to skills mobility. Labour Laws should ensure that the labour force is able to sell their skills on a much larger sectoral and occupational scale. This also relates to depth in terms of Skills Supply. The Skills Development Act is meant to play a significant role in this regard.

- Work representative security: Is about freedom of association and protection of bargaining mechanisms. The Bill of Rights in the constitution, does provide for the right to freedom of association (constitution RSA, 1996). The Labour Relations Act provides a climate for the realisation of this issue.

2.4 Policy implementation research

Since this study is intended to venture into the implementation component, research initiatives in this arena will be looked into.

Reasonable research on policy implementation has been carried out. Research undertaken here includes the following:-

- What guidelines should be put in place to improve implementation of legislation?
- The need to understand the bottom-up approach to implementation.
- Exploration and understanding the environment within which implementation takes place.
- The importance of feedback, a post implementation concept (Weissert, 2001).

Although there has been substantial research, it still isn't satisfactory (ibid).

The period post the 1990's saw an emphasis on researchers embarking on developing theories of policy implementation (Weissert, 2001). However, Cloete and Wissink (2000) pointed out that there are still huge disagreements amongst researchers on outlines of implementation theories.

Actually, there's even a lack of agreement on what are the crucial variables for successful policy implementation.

Largely, these disagreements are on what should constitute successful implementation (ibid). According to Cloete and Wissink (2000), implementation is by far, more complex than initially thought. As put by Bardach (1977:3) in Cloete & Wissink (2000):-

"Its hard enough to design policies that are brilliant and look good on paper. It is harder to sell them to politicians and various constituencies. It is excruciatingly hard to implement them in a way that pleases all."

Generally, implementation is recognised as critical in policy making. However, the analysis of implementation processes has either been neglected or insufficient.
And, as aptly put, the time to undertake research and build a wealth of knowledge on implementation is here and now (Cloete and Wissink, 2000). Research on policy implementation is rarely raised and barely debated (ibid).

According to O Toole (2000), policy implementation as a theme of research has been in and out of the academic circle since 1984. Although this area of research once moved to prominence, it has gone much more quiter since the 1990's (ibid). This is a serious gap, when one considers the number of laws that have been promulgated since 1994.

Actually, O Toole (2000) suggests that the interest has been in abeyance. There is consensus however on the need of much bigger empirical research in this area. In essence, implementation problems are alive and well. This area has not accomplished much as a field of study. In actuality, most research on implementation has been conducted around the USA and a few Countries in Central Europe (O Toole, 2000).
South Africa is in desperate need of locally based research in this area. This is a gap this study will assist to narrow.

2.5 The Employment Equity Act

Since this study has focused on the Employment Equity Act, in terms of its implementation and/or enforcement challenges, it is of paramount importance to reflect on the basis and objectives of its formulation.

The review process undertaken by the International Labour Organisation profiled some prominent labour market problems. Amongst those, was the problem of inequality (Barber, 2003).

Research attests to the fact that there is a marked increase in the participation rates for women in the labour market. More and more women are becoming available for work due to social, economic, cultural etc. changes. Furthermore, more than half of the Economically Active Population is below the age of 25 years (Bhorat, et al, 2001). The above dynamics made it necessary for youth and women in particular, to be afforded an equitable labour market environment. The need to develop the Employment Equity Act was influenced by this, among other things.

Barker (2003) reflected on the sharp income differences wherein Africans earned only 37% of what the whites do. Reducing and eventually eliminating all forms of inequalities remains an extremely important challenge for South Africa. So important that the following is imbedded in the constitution:

"The State may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth (constitution RSA, 1996:7)"

Bhorat, et al (2001) mentioned that the coloured and African women are the most marginalised. They are the lowest earners and the least skilled.
The Employment Equity Act is meant to deal with these and similar deficiencies in the labour market.

In his budget vote delivered on the 23 April 1998, Tito Mboweni referred to the commitment by Department of Labour to eradicate racial and gender imbalances in the world of work. Essentially, the EEA was to outlaw discrimination and promote diversity as well as representativity of the workforce.

Mboweni (1998) believed that effective implementation of the EEA will enhance economic productivity since it is likely to remove undue tensions amongst people. The workplace remained a stark reminder of past discrimination policies. The need to ensure that there is representativity, cannot be over-emphasised.
Interestingly, Mboweni (1998) admitted that effective implementation of the EEA, was always going to be a major challenge. No other law has been met with more opposition. Seven years after promulgation, Mboweni's predictions on the challenges around implementation of the EEA, have come true. Hence the attempt by this study to profile some of those challenges.

In his speech, Mboweni (1998) argued for a workplace that will be reflective of the broader society, across all occupational levels. He further mentioned that the law should ensure that Blacks and women in particular, should aspire to train and occupy positions from which they were previously barred, through repressive laws.

The promulgation of the EEA number 55 of 1998 embraced all the ideals that were articulated by Mboweni. The Act has two fundamental objectives, namely:-

- ☞ To promote and ensure equal opportunities and fair treatment of all workers through the elimination of hurdles that presented as discriminatory in nature.

- ☞ To implement Affirmative Action measures in order to redress the previously disadvantaged in employment. Also, to ensure that designated groups (Blacks, women and disabled people) are equitable distributed across all occupational levels and categories.

Furthermore the Act serves as a tool to urge employers to put in place mechanisms that will increase the marginalised workforce's chances of being equitably distributed across all levels. Measures here should be proactive in that they could be developmental. Tha is, they could build the capacity of the disadvantaged to make them more advancable.

The Act stressed the importance of communication by formulating Employment Equity consultative forums.
In terms of application, the act covers all employers who have 50 or more employees. It also covers employers who may have less than 50 employees but have an annual turnover beyond R500 000.00. (Employment Equity Act no 55:1998)

It is therefore important to continuously reflect on the impact of the EEA. Positive effect can only be realised through effective implementation. The centrality of implementers comes to strong play here. It is for this reason that the study was undertaken. That is, to isolate some of the problems and challenges experienced by labour inspectors when they implement EEA.

2.3 Centrality of implementation agents

Currently, South Africa is in an era of policy implementation (Brynard, 2000). The Department of Labour is no exception. There is no significant literature on implementation issues.

For instance, where does implementation start, and where does it end (Brynard, 2000). There should also be emphasis on cushioning and strengthening the implementation agents.

Brynard (2000) further put forward that the third generation of researchers have successfully argued for implementation to be recognised as critical in the policy making process. Developing countries display a great absence of literature on implementation. To a great extent, literature is borrowed, most from first world industrialised countries (Brynard, 2000).

Although there are implementation problems everywhere, they are assumed to be greater in developing countries (ibid).

It is within this context that this study is being propagated for. It certainly has a place in the policy implementation discourse.

This study was set out to focus on the Department of Labour's inspectors in terms of their challenges. In this context, they are implementation agents.

This section has argued and positioned the centrality of these implementers in the whole implementation process.

Woodrow (1887) cited in Cloete and Wissink (2000) moved for the view that implementation should be an administrative process run by people who are neutral, professional and apolitical. In the DoL, policy implementers are amongst the numerous staff that focus on operations.

Only they have an opportunity to interact extensively and directly with DoL's stakeholders.

De Coning (1995) argues that institutional arrangements have a great influence on the outcome of policy. This also alludes to the manner in which implementers are positioned. In other words, how much emphasis do institutions put on strengthening the muscle of implementing agents?

Brynard (2000) postulates that it should not just be assumed that implementation is bound to happen.

There must be a conscious decision and process to plan for this. It is for these reasons that one needs to be aware of the central role of implementers.

According to Lindblom (1979) quoted in Brynard (2000), in real life, implementation does not run like a well oiled machine. There are implementation challenges.

Brynard (2000) posits that the power to decide policy outcome rests with the implementers. Actually, Lipsky (1978) in Brynard (2000) argues that effectively, policy is made by implementers whom he refers to as street level bureaucrats. This is because they interact directly with beneficiaries and also exercise discretionary powers. I could not agree more.

Smith (1973) points out to the fact that implementation challenges could result from tensions amongst policy makers, policy implementers and target groups. Again, implementers are centrally positioned here.

Street level bureaucrats are central to the study of policy implementation (Lipsky, 1978, in Cloete and Wissink, 2000).

Dearden (2003) emphasises the importance of recognising the centrality of policy implementers and thus capacitating them accordingly.
Often, the importance of street level bureaucrats is underplayed.

Butcher, et al (2000) feels that street level bureaucrats are often neglected and set up for failure. Resultantly, this becomes implementation failure.
The challenges and incapacity of implementers is not adequately addressed. As put by Butcher, et al (2000) street level bureaucrats lack in-depth knowledge of policy contents.

By nature, policy formulation does not consider what implementers need to know to implement policy successfully (Hill, 2003). As a result, policy implementation does not become effective as it puts huge burdens on implementers.
Some of this burdens are due to incapacity. Implementers have the ability to change the desired direction of policy (ibid).

The above arguments support the importance of focusing on people who are policy implementers, which focus, is propagated for by this study.

The study has chosen to focus on specific operational challenges that centre around knowledge of EEA, enforcement hurdles, auxiliary and logistical back up for effective implementation.

It is common knowledge that the DoL has not realised much impact with the implementation of EEA. This study is propagating for attending to the most important component of implementation, the labour inspectors.

As it turned out, the survey conducted profiled some of the important fundamental challenges. These challenges centred around implementation and policy gaps.

Chapter 3

3. RESEARCH FINDINGS

3.1 PRE TEST STAGE

The purpose of this phase was to establish whether the questionnaire was going to elicit the expected responses.

Furthermore, the questions were tested for clarity, unambiguity and specificity.

The responses gathered through this process were consolidated.

On the whole, the outcome of the pilot and actual interviews was very similar.

This phase also assisted in the preparedness of the interviewers. The interviewers got into the actual interview stage with an idea of which questions needed a bit more probing.

It also provided some kind of insight with regard to the duration it was likely to take for each responded to be interviewed.

There was confirmation that the questions were clear and easy to understand. (The analysis herein is attached as Annexure C)

3.2 ACTUAL DATA COLLECTION STAGE

3.2.1 personal data

All in all, ten inspectors were interviews. The entire statistical analysis is attached as Annexure B.

Only 30% were female. 70% of them were male.

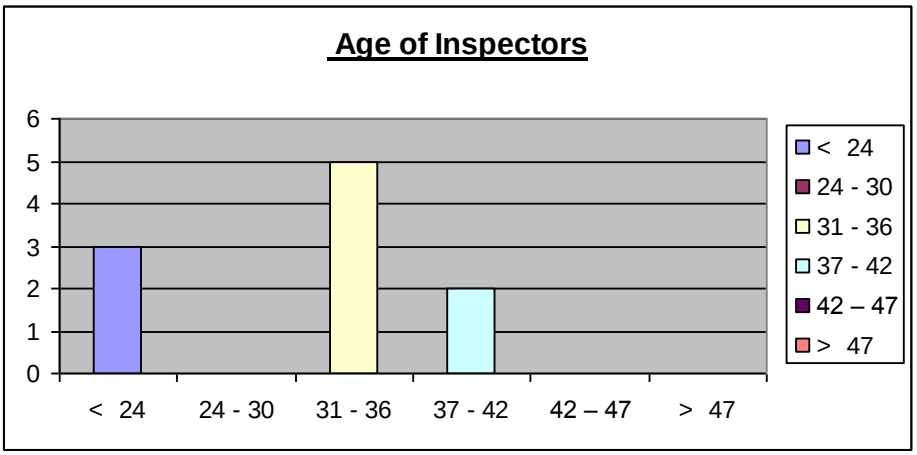
90% of the respondents did not have a problem of divulging their names. Only one person preferred to be anonymous.

Figure “A” attests to the above findings in terms of names and sex.

FIGURE “A”: NAMES AND SEX		
Q.NO.	**NAME**	**SEX**
1	Zweli Khubekha	1
2	Brenda Mhlanga	2
3	M Maseko	1
4	Anonymous	1
5	M Maleswena	1
6	DJ Mkhize	1
7	ST Shipalana	1
8	PE Nhlabathi	2
9	MS Mogola	2
10	GP Masilela	1

GENDER	
MALES	FEMALES
1	2

FIGURE B

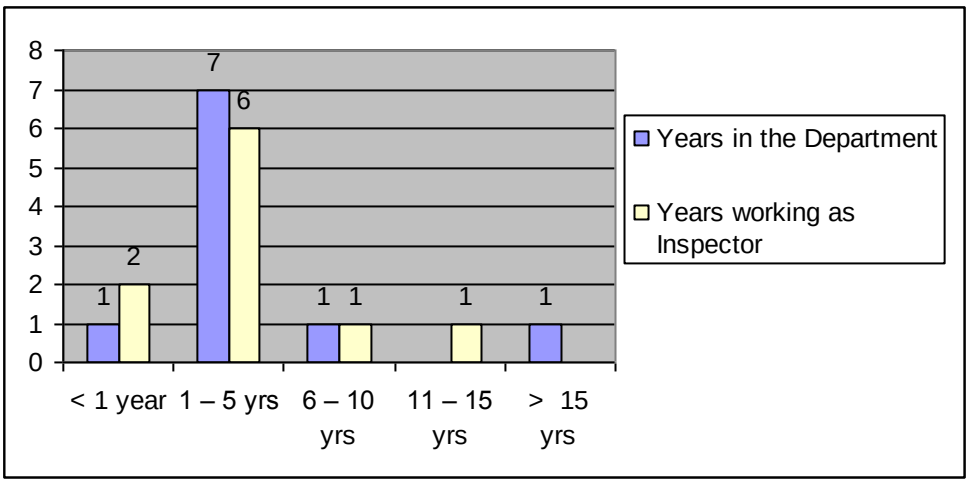


30% of the inspectors are below the age of 24.

50% of the respondents are between the ages 31 – 36.

20% are aged between 37 – 42.

FIGURE C



According to figure C, 70% of the inspectors have been in the Department of Labour for at least a period of 1 – 5 years. This is the most statistically significant period. The other 30% is made up of the following:-

Less than 1 year in DoL ⟶ 10%

6 – 10 years in DoL ⟶ 10%

15 years and above in DoL ⟶ 10%

Figure C further denotes the number of years an inspector has been working in the DoL. The findings are as follows:

1 - 5 years working as an inspector ⟶ 60%

Less than 1 year working as an inspector ⟶ 20%

6 - 10 years working as an inspector ⟶ 10%

11 – 15 years working as an inspector ⟶ 10%

3.2.2 Structured questions

3.2.2.1 how would you rate your knowledge of the Employment Equity Act?

This question was allocated 4 options, namely:

Very good

Good

Average

Poor

FIGURE D

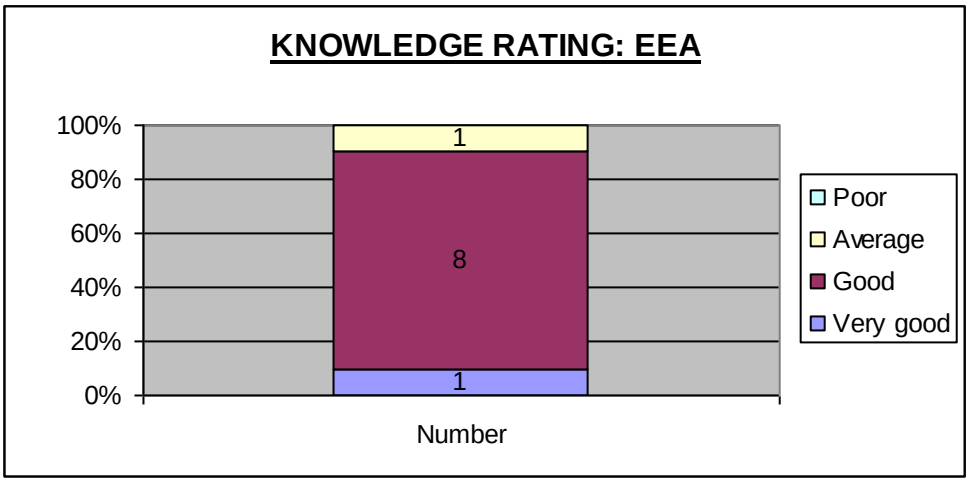


Figure “D” denotes that:-

10% of the respondents rated their knowledge of EEA as very good.

80% thought their knowledge of EEA is good.

10% rated their knowledge as average.

The reasons for this rating were explored and the finding were as follows:-

9 of the respondents said it was knowledge and exposure that shaped their knowledge of the EEA.

2 said it was through training that they improved on their knowledge.
1 said it was so because of inspections conducted and the ability to enforce the law that enabled him/her to have knowledge on EEA.

3.2.2.2 What in your view are challenges around enforcing the employment equity act?

The above question channelled the responses into five categories. Namely:

- ☞ Data collecting tools (Figure E)
- ☞ Enforcement procedures (Figure F)
- ☞ Acquisition and maintenance of tools of trade (Figure G)
- ☞ Administrative issues (eg planning, reporting, etc) (Figure H)
- ☞ Access to employers (Figure I)

In addition, an open ended question was provided since the above categories are not exhaustive. In this instance, the respondence were requested to outline any other area that they would regard as challenging. The question was phrased thus:-
Outline “Any other area of challenge” (Figure J)

The following tables are a presentation of the actual responses.

FIGURE E

DATA COLLECTING TOOLS	
RESPONDENTS	**RESPON-SES**
Rapid change	1
Non availability of tools	1
Time	1
Legal aspects	1
Data no true reflection	2
Lack of information	2
No challenge	5

FIGURE F

ENFORCEMENT PROCEDURES	
RESPONDENTS	**RESPON-SES**
Reporting by employers	1
Prosecutions	1
Ownership	1
Lack of knowledge	1
Training	2
Communication	2
Compliance	2
Lengthy process	3

FIGURE G

ACQUISITION AND MAINTENANCE OF TOOLS OF TRADE	
RESPONDENTS	**RESPON-SES**
Amount paid for official trips	1
Private km become more than official km	1
Process is too long eg. It takes more than 90 days to receive a car	1
Legislation and amendments not received timeously	1
Companies need to be trained on the act	1
Professional person regarding employment equity is not situated at Labour Centre	1
Availability of professional persons	1
Get us cars, computers	3
none	4

FIGURE H

ADMINISTRATIVE ISSUES (EG PLANNING, REPORTING, ETC)	
RESPONDENTS	**RESPON-SES**
Same as challenge under enforcement procedures	1
Unplanned meetings and training	1
To bring people more on board regarding knowledge of the act	1
Proper co-ordination	1
No challenge	6

FIGURE I

ACCESS TO EMPLOYERS	
RESPONDENTS	**RESPON-SES**
The employer's language	1
Agricultural employers are not easy to reach	1
Employers are not co-operatative	1
Employers failed to comply	1
Are not always met due to unplanned meetings and training	1
Policy advice should be linked to the legal requirements.	1
Inspection of government regional offices proof to be a problem	1
Information on the EE plan is required	1
No problem encountered yet	3

FIGURE J

ANY OTHER AREA OF CHALLENGE	
RESPONDENTS	**RESPON-SES**
Financial statements are not available. Our enforcement procedure take long	1
Employers are sometimes not reachable	1
Have a uniformed system of operation from PO to the Labour Centres	1
Budget does not comply with EEA. Monitoring is not entailed.	1
Department should upgrade its employees so that they can be motivated.	1
Clarity in terms of how and when to enforce the legislation eg bargaining councils.	1
Increase number of inspectors	1
No comments	3

3.2.2.3 **Please rate the challenges above in an order of importance (in other words, the most crucial challenge should be given 1st spot, and so on)**

FIGURE K

RATE THE CHALLENGES IN AN ORDER OF IMPORTANCE
☞ Enforcement procedure shorten the processes.
☞ Administrative issues improve on planning and reporting.
☞ Data collecting tools. Lack of computers.

Figure "K" was an attempt to get the respondents to pull out what they thought were the most critical challenges.
The findings are presented as per the figure above.
Only the most frequently occurring challenges were consolidated into the categories as per diagram.

3.2.2.4 **How do you suggest that these (challenges) be handled?**

The suggestions given here were numerous ranging from training to policy reform. The following are some of the responses given:

"Enforcement should be changed – cases should not go to Labour Court but to the Magistrate Court. The process in the Labour Court is very long".
"Inspectors should just take the cases forward after issuing a compliance orders".
"Privatise phones"
"We need recognition as Department of Labour inspectors".
"More training should be given".
"EEA implementation is a specialised field, we should have specialists even at Labour Centre level, not only at Head Quarters".
"Technical support is crucial".
"We need more knowledge on EEA".

3.2.2.5 Are there any other comments/experiences that you would like to share?

In this instance, 60% of the respondents provided information. Their responses are as follows:-

- Inspectors get obstructed by the SAPS and the Department of Justice. The Department of Justice does not want to prosecute with absolute justice"
- "Some employers ignore BCEA".
- None-consistency from Labour Centre to Labour Centre. Clear interaction is there between the LRA and the EEA. Employers don't have knowledge of these legislation."
- "Very rare to be shortlisted as incumbent for advertised posts".
- "A little while ago, an advert appeared in the newspaper regarding EEA. An Afrikaans speaking employer came to the office and wanted to talk to us in Afrikaans, he made the following statement:-
  - "You want me to appoint a black person but there is no white person here who can help me in Afrikaans".
- Interpretation of the act proves to be difficult. It is not the way it should be. At this stage, it is a mess:"

3.2.2.6 Exploration, Open ended interview with the Provincial Management of the inspections and enforcement services Business Unit

The Provincial Business Unit Manager stated that she has been working with the Department of Labour for the past five years. She mentioned that her knowledge and exposure to labour legislation is more than a decade since she had been working in a trade union for 10 years prior to joining the Department of Labour.

In her opinion, there seems to be a general understanding amongst employer of what Employment Equity Act is all about.

She maintained however that this knowledge is not matched with compliance. She confirmed that compliance with the Act is very low. Especially with regard to substantive compliance. In other words, a vast majority of employers comply with EE procedurally. However, they have not gone far enough to put their plans to action in order to achieve their targets. Inspectors are also unable to enforce procedural compliance due to lack of knowledge and skills.

In her view, black people in particular, are unable to take full advantage of occupying senior positions because they lack the necessary skills and experience. She confirmed that the enforcement procedure is too long. Also, the labour court takes forever to finalise cases. She mentioned that the labour court is sitting with huge backlogs, some cases date as far back as 1998. The Labour Court seems to have a huge staff shortage and they are therefore unable to be effective.

On administrative issues, she mentioned that the integrated checklist that is utilised tends to lose EE related issue. This contributes in carrying out shallow inspections around EEA.

She mentioned that the EEA database is inadequate and may therefore not be used effectively.

On tools of trade, she maintained that inspectors continue to experience cash problems. Also, there are policy issues that are an impediment to efficiency. For example, inspectors are obliged to ensure that they travel 70% for official purpose and 30% privately in their vehicles.

This is a policy issue. In some cases, it is not possible to achieve this since the span of travelling is narrow.

In conclusion, she suggested that more EEA dedicated inspectors are required at Provincial and Labour Centre levels. There should be more training. Policy guidelines on substantive compliance should be provided as a matter of urgency.

Chapter 4

INTERPRETATION AND ANALYSIS OF RESEARCH FINDINGS

1. STUDY IN PERSPECTIVE

One cannot venture into analysing and interpreting the findings of this research without re-focusing on the major thrust of this study.

As alluded to in the literature review, this study is arguing for the recognition that the policy making process is being hugely compromised by an ineffective implementation strategy.

Akojee (2005) mentioned that the government of the day has established a clear development vision that should be attained by 2014. Broadly, this vision is aimed at growing the economy and narrowing the income inequalities as depicted by the gini co-efficient. Actually, Akojee (2005) argues that the gini coefficient has actually increased as at 2003 to 0.57. A gini co-efficient of 1, depicts perfect inequality in terms of income.

The National development vision 2014 includes, inter alia, the accelerated improvement of Employment Equity. The years 1960-1970 saw a shift in favour of skilling and capacitating Black workers (Akojee, 2005).

The post apartheid policies focused also on Active Labour Market Policies (ALP). The Skills Development Act and the Employment Equity Act are such examples (ibid). According to the secretariat report delivered at the 7th National congress of September 2004, the following was said of the Employment Equity Act:

“This is one piece of legislation that has indeed caused a stir” (page 18). The report continues to state that this piece of legislation has been met with extreme resistance. Employers either refuse to comply, or they do so grudgingly, (ibid).

Clearly, this demonstrates an implementation challenge. The report went on to pick on tensions at organised labour level. White unions are said to be opposing its implementations whereas Black unions are embracing the Act.

One can't talk of government without making constant reference to the African National Congress (ANC). In its National Policy Conference draft resolutions, the ANC reiterated its vision towards achieving a prosperous, equitable, stable and democratic society. Also, they emphasised decent work, especially qualitatively. Furthermore, there should be improved equality in ownership, skills and access to opportunities.

The constitution of the Republic of SA (1996) makes provision for the protection of fundamental rights. Section 2 of the constitution articulates the basic rights that all South Africans have. The bill states rights to issues such as housing, health, social security and education. The tone of these rights suggests an underpinning principle of ensuring that citizens at large are afforded the opportunity to participate fully and meaningfully, in the economy of the country. Any piece of legislation should therefore play an anchor role with regard to actualisation of the constitution.

It is in this context that the Department of Labour instituted various laws, to contribute towards the attainment of constitutional objectives.

The analysis of the research findings will purely focus on the inspector of the Department of Labour as implementing agencies. A very small component of the analysis will be dedicated to the Provincial Management's perspective of implementing EEA.

1. ANALYSIS OF FINDINGS OF THE PRE TEST STAGE

The pre-test phase was a superficial and shallow set off towards the more comprehensive study that followed. Questions asked were able to elicit the responses that were awaited for. The researcher is already part of the establishment of DOL. She is therefore aware of critical implementation challenges that the implementers are faced with.

This phase served to confirm that, indeed, there were challenges that inspectors have to deal with on a continuous basis.

This phase also assisted to ensure that interviewer bias will be extremely minimal since researchers that were utilised were neutral. In other words there was no direct relationship between the interviewers and the respondents, which could have had undue influence on the whole study.

The fact that the respondents that were piloted on answered all questions confidently, confirmed that the questions were concise and unambiguous.

The outcome at this stage, strengthened the outcome of the entire survey since there were no contradictions on findings.

It was very useful to have undertaken this phase since it assisted on improved interaction between interviewer and respondents. Interviewers knew exactly where to probe and emphasise.

2. ANALYSIS AND INTERPRETATION OF THE ACTUAL RESEARCH FINDINGS

2.1 Personal data

The inspectors are dominated by males at 70% and only 30% females. This is a provincial picture. Anecdotal evidence also prove that this is indeed a national trend. This is ironic since at this early stage of the analysis, one can already pick up that this is a male dominated occupation. There is non-compliance also in terms of the Employment Equity Act. The challenge here cannot be simply overlooked.

According to the Annual Report (2002), presented by the Commission for Employment Equity (CEE), there are several barriers to the effective implementation of Employment Equity Act. The one barrier that needs to be mentioned here is lack of succession and experience planning.

Already, one can see that even the DoL itself is presenting a weak building base in terms of female representivity as far as the inspectorate is concerned.

The questionnaire did not venture into asking about the state of disability within the inspectors or lack thereof However, representivity in terms of Youth and race is good at 80% and 90% respectively. It would have been interesting to assess the level of representivity of one of the designated groups, viz, the disabled people.

Since the sampling was done scientifically, utilizing the random Sampling method, the above analysis on findings can be generalised to the entire population of inspectors. On average, the bulk of the inspectors are aged between 31-36 years. Effectively, 80% of the entire inspectorate is at lest 36 years old or younger. The Youth structures defines a young persons as anyone from 18 years up to the age of 35 years (source). Although the age categories were bracketed in a range of 5 years, it would have been interesting to see exactly how many people are between 18 – 35 years. On retrospect, the cut off age of 35, will have provided conclusive evidence of the inspectorate age in relation to the definition of youth. However, one can still conclude that inspectors are largely young, Black and male. It is difficult to ascertain why this is so. For example, is it because skills that are needed here (engineering and related fields) are still largely pursued by males? Is it because there is a strong male presence in the current supply of labour? Actually, according to the Labour Force Survey (September 2004), of the entire working population in all the sectors in the formal economy, 58.16% are men and 41.5% are female. In view of this, the argument that there are more working men than women, is justifiable.

Furthermore, the findings showed that 70% of all the inspectors have been in the Department off Labour for a period of 1-5 years. Of these people, 60% have been working as inspectors for periods between 1-5 years.

In this case, the age range used has actually concealed some of the challenges that the DoL is grappling with.

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For example, to what degree does DoL retain inspectors; especially at various levels. It could be that the 60% that has reported to being in the position for 1 – 5 years, are mostly in the 1 – 2 years cut off.

According to the Human Resources report of the Department of Labour in Mpumalanga, at least, 75% of all the inspectors in the Province have been in those positions for a period of a year or under. There has always been concerns, and indeed these are growing concerns that there is a very high turnover where inspectors are concerned. Generally, the entire DoL battles to retain inspectors for various reasons. This study will not venture into this dimension of analysis.

It is a common belief that one needs a period of at least six months for one to be able to make inroads into their work. The years of experience in this instance are crucial since they will help in understanding whether implementation challenges have anything to do with the number of years that inspectors have stayed in their job.

On the surface, it has always been a problem to ensure continuity, especially with regard to the work of inspectors. These group of people seem to come and go. As soon as they are trained and ready to effectively implement policy, the get snatched. Invariably, a new group enters the inspectorate stream. Then the DoL has to train and develop them. This cycle seems to go on and on. It will be interesting to develop a thesis along this line.

Suffice to say that the movement of staff here, makes it extremely difficult to build an effective team of inspectors who will be able to ensure that legislation, the EEA in particular, is properly implemented.

3.2.2 **Structured questions**

3.2.2.1 **How would you rate your knowledge of the Employment Equity Act**

This question presented the respondents with four options:

Namely: Very good
Good
Average
Poor

80% of the respondents thought that their knowledge of the EEA is good.

The idea here was to rate the overall knowledge of the EEA. That is, knowledge on definitions, purpose, interpretation and application. Also, prohibition of unfair discrimination, Affirmative Action, the Commission for Employment Equity, monitoring, enforcement and legal proceedings. Furthermore, knowledge of the general provisions of the EEA. According to the Inspections and Enforcement Strategy (2000) every inspectors should be able to conduct an integrated inspection. These people get trained on the entire contents of all the Acts to ascertain that they are confident and able to enforce the laws as they should.

Knowledge in this instance, was probed to confirm that it means what is already depicted here. As a result, an answer to the affirmative merely confirmed an in depth knowledge of rules and procedures as contained in the EEA.

Knowledge here also speak to strides that were taken by the employer in terms of delivering functional training. What shapes knowledge is also experiential training. 90% of the respondents mentioned that their rating of knowledge as good and very good, was due to experiential learning and exposure. This could be inferred to mean that as they go out to conduct inspections, they grow in knowledge. In addition, whenever they get a chance to interact with their peers, they also benefit from this type of learning.

Interestingly, only 20% saw their knowledge of the Act as a result of formal training. It could be that there is no common understanding of what training is. On the whole, functional/on the job training is hugely underrated. People would only regard formal, certificate bearing training as something that is worthy of being mentioned. Whenever people attend workshops or conferences, these do not get classified as training. It is also difficult to measure growth in knowledge. These things remain dodgy and sometimes eroded due to overuse. Although the study did not necessarily get into too much detail, growth in knowledge could be confirmed by improved impact on the part of the inspector. One would look at things such as number of inspections conducted, on a continuum, so that a trend can be depicted. Beyond that, there has to be quality assurance. In this instance, the immediate supervisor will have to come in since there are always quality assurance standards that are built in to assure that inspections conducted are up to the prescribed procedures and standards.

3.2.2.2 **What in your view are challenges around enforcing the Employment Equity Act**

The question posed above was actually a leading question. There is an unopposed stance generally, that there has been insurmountable challenges in implementing the Employment Equity Act.

In a newspaper article of “The Star” of 14 September 2005, workplace. It was mentioned that compliance with the employment Equity Act has been patchy. This statement is being made close to seven years after promulgation of the Act.

This question was deliberately designed to channel responses into four categories. Namely:

- Challenges around data collecting tools;
- Challenges around the enforcement procedures;
- Acquisition and maintenance of tools of trade;
- Challenges on administrative issues such as planning; and
- How accessible are employers.

This was also backed up by an open ended question that was meant to make the categories as exhaustive as possible.

3.2.2.3 **On data collecting tools**

50% of the respondents mentioned that they do not have any challenges on this issue. The other 50% mentioned issues of lack of continuity of data collecting tools. Somebody also mentioned that there are no tools whatsoever.
Insufficient information, and non-authenticity of data collecting tools were also cited as reasons for challenges. There was a reflection on the amount of time it takes to handle these tools and the legal aspects attached to them.

The fact that half the respondents saw no challenges here is an eyebrow raising issue. The DoL, nationally, has been grappling with utilization of data gathering tools that are standardised. This has not been achieved. Especially questionnaires that are meant to capture primary information/data. The practise is that these tend to differ from province to province. Even within the province itself, there seems to be differences from region to region. This item also links directly with issues of authenticity of data. In essence, if data collecting tools can be easily manipulated, there is always a risk of the human factor creeping in were data will the manipulated, often consciously, to provide a distorted picture. To say therefore that there are no challenges in this instance, is highly questionable.
Furthermore, there has been problems around coming up with a complete designated employers database.

Due to incompatibility of systems in the Department of Labour, there is vital information gaps that makes enforcing EEA doubly difficult. For instance, the unemployment Insurance Fund database has in excess of 100 000 employers. The Employment Equity database has just over 4000 designated employers nationally.

At the formulation stage, the issue of linking these systems was not explored with the result that DoL is sitting with a seemingly minute proportion of designated employers.

Furthermore, the employers that are on the EE database, are those that have originally submitted reports. The vast number of dissenting employers are still at large.

The fact that there is not continuity in the utilization of data collecting tools is not far fetched. The DoL is in the process of overhauling its systems so that they are effective. This has been a period of trial and error wherein tools of collecting data get updated all the time. A certain amount of stability is needed to provide also for a strong analysis base. Trends can only be realistically determined when there is an element of consistency.

3.2.2.4 **Enforcement Procedures**

In this category, all the respondents cited at least one area of challenge. The issue of prosecutions, compliance and lengthy process can be put together to speak to enforcement mechanisms. The concerns depicted here are not unfounded. As at 2002, employers were flouting the EEA to a large degree.

Of the 77% Black employees, only 25% were in top management. Effectively, the 25% can be broken down as follows:-

- 8% Africans
- 13% Coloureds
- 4% Indians

As far as senior management is concerned, only 20% were Blacks, namely:

- 10% Africans
- 5% Coloureds
- 4% Indians (Commission of Employment Equity Annual Report 2002)

In 2003, the picture was pretty much the same. Only 19% of top management were Blacks and only 22% of Senior Management were Black. The workforce in terms of recruitment, promotions and termination, was disappointing for Blacks. There were evidence that these movements were never exploited to improve on equity figures (commission of Employment Equity Annual Report, 2003).

With the emergence of the above picture, one would expect to see employers that are not complying being prosecuted. According to the EEA, (1998) an employer that violates prescripts of the Act could be fined a minimum of R500 000.00. It is my belief that one such penalty, can act as a deterrent to potential violators of the EEA.

There is a generally agreed upon position in the Department that the enforcement procedures are self defeating.

For starters, an employer who does not comply with the prescript, is given an undertaking. This is preceded by bouts of advocacy, that on their own, also take up some time. The workplace is then revisited where after a prosecution may be recommended. Since prosecutions can only take place at the Labour Court, there is a huge backlog. The Labour Court has administrative and capacity problems.

Some cases are more than seven years old. For effective enforcement, some of these procedures need to be revisited, especially at policy level.

The other challenges raised around reporting by employers, ownership and communication, all centre around the whole issue of self regulation.

The Department of Labour will ideally, like a scenario whereby employers self regulate. A view has always prevailed that the DoL's inspectors are seen to be policing the laws.

Some respondents mentioned that there needs to e more training on enforcement procedures since there is lack of knowledge. This does come as a surprise, especially with reference to an earlier response that showed that almost all the inspectors rated their knowledge of EEA as good, with 1 rating of very good. Also, the emphasis of compliance with EEA at this stage is focusing exclusively on procedural compliance.

Procedural compliance includes inter alia, the following:-

- Consultations with workforce, through the Local Employment Equity Forum
- Objectives per year
- Affirmative Action measures
- Numerical goals
- Monitoring and evaluation
- Submission of a report to the Director General of DoL (EEA of 1998)

3.2.2.5 **Acquisition and maintenance of tools of trade**

Although the expectation was that the responses in this instance will only be limited to the reference to physical tools of trades such as cars and cell phones, some people ventured further into the need to have technically oriented persons being stationed at the points of service delivery.

The frustration is both on the policy issues as well as efficiency on the side of the human element. According to policy, cars should be utilised a minimum of 70% of the time, for business purposes only. The remaining 30% may be dedicated to private use. In Mpumalanga for instance, more than 50% of the inspectors battle to meet the 70/30% criteria. These people are continuously reminded to stick to the contractual agreements in this case. Since in other cases it seems to be virtually impossible to meet this criteria, people end up chasing kilometres at the expense of quality. This issue needs re-visiting at policy level.

Other factors such as the amount of money paid for kilometres travelled also border on policy. This is where integrated governance comes in. the DoL is not responsible for prescribing amounts of monies to be reimbursed for travelling purposes. This is the core responsibility of the Department of Transport. For policy to be effectively implemented, all key stakeholders should, as much as possible, create an enabling environment. The salaries given to inspectors are amongst the lowest in the DoL.

Most of the time, these people end up desperate to make ends meet. There are instances wherein the inspectors cars are turned into little taxis. Inspectors will tend to provide transport to hikers en route to their inspection destinations. The danger is, they do put their own lives at risk, given the rates and nature of crime in the country. In addition, they tend to compromise on their work, with a divided focus to also score a quick buck.

The human inefficiencies that tend to creep in when cars and cell phones have to be procured are also worrisome. The procedure is inherently cumbersome. This is further compounded by the half hearted commitment that the procurers sometimes render. Often, inspectors have to wait for some time to get their tools delivered. On the other hand, acquisition of tools of trades becomes impossible when beneficiaries are blacklisted.

From time to time, DoL's inspectors have been perceived to be conniving with employers to underplay compliance. Some organisations and civil structures have gone so far as to accuse DoL inspectors of accepting bribes.

90% of the time, however, people are not prepared to come forth to bear testimony to these allegations.

DoL does provide for other tools of trade such as computers. The Departments needs to be commended on its attempt to keep abreast with technological developments. As recently as this year, DoL is piloting the utilisation of palm tops for inspectors. This device is meant to provide inspectors with an out of office, portable computer that should enhance implementation. The process is still at a piloting stage. Ones successfully piloted, there will be a massive roll out of the instruments to every single inspector, nationwide,

The issue of having a technocrat in EEA at a provincial level, is indeed a useful option.

Most specialists tend to be placed at Head Office. They only provide technical support to provinces. When one looks at emerging implementation hurdles, it does make sense to capacitate service delivery arms.

3.2.2.6 **Administrative issues, eg planning**

On administrative hurdles, 60% of the respondents mentioned that they did not have any. What is worth mentioning here is that 20% of the inspector complained about impromptu meetings and training. What was also mentioned was the issue of proper co-ordination.

One must point out that from time to time, there does seem to be a disruption of planned activities owing to workshops or other activities that were not properly co-ordinated. However, this occurrences don't seem to be to a degree that could be viewed as being out of hand.

The effect of administrative issues on policy implementation, is not of a significance that could be bothersome. The disruptions levels, although unpleasant, are not necessarily weighing too negatively on the execution of duties.

What is of interest is that one of the respondents picked on enforcement procedures as an issue with regard to administrative hurdles. There has always been a perception that enforcement procedures are an administrative nightmare since there is a lot of paperwork involved. This challenge does appear to be real. However, on the basis of this study, it does not seem to be a big issue. It did receive prominence on the question raised earlier on with regard to challenges picked up on enforcement procedures.

3.2.2.7 **Access to employers**

In analysing the findings on the above category, one should present broad themes that are presenting here, namely:-

- Communication access
- Sectoral access
- Lack of access due to administrative and logistical issues

On communication access, what is being depicted here is that language does present itself as a barrier to effective communication. Whether this is deliberate or genuine, on the side of the employers is not conclusive. What has been found out is that some employers will pretend not to understand English with an aim of getting away with non compliance.

In these instances, even the provision of a piece of legislation in a preferred language does not seem to assist.
These particular employers will insist on communicating only in a language of their choice. A useful solution is to get inspectors to speak a number of languages. Although this seems easy enough, it is often difficult to acquire in real life. All these issues only succeed in slowing down effective implementation.

On sectoral access, inspectors mentioned that it is not easy to access employers in the Agricultural sector. This has been a sore area for some time in the Department of Labour. It has been very difficult for inspectors to access some of the farms. Some farmers will use the criminal intents that have resulted in waves of murder and robbery as a deterrent. Thus refusing even inspectors entry unless they made arrangements long in advance or are accompanied by the police.
More often than not, it will take forever for such farms to be inspected. When finally an inspection takes place, one may not rule out the possibility of window dressing since the employer has arguably had more than enough time to prepare for such. Again, effective implementation gets compromised.

One of the respondents also mentioned that inspection of government regional offices proved to be a problem. I can only infer that this is due to the fact that a regional office may fall out of the designated employers list due to its numbers.
For instance, some regional offices may be having less than 50 employees, although nationally and provincially, they could be making the threshold. It is not evident whether the sectoral access in this case, may be due to any other issue.

On the administrative and logistical issues, access may be influenced by the availability of all parties for inspections purposes. Some employers may simply be unwilling to co-operate whilst others may be thrown off schedule by unplanned meetings and training, on the side of the employer. It is evident that proper and intense planning is necessary for effective implementation to take place.

3.2.2.8 **Any other area of challenge**

In this instance, only additional and new challenges will be looked at. The tendency was for respondents to raise issues that were already touched on, probably for the sake of emphasis.

It was mentioned that employers who could be designated due to their income threshold are not always willing to provide their financial statements.

It should be borne in mind that when the DoL inspectors go out, they conduct an integrated inspection.

In other words, they have a check list that contains all the pieces of legislations that are administered by the DoL.

Unless an employee is on the database of the EEA, he/she may not be designated. In this instance, inspectors would require a financial statement, especially where the numbers of employees is below the 50 that is prescribed. In a sense, there seems to be an element of voluntary compliance with the EEA.

What was also picked up was the whole issue of lack of uniformity of systems of operation at both the provincial office and the labour centres. What one will add here is the fact that this lack of uniformity, is apparent even at the level of the national office. The disintegration of systems has already been discussed extensively. An improvement in this case can only enhance the implementation of the EEA.

The issue of remuneration in the form of upgrading employees was also mentioned. The suggestion is that inspectors seem to be demotivated due to lack of recognition on the part of the employer.

The issue of upgrading lower level staff in general, and inspectors in particular has always been raised sharply in DoL. There appears to be a political and administrative will at higher levels. However, implementation is yet to be realised. Whether this will automatically result in improved service delivery, remains to be seen.

According to the Performance Management Policy of the DoL (2001), it is desirable to recognise outstanding behaviour and reward accordingly.

The policy does however, discourage monetary rewards as the primary motivator.

I am of the view that upgrading alone, may not be enough to ensure commitment. Social reinforces such as affirming people should have a role to play in this instance.

There was also a feeling that the number of inspectors should be increased. In this instance, how many inspectors will be enough? The truth of the matter is that resources continue to dwindle.

It is unlikely that the number of inspectors could drastically increase. Furthermore, the DoL is more in favour of employers who will self regulate.

This approach alone does not tally with introducing a sudden increase in the number of inspectors. The question here may well be, to what extent does innovation take place so that those inspectors in the DoL's employ are utilised maximally.

3.2.2.9 **Putting the challenges in order of importance**

In this instance, what was apparent was that inspectors opted for enforcement procedures to be shortened. This was the most crucial hurdle. Indeed, if procedures were to be shortened, it will undoubtedly increase the pace at which cases got handled and thus the pace of recommending for a prosecution. However, this may not necessarily lead to improved service delivery since prosecution challenges, outside the DoL, will still prevail.

The issue of improving planning and reporting came second. Planning, will be to implementation what reporting will be to monitoring and evaluation.

Both are equally important. Debunking the bottlenecks here can only improve effectual service delivery.

The last issue that was strongly raised was on data collecting. Again, this is important. Especially for the purpose of effective analysis of impact of the Employment Equity Act in the Labour Market.

3.2.2.10 **Suggestions on how to handle challenges**

In this case, some useful suggestions were put forth. How about increasing the inspector' powers rather than taking cases to the Labour Court? This issue can be explored at a policy formulation level. Also, it is not just a case of policy alteration. It has structural and systemic implications. The suggestion that cases should go to a magistrate rather than a Labour Court, may not be feasible. Magistrate and Labour Courts are two different competencies. They are thus differently resourced and capacitated in relation to their core business. What might need to be explored is how to improve service delivery at Labour Courts. A proper capacity analysis should be able to elevate implementation challenges that these courts face.

On providing more training, one would caution that training should not be seen as a panacea for every implementation challenge. In fact, DoL has spent a lot of money on training programmes that are relevant to specific demands.

There was also a suggestion of privatizing phones so that it should not be too obvious that DoL officials are calling.

This is something that can be achieved without any hassles. Whether it will assist in improved service delivery, is another issue.

The suggestion that the implementation of EE should be properly provided for by availing specialists at a Labour Centre level is a sound one. Technical support is surely crucial, but it may not be enough if a specialised workforce is not deployed at implementation level.

4. EXPLORATORY INTERVIEW WITH THE PROVINCIAL MANAGEMENT

What this interview achieved was confirmation of issues raised by the inspectors. Almost every single item was confirmed. Especially noteworthy is the issue of enforcement procedures and data collecting tools that are not user friendly.

There was confirmation that compliance levels to EEA were very low. Actually, they are currently just on complying with procedures.

Chapter 5

5. CONCLUSION AND RECOMMENDATIONS

5.1 Core of findings

As the study draws to a close, it is important to reflect on the core issues. This cannot be done effectively unless one refers back to the fundamental aims and objectives of labour legislation. It was argued that the past political and institutional arrangements stifled growth and development of certain racial groups. It was also put forth that the country as a whole was affected by laws and programmes that promoted discrimination. They also fostered vulnerability and exploitation. There was also rifeness, which still persists, of inequality, particularly in terms of income and access to opportunities. This research has set out to argue that South Africa still faces a lot of policy implementation challenges. More than five years after promulgation of most labour laws, the picture in the labour market looks pretty much the same. Unless the policy implementers are equipped and placed in a conducive and supportive environment, there will not be effective policy implementation.

The EEA was pulled centrally to demonstrate a small area of implementation failures. As per the interpretation and analysis chapter, it was further put into perspective the challenges that make implementation of EEA a nightmare.

It is this context that actual EEA failures will be looked at.

5.2 Implementation failures: EEA

The Department of Labour promulgated the EEA with an aim of addressing past imbalances in relation to access to all levels of employment. Specific designated groups that were previously marginalised were earmarked for advancement and maximum participation in the economy. Affirmative Action was put in place as a tool that would facilitate and fast track representivity in line with the national demographics (EEA, no 55 of 1998). Furthermore, DoL launched the code of good practice on the employment of people with disabilities on the 19 August 2002. Essentially, these are a guide to employers and trade unions on promoting equal and fair treatment for people living with disabilities (Commission for Employment Equity Annual Report, 2002). DoL also developed and availed technical assistance guidelines for the management of HIV and AIDS in Workplaces (Ibid).

Seven years after promulgation, there has been very little shift on the attainment of representatively in the workplace at all levels. The guiding goal here is the national demographics of the Economically Active Population. In the literature review, it was firmly put that the promulgation of the EEA was undertaken to promote representivity of the workforce across all levels and occupational categories.

As at March 2005, the following was the picture in relation to the Economically Active |Population (EAP) nationwide and by sex:-

FIGURE L: EAP

SEX AND POPULATION GROUP	MARCH 2005	%
MALE		
Black African	6448	72.4%
Coloured	908	10.2%
Indian/Asian	326	3.7%
White	1206	13.5%
TOTAL	**8906**	**99.8%**
FEMALE		
Black African	5381	73.9%
Coloured	785	10.8%
Indian/Asian	187	2.6%
White	915	12.6%
TOTAL	**7276**	**99.9%**
BOTH SEXES		
Black African	11834	73.1%
Coloured	1693	10.5%
Indian/Asian	516	3.1%
White	2121	13.1%
TOTAL	**16190**	**99.8%**

Source: Labour Force Survey, September 2000 to March 2005.

According to the above table, the largest percentage of the EAP is that of Black African females at 73.9% followed by their male counterpart at 72.4%. The least are the Indians/Asians, both sexes.

According to the census 2001, just over 5% of the population are living with various types of disabilities.

In terms of the Labour Force Survey (09/2000 – 03/2005), in 2000, 55,8% of people in more skilled occupations were men against 44.2% of women. In 2005, the gender gap was narrowed insignificantly to 55.2% of man in more skilled jobs and women representing 44.8% in skilled job categories.

The literature review reflected on the fact that there are more women than men who are getting into the labour market. The fact that women are underrepresented in this instance, attests to the lack of impact with regard to implementation of EEA thus far. The commission for Employment Equity Annual Report of 2002 revealed the following:-

In <u>top management,</u> the figures were as follows:-

- 25% Blacks → 8% Africans
  13% Coloureds
  4% Indians

  75% Whites
  12% Women
  88% Men

In <u>Senior management,</u> the figures were as follows:-

- 20% Blacks → 10% Africans
  5% Coloureds
  5% Indians

  80% Whites
  18% Women
  82% Men

The aforementioned figures were depicted from 2 369 designated employers reports.

The trends were pretty much the same on legislations. Overall, only 0.9% of the employees were people with disabilities. The report showed that the highest levels of representations were found in government departments. The private Sector was trailing behind.

The CEE's annual report of 2003 continued to show vast areas of non-compliance. In 2003, 6 990 reports were received covering 2 605 729 employees. There was limited improvements. Blacks occupied only 19% of top and 22% of Senior management positions. Only 14% and 21% of females were found in top and senior management respectively.

The report further confirmed that females tend to be clustered in the lowest categories in the professional and technical categories. Disabled people claimed only 1% of all recruits. On the whole, the reports affirmed to weaknesses in the implementation of Employment Equity Act.

A study done by the University of Stellenbosch (2002) on compliance with EEA at centres of higher Education and Transformation showed that by and large, equity targets have not been achieved. Where there has been sustained improvement, it could be attributed to excellent development and retention strategies. The study however showed no data at all on staff with disabilities.

In his speech at the Harold Wolpe Memorial (8/06/05) Willie Madisha, the COSATU president asked the following question on EEA, amongst other laws:

"Are these laws really changing SA into a non racist society wherein wealth is distributed on merit?"

He pointed out that SA is still a long way off from realizing its goals. He further argued that EEA was only benefiting a few. He articulated that only 40% of employer were complying procedurally with the EEA.

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Du Toit (2005) mentioned that there has not been any transformational progress at workplaces, to speak of since 1994. Instead, there has been a marked failure on achieving greater equality in SA.

He further mentioned that the implementation of Affirmative Action (AA) measures has failed.

In a briefing in Cape Town (2003) Minister Mdladlana referred to unacceptable levels of compliance with the EEA. He emphasised the importance of partnering in order to ensure that the spirit of EEA, becomes a reality. A report by Luphondwana and Furguson (2001) highlighted the criticality of affirming women especially through the EEA.

According to the South African Human Rights Commission Report (2002), issues of equality attracted the most attention. Complaints on equality issues were the 3rd highest in 25 categories.

On the whole, internally generated reports of the DoL affirm that compliance levels range from about 30% - 70%. Exclusively, this compliance speaks only to procedural compliance.

It is of paramount importance for employers to move to substantive compliance which is the real thing.

5.3 RECOMMENDATIONS

Although the survey itself did not venture into determining the impact of EEA, problems faced by implementation agents, no matter how big or small, are most certainly going to contribute to lack of impact. The argument is, if these are not addressed in a deliberate and focused way, there will never be effective implementation. It is my undertaking that all the hurdles reflected on by the labour inspectors as a sore challenge, need to be taken seriously. There is an inferred cause and effect relationship between effective implementation and impact. As a result, the recommendations that follow are in the spirit of addressing some of the implementation failures.

The recommendations have been clustered in four broad themes. Namely:-

- Policy interventions
- Process
- Co-operative governance
- Management issues

5.3.1 Policy interventions

The trend on both the CEE and the DoL generated reports show that the clubbing together of Blacks as a broad band is presenting with unintended challenges. Generally, there has been an improvement on the securing of Blacks into positions that were historically reserved for Whites. However, it has since emerged that the Coloureds and Indians are favoured above the Black Africans. This trend is defeating the purpose of the EEA. As aptly put by Akoojee, et al (2005), the Segmentation in the Labour Market remains relatively intact.

There is therefore a need at policy level to further disaggregate the Black category so that the issue of Africans can be addressed.
In addition, the South Africa Human Rights Council has established that in the African category itself, there are a number of Africans who are non SA, who have been affirmed. Clearly, a policy directive is needed to provide guidance on how this issue should be handled. Especially in terms of monitoring and evaluation of progress.
According to Naidoo(no date), the whole debacle around EEA has failed to explore deep sitted equity problems. Namely, the quality of the equity.

In my opinion, there has to be policy intervention on strengthening equity issues by attaching quality to it. For argument sake, there are people who have been put in top or senior posts as tokens for the sake of making up numbers. When one considers value adding in terms of productivity and indirectly, economic growth, one find this thing lacking.
Companies should be coerced to build in qualitative measures that will ensure that there is indeed deep growth.

Inspectors complained extensively about the length of the enforcement procedures. DoL should look into reviewing this at policy level. An emphasis could be placed on advocacy, with an understanding that employers will only be inspected at a particular time. There should be an immediate penalty for failure to comply.

DoL should also look into enforcing the Skills Development Act (SDA), which is complementary to the EEA. This argument will be developed further later on. However, at Policy level, complying with the SDA remains voluntary. The enforcement of this law is long overdue.

As a matter of policy, implementers of the law should be able to communicate effectively in the languages that are dominant in a particular area. This issue needs critical policy attention so that even at recruitment level, emphasis is placed on this. Furthermore, training can be invoked to close various gaps.

5.3.2 Process

I will recommend the speeding up of an integrated System that will enhance the EEA database, inter alia. Indeed, there is recognition and buy in on this issue in the DoL's leadership. Furthermore, there has to be a concerted effort towards ensuring that there is a viable database for employers living with disabilities. This issue may need the involvement of other entities such as the Disabled People of South Africa, Disability desks, statistics generating bodies etc. The emphasis is on having a database of disabled people to speed up attraction and recruitment of such.

There should be concerted efforts towards ensuring that there is self regulation. A reinforcement mechanism could be put in place to recognise and reward complying employers publicly.

There should be improved communication. This should be apparent, especially at implementation level.

The DoL needs to move to a phase of ensuring substantive compliance. Ironically, evaluation of the EEA tends to be skewed towards actual impact when actually, what is being enforced on the ground is procedural compliance.

5.3.3 Co-operative Governance

Addressing imbalances that have accumulated over decades is not going to be a quick fix. There is always going to be a need to deal with this at a formative stage. Naidoo (no date) raised some issues that have a direct bearing on ensuring that EEA is realised.

He mentioned that rural students are ill equipped to deal with realities they are faced with at higher institutions of learning. The education system in the former model C and private Schools is superior to traditionally black schools. It is my view that it is not only rural students who suffer, but a vast amount of those that come from townships that are exclusively Black. Naidoo continues to say that career guidance is either lacking or non existence, in such schools. Already those pupils are in a poorer position to take advantage of senior/top posts, later on in their lives.

He further postulates that Recognition of Prior Learning (RPL) is poorly effected due to poor human resource capacity, inter alia. Furthermore, students from disadvantaged backgrounds don't have the prerequisite knowledge, skills and attitudes (ibid).

It is therefore imperative for the Department of Education (DOE) to play a critical role. The Human Resources Development Strategy that is driven by both DoE and DoL, is an important requirement in ensuring that there is a basis for a strong implementation of the EEA.

Also, DoL has to ensure that the SDA is implemented effectively. As mentioned earlier, these are like two sides of the same coin. Mdladlana mentioned that the link between the Skills Development Act and EEA is inextricable. Why then does the SDA remain by and large toothless?

The annual reports by the CEE showed that most of the problems around ineffective implementation of EEA are due to weak strategies of training and development. It is therefore important to ensure that the ideals imbedded in the SDA are successfully implemented.

5.3.4 Management issues

Issues here will be limited to internal operations in the DoL. There is certainly room for improvement in the planning and co-ordinating process. This seeming functional issue can negate attempts towards effective policy implementation. Immediate supervisors should really play ball and ensure that whatever activities that take place are well planned and co-ordinated.
The provision of tools of trades should improve. The lead time for delivering such tools should be as short as possible. Everyone on the chain of supply need to do their functions conscientiously.

At policy level, the prescribed 70%/30% of official and unofficial trips respectively, needs to be re-looked at. Emphasis should rather be put on attainment of objectives as per individual contractual agreements of various inspectors.

The effective implementation of the Performance Management System (PMS) should assist in maintaining acceptable levels of staff morale. The PMS emphasises recognising good performance were it is due and also dealing with underperformance through coaching, mentoring, training and other ventures.

The full and innovative exploitation of policies such as the retention policy may also pay off. The high turnover of inspectors needs to be fully investigated so that corrective measures can be arrived at.

Chapter 6

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Annexure A

Questionnaire for labour inspectors

Thanks for your willingness to be interviewed. The responses herein are for the purpose of completing a study towards a master's degree. It is envisaged that findings will hopefully improve service delivery with regard to inspectorate services. Your anonymity is guaranteed, should you so wish.

I will be asking you a few questions. This should take ± 30 minutes of your time. Please respond as honestly and openly as possible.

A. Personal data

1. Name (optional) ……..

2. Sex: **M** ☐ **F** ☐

3. Please indicate your age

- **3.1 < 24** ☐
- **3.2 24 - 30** ☐
- **3.3 31 - 36** ☐
- **3.4 37 - 42** ☐
- **3.5 42 – 47** ☐
- **3.6 > 47** ☐

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5. How long have you been in the department?

5.1 < 1 year ☐
5.2 1 – 5 yrs ☐
5.3 6 – 10 yrs ☐
5.4 11 – 15 yrs ☐
5.5 > 15 yrs ☐

6. How long have you been working as an inspector?

5.1 < 1 year ☐
5.2 1 – 5 yrs ☐
5.3 6 – 10 yrs ☐
5.4 11 – 15 yrs ☐
5.5 > 15 yrs ☐

B. <u>Please answer the following questions</u>

1. How would you rate your knowledge of the Employment Equity Act?

Very good	Good	Average	Poor

Please explain why you have rated yourself as above.

……

……

A. Moiloa
9012140A

3. What, in your view, are challenges around enforcing the employment equity act in the following areas:

3.1 Data collecting tools:

……

……

……

3.2 Enforcement procedures:

……

……

……

……

3.3 Acquisition and maintenance of tools of trade:

……

……

……

……

3.4 Administrative issues (eg planning, reporting, etc):

……

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A. Moiloa
9012140A

3.5 Access to employers:

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3.6 Any other area of challenge:

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4. Please rate the challenges above in an order of importance. (In other words, the most crucial challenge should be given first spot, and so on).

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A. Moiloa
9012140A

5. How do you suggest that these be handled?

……

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……

6. Are there any other comments/experiences that you would like to share?

……

……

……

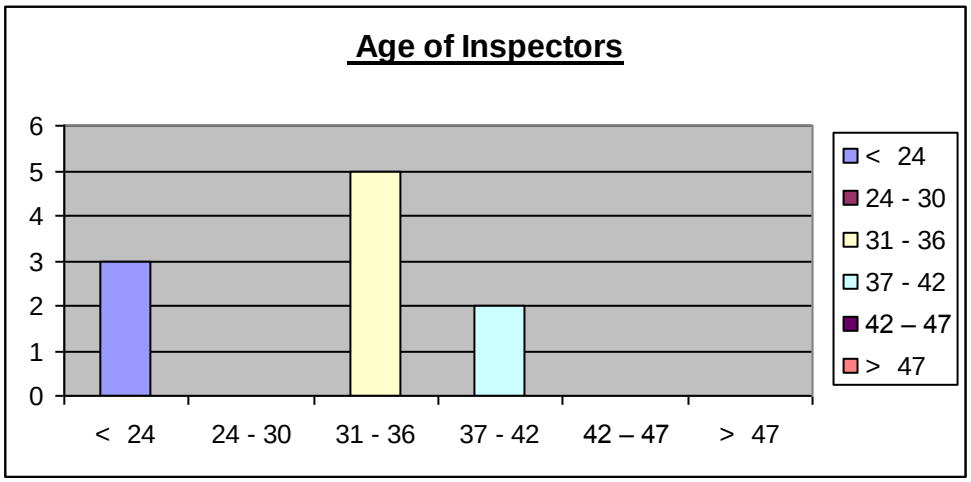
……

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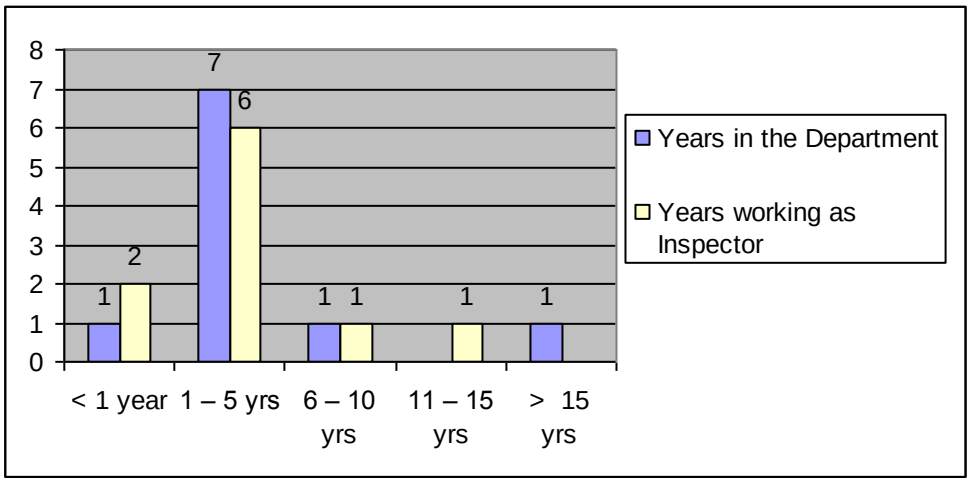
Annexure B

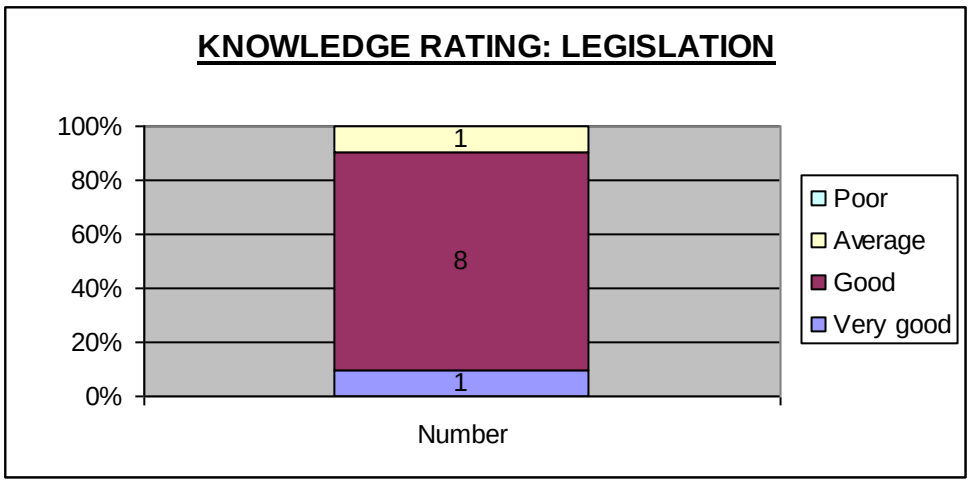
Q.No.	A. Q1	A. Q2		A. Q3		A. Q5		A. Q6		B. Q1
	Name	Sex		Age		In Dept		As Inspector		Knowledge
1	Zweli Khubekha	1		2		3		3		2
2	Brenda Mhlanga	2		2		2		2		2
3	M. Maseko	1		4		2		2		2
4	Anonymous	1		4		5		4		1
5	M. Maleswena	1		2		2		1		2
6	D.J. Mkhize	1		3		2		2		2
7	S.T. Shipalana	1		3		2		2		2
8	P.E. Nhlabathi	2		3		2		2		3
9	M.S. Mogola	2		3		2		2		2
10	G.P Masilela	1		3		1		1		2

Gender		Age		Years in Dept		Working as Inspector		Knowledge	
Males	Female		Number		Number		Number		Number
7	3	< 24	3	< 1 year	1	< 1 year	2	Very good	1
		24 - 30		1 – 5 yrs	7	1 – 5 yrs	6	Good	8
		31 - 36	5	6 – 10 yrs	1	6 – 10 yrs	1	Average	1
		37 - 42	2	11 – 15 yrs		11 – 15 yrs	1	Poor	
		42 – 47		> 15 yrs	1	> 15 yrs			
		> 47							
Check			10		10		10		10



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8
7
6
5
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6
2
1
1 1
1
1
< 1 year
1 – 5 yrs
6 – 10 yrs
11 – 15 yrs
> 15 yrs
Years in the Department
Years working as Inspector


KNOWLEDGE RATING: LEGISLATION
100%
80%
60%
40%
20%
0%
1
8
1
Number
Poor
Average
Good
Very good

Please explain why you have rated yourself as above.

Conducted inspections on big companies.

A lot of experience and also the training I received from DOL gave me knowledge on EE enforcement

Working with Employment Equity everyday.

Gaining knowledge and experience on a daily basis

Able to enforce the law and the contraventions of the law.

Know the Act from Section 36a – j. I know how the stakeholders and designated employers should comply.

Knowledge and experience in labour: Good in enforcing EEA.

Challenges of the Act.Given 100% advice to the employer.

I've credited by UNISA upon the experience.

It is an integrated service. One has to know all the legislation like OHS & COIDA understand the act. it readdress issues like colour, gender levels workplace fair and equal treatment.

A. Moiloa
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What, in your view, are challenges around enforcing the employment equity act in the following areas:

Data collecting tools

No challenge experienced.

No challenge experienced so far.

Non availability of tools

Rapid change of tool (not always the same).Takes a long time eg. two months.No time for completion of tool due to high workload

None.

Not a bigger challenge

Data not a true reflection of the data we suppose to have.

General, and it does not have sufficient information.

Have no problem the department is providing the necessary tools for data collecting.

To look at the employment equity plan. Dealing with people not legally aware with employment equity Can I visit a workplace to see who many people are employed there?

Employment figures may differ from the reality

Enforcement procedures:

Reporting by employers on EE does not tally with what practically happen.

As inspectors we learn the hard way as we are not trained on EE, we gain knowledge as we do our job. Lack of training from DOL. No enough knowledge about Equity

None

People in PO responsible for prosecution are not having clear communication. Prosecutions are taken to Labour Court.No clear communication.Complainants complain with the compliance of the Labour Court

Period of compliance order.Matters of follow up inspection.

Implementation (delaying).

The process took very long to finalize.

They are not effective as the employers do not comply with procedures, the time frames are long. Not even one single employer has been prosecuted.

The 50 Threshold. The business is family owned from the most senior person to the owner. There fore they see no need to employ previous disadvantaged people…

It should be address by bargaining councils or the CCMA If the employer belongs to one of them

A. Moiloa
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Acquisition and maintenance of tools of trade

Amount that is paid for official trips is less as compared to the petrol price. With regard to the cell phone no challenge so far.

Private Km become more than official Km as a result of the home to work – 70% official 30 % private can not be reached.

None

Department should get us cars, computers.Our job should be computerized rather than manually

None

No challenge.

Lack of computers.

Process is too long eg. it takes more than 90 days to receive a car. Legislation and amendments not received timeously

Most companies need to be trained on the act.. no tolls to that training for example laptops. We do have pamphlets The professional person regarding employment equity is not situated at the labour centre. Either in the provincial office or head office and sometimes they are not available**……**

What can I say?

A. Moiloa
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Administrative issues (eg planning, reporting, etc):

Same as challenge under enforcement procedures

No challenge.

None

No comments.

None

Not challenged.

Proper co-ordination am plug employers and employees

You can't plan for the whole month due to the unplanned meetings and training

Not many challenges

Within the department people are quite knowledgeable but we have to bring people more on board regarding knowledge of the act

Access to employers:

In the Agriculture Sector, you need to speak the employer's language. If you can't speak Afrikaans then you can't conduct inspections.

No problem encountered yet.

Agricultural employers are not easy to reach

Employers complain with failure of compliance to the Act

Employers are not co-operative. Employee make several adjournments on appointments.

No challenge.

Very seldom / no challenges

Are not always met due to unplanned meetings and training and daily incoming investigations received.

Inspection of government regional offices proof to be problem Information on the EE plan is required it is always at Head Office information can not be accessed

Employers are quite good. Either they implement employment equity or they do not. Policy advice should be linked to the legal requirements….

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9012140A

Any other area of challenge

No comments.

No comments

Financial statements are not available. To enforce legislation on domestics, domestic employers are sometimes not reachable. It is not easy sub-poena them. The case would take longer than expected. Our enforcement procedure take long

Have a uniformed system of operation from PO to the Labour Centres. Strategies used should be the same.Labour Centres system of operation should not vary because other Labour Centres are small and others are big.

Problem of implementation plan.Budget does not comply with EEA.Monitoring is not entailed.

Department should upgrade its employees so that they can be motivated. Performance agreement need to be explained.

Need to be clarity in terms of how and when to enforce the legislation eg. bargaining councils.

Increase number of Inspectors.

Lots of education still needed. Senior managers to be empowered. Lots of information sessions are needed

Business organisational forum will do beter. It is more easy to do advocacy sessions. Running individual sessions with employers take time and it is not so effective….

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Please rate the challenges above in an order of importance. (In other words, the most crucial challenge should be given first spot, and so on).

Enforcement procedure- shorten the processes – to be referred to Magistrate Court. Review the rate of payment of petrol per official km, to be in par with the petrol price.

Training of inspectors should be given priority.The 70% official 30% private Km should be reviewed.

Access to employers, Enforcement procedures, Data collecting tools: Acquisition and maintenance of tools of trade Administrative issues:

3.4 Administrative issues(eg planning, reporting, etc):Most important and other previous points will fall into place

Consultation enforcement.Implementation of EEA.

Data collection tools.Enforcement procedures.Acquisition and maintenance.Administrative issues.

Data collection tools.Acquisition and maintenance of tools.Lack of computers. Administrative issues. Any other area of challenges. Enforcement procedures

Increase number of Inspectors.

1. Enforcement, 2Access to Employers and 3 Information Tools of trade

2. lack of Knowledge of employers 2.The Department should take inspectors rigorous training …

A. Moiloa
9012140A

How do you suggest that these be handled?

Enforcement should be changed – cases should not go to Labour Court but to Magistrate Court. The processes in the Labour Court is very long

Inspectors should be given the responsibility after compliance orders to take cases forward. After the compliance orders have been served Provincial Office do not take cases forward, hence the difficult employers are proud of not complying.

According to constitution in domestic we should get employers concern.If we use a privatised phones to phone employers

No opinion.

Period of compliance is too long, therefore makes more companies not to comply to the Act.

We need to be recognized as the employees of the Department.

Through working in partnerships with the employers and the Department of Labour, we can handle these challenges

All officials relevant to that Unit should be consulted to make inputs before taking a decision.

A lot training and briefing sessions to be conducted. We should have a specialist at labour centre level. Not only HQ

It is a specialist field. I suggest that that a specialised unit deal with issues like the OHS unit does. The need and complexity of the area should be looked at> When problems are experienced the unit should provide technical assistance and the advise should be utilized. Knowledge of the legislation is very important.

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Are there any other comments/experiences that you would like to share?

N/A

No comments.

Enforcement of legislation – problem with SAPS & Justice. Obstruction of inspectors Section 92 in BCEA.ustice Department don't want to prosecute.Child labour should be prosecuted with absolute justice

None.

In BCEA some employers ignore it.While we check period check level of compliance. Non-consistency from Labour Centre to Labour Centre.Clear interaction between LRA & EEA.Employers don't have knowledge on these legislation.

Very rare to be short listed as incumbent for advertised posts.

No.

None

A little while go an advert appeared in a news paper regarding EE. An Afrikaans speaking employer come to the office and want to talk to us in Afrikaans, the following statement was made. You want me to appoint a black person but there is no white person here who can help me in Afrikaans

Interpretation of the act proof to be difficult it is not the way it should be, at this stage it is a mesh

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Annexure C

Pilot Questionnaire Analysis. Based On Received Answered

	Comments
1. Name (optional) ……	✓
2. Sex: M F	✓
3. Please indicate your age 3.1 < 24 3.2 24 - 30 3.3 31 - 36 3.4 37 - 42 3.5 42 – 47 3.6 > 47	✓
4, No question 4.	
5. How long have you been in the department? 5.1 < 1 year 5.2 1 – 5 yrs 5.3 6 – 10 yrs 5.4 11 – 15 yrs 5.5 > 15 yrs	✓

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<table>
<tr><td>6. How long have you been working as an inspector?
5.1 < 1 year
5.2 1 – 5 yrs
5.3 6 – 10 yrs
5.4 11 – 15 yrs
5.5 > 15 yrs</td><td>✓</td></tr>
<tr><td>B. Please answer the following questions

1. How would you rate your knowledge of the Employment Equity Act?
<table><tr><td>Very good</td><td>Good</td><td>Average</td><td>Poor</td></tr><tr><td></td><td></td><td></td><td></td></tr></table></td><td><u>Comments</u>

✓</td></tr>
<tr><td>Please explain why you have rated yourself as above.</td><td>Staff looks at the act. Not at there own knowledge of the act. Objective guidance from the interviewer is necessary</td></tr>
<tr><td>No question 2</td><td></td></tr>
<tr><td>5. What, in your view, are challenges around enforcing the employment equity act in the following areas:
5.1 Data collecting tools:</td><td>The first part of the question had to be repeated several times. Question not very structured. Further probing is necessary to direct respondent.</td></tr>
</table>

5.2 Enforcement procedures:	✓
5.3 Acquisition and maintenance of tools of trade:	Staff does not say much about the topic. An answer must almost be dragged out of them.
5.4 Administrative issues (eg planning, reporting, etc):	✓
5.5 Access to employers:	✓
5.6 Any other area of challenge:	✓
4. Please rate the challenges above in an order of importance. (In other words, the most crucial challenge should be given first spot, and so on).	✓
5. How do you suggest that these be handled?	✓
6. Are there any other comments/experiences that you would like to share?	✓

GENERAL COMMENTS.

The pilot and actual interviews outcome is very similar. The topic is very relevant. Answers obtained from the open ended can be utilized for further research. Clear Hypothesis statement can be formulated. For example

Main Hypothesis:

The lack of practical knowledge regarding the enforcement of Employment Equity Legislation creates conflict between Inspector and Employers.

Sub Hypothesis.(1)

Training will solve most problems that exist.

Sub Hypothesis.(2)

Shortening of enforcement procedures will lead to many more employers complying.

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