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THE EFFECTIVENESS OF INSTITUTIONS DEALING WITH LABOUR DISPUTES RESOLUTION IN LESOTHO

by

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Submitted in partial fulfilment of the requirements for the degree

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ABSTRACT

It is human nature to pursue happiness. This pursuit of happiness is in many cases obtained through hard work. People work in order to provide for their families and they obtain satisfaction if their families are happy with their provision. It is thus never an employees' motive or desire to be dismissed from work or have bad relations with his/her employer. It is important to minimize conflicts between employers and employees in any country because it helps reduce the socio-economic problems that these conflicts may foster in societies. Governments use labour laws and policies to manage labour disputes. However, if these policies do not seem to be achieving what they are supposed to then that may suggest policy failure.

This study looked particularly at the effectiveness of institutions dealing with labour dispute resolution in Lesotho. The purpose of the study was to establish reasons for why, despite all the legal frameworks relating to labour relations in Lesotho, there seems to be an escalation of disputes. It was found that lack of public participation, especially of employees and employers, in the formulation and implementation of policies, laws and regulations relating to labour relations leads to the escalation of disputes. This simply means that involving stakeholders in issues that affect them from the onset can reduce the level of disputes because the majority would have understood what labour relations entails.

A qualitative study was used and data was collected through one-on-one semi-structured interviews with 31 participants, focusing on people who are mostly affected by labour relations in Maseru, the capital of Lesotho. The participants were chosen purposively to suit the study being undertaken. However, data collection was a limitation to this study because it was difficult for the researcher to secure appointments with participants.

The study made the following recommendations: it is through the effectiveness of institutions that labour disputes can be reduced, especially Ministry of Labour and Employment (Department of Labour), Directorate of Dispute Prevention and Resolution (DDPR), labour court, and labour appeals. However, the social partners, especially trade unions and employers' organizations, also play a critical role in ensuring well-functioning labour relations are in place.

DECLARATION

I hereby declare that this research report titled “The effectiveness of institutions dealing with labour dispute resolution in Lesotho,” is my own unaided work and that the report has not previously been submitted by me for a degree at any other university.

I have given acknowledgement of all the sources consulted in this report.

MaletsieAndronicaLetsie.

……
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February 2016
Date

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I would like to acknowledge the following people for their contribution in helping me to complete this research report.

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LIST OF ACRONYMS

ADR	Alternative Dispute Resolution
BCEA	Basic Conditions of Employment Act
BCLL	Basic Concepts of Labour Law
BCP	Basotho Congress Party
CCMA	Commission for Conciliation Mediation and Arbitration
CDH	Proper Conduct of Disciplinary Hearing for Misconduct Cases
DC	Democratic Congress
DDPR	Directorate of Dispute Prevention and Resolution
IPAPU	Industrial Peace and Promotion Unit
IR	Industrial Relations
ILO	International Labour Organization
LB	Labour Relations
LCD	Lesotho Congress for Democracy
LP	Labour Policy
LPC	Lesotho People's Congress
LRA	Labour Relations Act
MFP	Marematlou Freedom Party
NACOLA	National Advisory Committee On Labour
NIP	National Independent Party
PCDH	Preparing a Case for DDPR Hearing
PFD	Popular Front for Democracy
RDI	Resolution of Dispute of Interest
RSA	Republic of South Africa
WG	Proper Handling of Workplace Grievances

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CHAPTER ONE
INTRODUCTION

1.1 INTRODUCTION

The research report examined the effectiveness of Labour Relations (LR) institutions dealing with labour dispute resolution in Lesotho. The institutions that were reviewed include the Ministry of Labour and Employment (Department of Labour), Directorate of Dispute Prevention and Resolution (DDPR), Labour Court, Labour Appeal Court, trade unions, and employers' organizations. Policy actors include all government officials from government institutions engaged in labour issues, employees, and employers. This study looked at how policy affects those who are guided by it, how power dynamics influence decision-making amongst institutions, and how effective institutions are in ensuring that policies do not fail.

In this chapter the study will provide the background to the study, the key concepts will be defined, as well as rationale and problem formulation, research questions, aim of the study, field of study, feasibility of the study, chapter outline, and finally the limitations of the study.

1.2 BACKGROUND

The study was conducted in Lesotho in Maseru District. Lesotho is a country in Southern Africa which is landlocked by South Africa. It was founded by Moshoeshoe I. According to Gill (2010:24), "Moshoeshoe, a disciple of Mohlomi, was born about 1786 at Menkhoaneng in what is now Northern Lesotho. Although he was born into a chiefly family, his courage, foresight and humanity would propel him into the forefront of the struggle by the Southern Sotho to survive the Lifaqane. It was during this epic struggle that a new nation called Lesotho was born."

Men and women in Lesotho have been working to provide for their families even in the times of King Moshoeshoe where they would mostly labour in the fields. According to Gill (2010:46), the nation of Lesotho had a mixed economy where they would manufacture things for themselves or trade with people from Natal and Transvaal to get raw materials like iron ore. This great nation has always had a a strong work ethic with a strong employer-employee foundation.

Lesotho was a British colony from 1884 until it gained its independence in October 1966. The laws that it was using until it enacted its first labour laws in 1967 were British laws. The law that governed LR in Lesotho post-independence was the Employment Act of 1967. Post-1967 Lesotho experienced a number of evolutions in the Industrial Relations (IR) field which forced it to enact new laws like the Labour Code Order Number 24 of 1992 which provides the foundation for all labour laws in Lesotho and is still used. Another law that governs labour relations in Lesotho is the Labour Code Wages Amendment Act of 2015 which changes every year.

According to Oludeyi (2014:123), “in the past few decades, labour and employment relations have undergone significant changes, especially in developing nations, partly as a result of the following: the growing influence of globalization, the global economy, turbulent competition which led to new employment arrangements, the growing emphasis on adopting international labour standards and prescriptions, and the active participation of international organizations like the International Labour Organization (ILO).”

Lesotho as a member state of the ILO adheres to the standards of this international organization which could provide an explanation forwhy the country has tried over time to reform its labour laws. Lesotho has to be on the same platform as other member states when it comes to labour issues, hence some of its laws could resemble laws of other member states. The Labour Code Order Number 24 of 1992 resembles both the Labour

Relations Act (LRA) and the Basic Conditions of Employment Act (BCEA). Labour dispute resolution mechanisms in Lesotho also resemble those of other member states and one would look at an institution like the DDPR which is the equivalent of the Commission for Conciliation, Mediation and Arbitration (CCMA) in South Africa since the way in which these institutions resolve disputes is more or less the same.

These institutions were established to facilitate effective conflict resolution between employees. The Labour Code Amendment Act of 2000 (see Annexure D) has repealed some parts of the Labour Code Order Number 24 of 1992 and it gives the DDPR judicial power to mediate, conciliate, and arbitrate. The Labour Court and Labour Appeal Court litigate while the Department of Labour mediates. Trade unions and employers' organizations are in most cases involved in collective bargaining. However, trade unions and employers' organizations serve their paying members only. That is why government institutions are important in the entire labour dispute resolution process because they serve everyone irrespective of their affiliation.

1.3 KEY CONCEPTS USED IN THE STUDY

The following are the main concepts used in the study:

- **Institutions:** According to Scott (2014:56), "institutions comprise regulative, normative, and cultural cognitive elements that, together with associated activities and resources, provide stability and meaning to social life." This definition clearly shows that institutions are a mechanism of governing the behaviour of a set of individuals within a given human community. "Although symbolic systems, rules, norms, and cultural cognitive beliefs are central ingredients of institutions, the concept must also encompass associated behaviours and material resources," (Scott, 2014:57).

- **Department of Labour:** According to Mr Ntema, Principal; legal officer (05 June 2014, telephonic interview) the Department of Labour is the office responsible for enacting legislation that regulates labour practices. Mr Ntema (05 June 2014, telephonic interview) further explained that it is a department that regulates the employee and employer relationship to ensure good industrial relations in the work place.
- **Labour Disputes:** Labour disputes are a result of disagreements between employees and employers brought about by conditions of employment which either party may feel are unfavourable (Oludeyi, 2014:25). Furthermore, a dispute is a highly formalized manifestation of conflict in relation to workplace related matters which may include the failure to address a grievance (Brand, Lotter, Mischke & Steadman, 1997:11).
- **Grievance:** According to Bran et al. (1997:10), "a grievance is a partly formalized expression of individual or collective conflict, usually dissatisfaction in respect of the workplace."
- **Policy actors:** Policy actors in the context of this paper and according to Oludeyi (2014:24) means, "an actor in industrial relations and which is any individual or group of individuals in society, whether at local, regional or national level, whether in a formal setting, whether organized or unorganized, who is able to influence labour and employment relationships, whether at enterprise, industry or global level, and whose role and influence are recognized and assented to by the traditional industrial actors."
- **Power:** According to the Oxford Learner's Dictionary (2010:1187), "power is the ability to control people or things."
- **Decision-making:** According to Gildenhuys and Knipe (2000:126), "decision-making can be secured by the acceptance of the principle that each and every citizen of a country has the democratic right to participate in public decision-making in all those areas that influence his or her life, and this includes almost all government activities."

- **Labour inspectors:** These inspectors are appointed under section 14 of the Labour Code Order Number 24 of 1992. According to Mamakwa (2012:13), “Labour inspectors are government officials/employees who are in a position to influence the development of safe, healthy, fair and productive workplaces.”
- **Trade union:** Labour Code Order Number 24 of 1992 defines it as a combination, either temporary or permanent, of ten or more employees or workers, the principal purposes of which are under its constitution, the representation and promotion of employee’s interests and the regulation of relations between such combination would or would not, if the code had not been deemed to have been an unlawful combination by reason of its purpose being in restraint of trade.
- **Employer’s organization:** Labour Code Order Number 24 of 1992 defines it as any combination, either temporary or permanent, established by employers for the principal purpose of representing and promoting their interests, and of regulating the relations between employers and employees, whether such combination would or would not, if the code had not been enacted and have been deemed to have been an unlawful combination by reason of its purpose being restraint of trade.
- **Employee:** This means any person who works in any capacity under a contract with an employer in either an urban or a rural setting, and includes any person working under or on behalf of a government department or other public authority as explained by the labour Code Order Number 24 of 1992.
- **Employer:** Any person or undertaking, corporation, company, public authority or body of persons who or which employs any person to work under a contract as defined by the Labour Code Order Number 24 of 1992.

1.4 RATIONALE AND PROBLEM FORMULATION

Labour disputes are likely to happen where an employee and employer relationship occurs. However, the rate at which these disputes occur and are reported to relevant institutions and resolved timeously is of great concern, especially where rules and regulations exist that deal with employee and employer relationships to minimize conflict. Also of great concern is the time-frame taken within which disputes are resolved by relevant institutions. The study focuses on the Labour Department, DDPR, Labour Court, and Labour Appeal Court. According to Maboee (interview, 08 December 2014) "disputes which are referred to the Department of Labour on a monthly basis average 60". However, it seems that with each month the number of unresolved disputes exceeds the preceding month's (Maboee, interview, 08 December 2014). According to Mejaro (interview, 08 December 2014), "almost half of these disputes referred to the Department of Labour are not resolved at that level hence are escalated further to DDPR for conciliation and arbitration and because these disputes have to be investigated before they go to DDPR the process usually takes long." It has also been observed that disputes referred to the Labour Court either for review or enforcement take a longer time to be resolved.

Table 1: Number of cases registered at DDPR over two years

Number of cases registered at DDPR			
Year	Number of cases	Cases resolved	Percentage
2013	2009	1705	84.87%
2014	1888	1727	91.47%

Table 1 provides an illustration of the number of cases reported at DDPR over a period of two years (2013-2014). It is evident that there is an increase in the percentage of the number of cases resolved in 2014. This suggests

that DDPR as an institution is trying its best to ensure that labour disputes are resolved timeously.

Table 2: Applications of rescission/variation at DDPR over two years

Applications of rescission/variation at DDPR			
Year	Total cases reported	Number of rescissions	Percentage
2013	2009	92	4.58%
2014	1888	120	6.36%

Table 2 is an illustration of the number of rescissions applied for over a period of two years (2013-2014). Parties apply for a rescission if they fail to show up at the court on the date stipulated by the DDPR. Failure to appear on the stipulated date guarantees a case being arbitrated in default with the present party usually winning the case. They therefore apply for rescission so that an award may be rescinded. In 2014 there were many rescission applications and this may suggest that policy actors (employees and employers) sometimes take labour matters for granted thereby extending process of labour dispute resolution.

Table 3: Review of awards at Labour Court over two years

Reviews of awards at Labour court over two years					
Year	Reviews	Finalized	Percentage	Postponed/Partly heard	Percentage
2012	79	52	65%	27	34%
2013	134	81	60.40%	53	39%

Table 3 is an illustration of reviews that were finalized and postponed/partly heard over a period of two years (2012-2013). The percentage decrease in cases that were finalized in the year 2013 and the percentage increase in cases postponed/partly heard in the same year may suggest that the Labour Court is not effective enough in resolving labour dispute resolutions.

Table 4: Enforcement of awards at Labour Court over two years

Enforcement of awards at Labour Court over two years			
Year	Enforcement applications	Warrants of arrest	Percent-age
2012	326	98	30%
2013	266	54	20.30%

Table 4 is an illustration of enforcement applications made over a period of two years (2012-2013) and the arrests made in relation. There is a percentage decrease in arrests made for policy actors who do not abide by the labour laws in 2013 as compared to 2012. This may suggest that the Labour Court has challenges with issuing arrest warrants and these problems may be either institutional or external.

1.5 RESEARCH QUESTIONS

The following questions will be used to define what the research wants to understand. These research questions will communicate to the reader the goal of this research which is to determine why it is, that despite the existing rules and legal framework governing labour relations in Lesotho, there seems to be an escalation of labour disputes. Questions to be considered include:

- What could the explanation be for the fact that labour disputes take a long time to be resolved as opposed to being resolved out of court or through consultation?
- How do the DDPR, Labour Department and Labour Court handle the escalation of labour disputes?
- How effective are institutional modalities for decision-making given the increasing number of incidents?
- How do labour disputes affect the state of labour relations in Lesotho?

1.6 OBJECTIVES OF THE STUDY

This research report used evidence from the research to ensure that institutions dealing with labour dispute resolution are effective in resolving disputes. In achieving this aim the research report addressed the following four objectives:

1. To determine why disputes are not resolved within reasonably acceptable time-frames.
2. To determine the role of institutions in containing the escalation of disputes.
3. To determine how institutions participate in decision-making given the escalating incidents of labour disputes.
4. To determine how the status of labour relations in Lesotho is affected by long-standing disputes.

1.7 FIELD OF STUDY

The research was conducted using an institutional policy framework and institutional governance. These were chosen for use because the recommendations may later inform policy change in the institutions involved in labour dispute resolution in Lesotho in order to ensure that there are good labour relations which could lead to zero conflicts in the workplace.

1.8 FEASIBILITY OF THE STUDY

Permission was granted from all participants who took part in the study and consent forms were signed before commencement of the study (see annexures B and B1 for translated versions).

Extensive travelling was done to various establishments and to meet with participants.

1.9 CHAPTER OUTLINE

The chapters in the report are explained below:

Chapter One: Introduction

The first chapter provides background to the study, including the context that has informed labour relations policy in Lesotho, specifically exploring labour dispute resolution by different institutions and policy actors. The chapter explores the number of disputes reported at different institutions and provides the rationale as to why disputes seem to increase despite the different legal frameworks that are in place.

Chapter Two: Theoretical framework and literature review

The chapter reviews literature on public policy in a broad manner and also looks at labour relations broadly. It focuses on public policy evolution and how it applies in the case of Lesotho. It further explores how public policy is manifested in labour relations in Lesotho. There are some theories used in this chapter to align with the literature in order to fully clarify institutions and public policy.

Chapter Three: Research methodology

This chapter explains the methodology used to gather the relevant information (data) on the research subject and the reasoning behind the selection of the methodology. It presents the approach and design used in the collection of data and gives reasons for choosing the specific design and approach. The selection of the population in order to merge with the literature needs sampling. Therefore, the sampling method is discussed as well as the reason for choosing it. The chapter also explores how data was collected, from which sources, and how it has been analyzed for use in the following chapters.

Chapter Four: Research findings

This chapter presents the findings from the different sources of data collection. It interrogates these to identify answers to the research questions.

Chapter Five: Data analysis and interpretation

This chapter presents theanalysis of data especially exploring findings from chapter four. It is the interpretation of data to provide answers to the research questions.

Chapter Six: Conclusions and recommendations

This chapter provides conclusions and recommendations based on the analysis of data from chapter five. The recommendations are aimed at the different institutions and policy actors involved in labour dispute resolution in Lesotho.

1.10 LIMITATIONS OF THE STUDY

Data collection proved to be difficult for the researcher because securing appointments was difficult since participants had busy work schedules and most of them could only be reached during working days.

Maseru is Lesotho's biggest city and reaching participants cost the researcher more time. It took the researcher approximately one month to interview seven participants.

1.11 SUMMARY

This chapter acknowledges that labour relations should be preserved to avoid labour disputes and it has given background to show how far labour relations have progressed in Lesotho. The study was conducted in Maseru District. The concept of labour dispute resolution largely depends on good labour relations and effective institutions. Unavailability of good labour

relations is the reason why there is an escalation in labour disputes as presented in Tables 1 to 4.

Labour disputes can be highly detrimental to the labour relations climate in Lesotho. Therefore, different institutions try by all means to ensure that labour relations are improved to curb the escalation of labour disputes which seems to present a problem.

The identified institutions are presented as key subjects in the study mainly because of their functions in labour policy (LP).

The next chapter will provide the theoretical framework and literature review.

CHAPTER TWO
THEORETICAL FRAMEWORK AND LITERATURE REVIEW

2.1 INTRODUCTION

The researcher reviewed various texts in literature on institutions, policy formulation and policy implementation to obtain the necessary information that could help in understanding how institutions deal with labour disputes in Lesotho. Literature pertaining to labour relations was also perused and analysed. The researcher reviewed various theoretical perspectives in order to understand the broader perspective on institutions and power. The following issues are discussed: Institutionalism, Elite theory, Social disorganization, Dispute resolution, Public administration, Public policy analysis, and Public policy insofar as they relate to interaction between policy, legislation, and operationalization.

2.2 THEORETICAL FRAMEWORK

2.2.1 Institutionalism

There are specific approaches to the relationship between state and the society (Parsons, 2003:33). For this reason, institutionalism is more concerned with certain value systems in the society and the processes utilized to ensure those value systems. In the case of labour relations in Lesotho, the state has made rules, regulations and laws that govern employee and employer relationships, examples of which include, but are not limited to, the Labour Code Order Number 24 of 1992, the Minimum Wages Act of 2015, and the Codes of Good Practice. The kind of relationship that the Government of Lesotho has with the society is that of the provider and regulator of rules and laws governing labour relations in Lesotho. However, other institutions have different relationships to that of government in society. Even though institutions have different relationships

to that of government there is a common denominator, which is that all institutions operate with rules and regulations. Institutions are based on formal rules and compliance procedures (Parsons, 2003:333). According to Fukuyama (2011:15-16), “the three categories of institutions include the state, the rule of law, and an accountable government.” The state should always be accountable for its actions and it should use its power to ensure that citizens comply with laws (Fukuyama, 2011:15-16). Furthermore, the rules that any government puts in place should always be transparent. According to Fukuyama (2011:19), “a modern state without rule of law or accountability is capable of enormous despotism.”

Institutions do not exist in isolation, hence the Ministry of Labour and Employment in Lesotho has adopted a concept that labour relations are like a ‘three-legged pot’ with the three legs representing government (Ministry of Labour and Employment, DDPR, Labour Court, Labour Appeal Court), employers’ organizations (employers), and the third leg representing trade unions (employees). This pot needs all the three legs to stand and if one or two legs fall then the pot becomes dysfunctional. Institutions therefore shape the choices which policy makers make but they do not eliminate the free will of policy makers (Hall, 1986:259).

Disputes have to be addressed through due process and resolved in such a manner that all the needs of relevant policy actors are met. However, the needs do not have to be satisfied at the expense of others. That simply means that dispute resolution should at all times be fair and transparent. An institution will therefore be a product of social needs and pressures (Hill, 2013:70). Institutions satisfy the needs of policy actors in their respective fields. Needs are satisfied if changes are made and a clear example in this regard would be employees’ wages, where they have been stagnant; their wages change in October of every year because the cost of living is changing. However, 2015 saw a change in the labour spectrum, in that for the first time the Labour Code Wages Amendment Act of 2015 came into

force as amended in April 2015. The Labour Code Wages Amendment Act of 2015 was enacted to increase employees' wages in order to meet their everyday needs. To place more emphasis on this point, Hill (2013:72) observes that, "Institutions are seen as a source that influences processes of change." Institutions can influence the process of change but may not be open to or willing to change. The rules and laws used in Lesotho to govern labour relations dates back more than two decades, especially the Labour Code Order Number 24 of 1992. This law may have been applicable at that time but may not be appropriate for the current modern context.

Institutions do not allow one to predict policy outcomes (Hill, 2013:76). However, as has been mentioned earlier, there are rules governing labour relations in Lesotho that should enable one to predict the ways in which policy conflicts are played out (Hill, 2013:76). Institutions therefore play a major role in stabilizing situations.

Institutions play a crucial role in the society. These institutions formulate rules, laws and orders, and all the other ways that will enable societies to behave or act in a certain way. Therefore, institutions are not foreign to Lesotho because as a democratic state it has rules, laws and regulations that its citizens have to follow. For this reason, the institutional model of public policy is the product of public institution (Cloete & Wissink, 2000:36). The institution responsible for enacting public policy is government because all public policies affect all members of the society (Cloete & Wissink, 2000:37).

Institutions include political organizations, laws and rules that are central to every political system and which constrain how decision makers behave (John, 2005:38). John (2005:38) further suggests that, "institutions divide powers and responsibilities between the organizations of the state; they confer rights on individuals and groups; they impose obligations on state

officials to consult and to deliberate; and they can include and exclude political actors, such as interest groups in public decision-making."

In Lesotho most of the rules and laws that govern employee and employer relationships are enacted by the Minister of Labour with the assistance of the National Advisory Committee On Labour NACOLA. However, the final decision rests with the Minister of Labour. The Minister is a political representative and some of the decisions he/she makes are politically motivated. Politically motivated decisions can leave other decision-makers out of the decision-making process. However, according to John (2005:39), "theorists and researchers have often considered institutions such as legislatures, executives, bureaucracies and judiciaries, to be manifestations of the functions of political life." This means that these institutions shuld be involved in activities which include: representation, policy formulation, implementation and adjudication (John, 2005:39).

A new coalition government was formed in Lesotho in February 2015 made up of seven different political parties. Lesotho is the first country in Africa to form a coalition of more than two parties. This coalition government has signed a coalition agreement and the parties involved are the DC, LCD, PFD, BCP, LPC, MFP, and NIP. The coalition agreement serves as a basis for where the government wants to move and what it wants to achieve. The agreement is made in such a way that no one party can come with its own policies to implement but rather all things should be implemented holistically by all parties. For the time being one may say the coalition agreement serves as an instrument for policies which are yet to be made. This agreement was signed on Friday 10th April 2015. Some parts of the coalition agreement speak to labour relations in Lesotho albeit it minimally. The citizens have yet to see how this government is going to institutionalize labour relations in Lesotho, especially looking at dispute resolution, because government is the cornerstone in public policy. Government institutions are

a crucial entity in public policy and they revolve around politics (Dye, 2002:12).

According to Dye (2002:12), “political activities generally centre on particular government institutions and that is the reason why public policy is authoritatively determined, implemented, and enforced by these institutions.” The link between public policy and government should be clearly understood because all public policies are adopted, implemented, and enforced by government institutions (Dye, 2002:12). A policy is thus not a public policy if the abovementioned steps do not occur. According to Dye (2002:12), “government institutions give public policy distinctive characteristics which include that government policies are generally regarded as legal obligations that command the loyalty of citizens; and only government can legitimately imprison violators of its policies.”

However, according to Dye (2002:13), “institutional studies usually describe specific government institutions and how they function without systematically inquiring about the impact of institutional characteristics on policy outputs.” This leads to the point that, “the impact of institutional arrangements on public policy is an empirical question that deserves investigation,” (Dye, 2002:13). Institutions are therefore powerful policy actors. Policy actors may be divided into five categories, namely elected officials who are the politicians, appointed officials who are bureaucrats, interest groups that may include trade unions and employer’s organizations (employees and employers), research organizations like the International Labour Organisation (ILO) and the mass media (Howlett & Ramesh, 1995:52).

According to John (2005:40), “institutions embody cultures and past political decisions.” That is why in most cases one finds labour laws of more than ten years ago active in the current labour environment. Some labour laws in Lesotho back more than ten years and little or no change has been made

to them. This leads to what John (2005:40) observes, “formal rules and structures, agreed or introduced long ago, influencing how political actors exercise their current choices.”

Furthermore, “Institutionalists believe that formal arrangements often affect policy through their capacity to influence the co-ordination of public decisions,” (John, 2005:42). The formal arrangement leads to institutional rules which vary across political systems and allow interest groups to block and modify policy decisions (John, 2005:42). According to John (2005:43), “a plausible line of argument is that institutions are important insofar as they show how actors try to co-operate in a policy sector.” Within the formal arrangement one finds bureaucrats. According to John (2005:44), “the bureaucracy represents the state and how it implements its decisions; and officials are often permanent appointees so they have expertise and knowledge to participate in and to shape policy.” Furthermore, (John, 2005:44), “bureaucracy is the focus for much institutional analysis because of the importance of government.” However, bureaucrats do not seem to work in harmony because they all have different agendas, as John (2005:44) explains, “bureaus compete with each other for resources and influence on policy.”

2.2.2 Elite theory

Decision-making is necessary in societies in order to make laws, rules and regulations. This decision-making involves full participation of policy actors that are affected by Industrial Relations (IR) in Lesotho. Some policy actors do not always participate fully in decision-making and an example is the implementation of the current Minimum Wages Act of 2015 as implemented in April 2015. Many people were not aware of the current changes and some are still not aware that the Minimum Wages Act is in use because they know it changes in October of each year. In every society there is a class that rules and a class that is ruled (Hill, 2013:37). According to Hill (2013:38), “it

may be argued that in the modern state, the position of the elites is related to the development of large scale organizations in many areas of life, with the result that there are different kinds of elites, not just those holding formal political power." This, according to Hill (2013:38), "suggests that elite power may be based on a variety of sources: the occupation of formal office, wealth, technical expertise, knowledge and so on."

Decision-making can be determined through the power structures (Parsons, 2003:248). Therefore, power is concentrated amongst only a few policy actors. According to Parsons (2003:251), this power could be exercised through the mobilization of bias or through non-decision-making. This relates to whether all policy actors are able to be involved with decision-making about policies that govern labour relations in Lesotho. It is possible that one party can influence another party to act in a certain way and accept decisions on rules and regulations governing labour relations in Lesotho just because the first party has more power. It is not all policy actors that are conversant with laws and regulations governing labour relations in Lesotho. Therefore, it is the duty of those who are conversant to inform others. However, it is not known if these policies are communicated well. For this reason, Parsons (2003:252) suggests that the elite theory "may involve the study of the communication of information, both of what is communicated and how it is done; it may involve locating the power processes behind the social construction of meanings and patterns that serve to get A to act and believe in a manner in which B otherwise might not, to A's benefit and B's detriment."

The elite theory is about preservation of status. Policy actors can preserve their status in many ways; for instance, the leadership of a trade union may make a certain decision which will not benefit members of the trade union but would otherwise benefit the leadership of the trade union. All institutions involved in labour dispute resolution in Lesotho have some form of leadership which is mostly involved in decision-making and that raises a

question of whether these leaders make decisions that benefit everyone or just themselves.

According to Dye (2002:23), “elite theory simply means that people are apathetic and ill-informed about public policy, that elites actually shape mass opinion on policy questions more than masses shape elite opinion.” Public policy thus becomes a property of the elites. This leads to changes in innovation in public policy happening as a result of redefinitions by the elites of their own values (Dye, 2002:24). However, according to Dye (2002:24), “elitism does not necessarily mean that public policy will be hostile toward mass welfare but only that the responsibility for mass welfare rests on the shoulders of elites, not masses.” There are different kinds of elites. In life, not all people can rule and this raises the level of competition among the rulers since none wants to be ruled. According to Dye (2002:25), “elitism does not mean that elite members never disagree or never compete with one another for pre-eminence but elitism implies that competition centres on a very narrow range of issues and those elites agree more often than they disagree.”

2.2.3 Social disorganization

The ruling party in Lesotho which ultimately formed a coalition government in 2012 with two other parties had a short-lived government of two years. The Lesotho nation is presently undergoing rapid social and political changes. According to Mooney, Knox and Schacht (2002:11), “rapid social change disrupts the norms in a society and when norms become weak or are in conflict with each other, society is in a state of anomie.” Not only rapid social change can cause this state of anomie. According to Frimpong and Jacques (1999:131), “Merton defined anomie as a state of societal normlessness, produced by a disjunction between culturally prescribed goals and access to institutional means for attaining those goals. If everyone in the community is equally judged by his status or financial success, but

the means for attaining status and money are not equally available, then the 'rules of the game' lose their legitimacy and people may stop following them." Furthermore, Frimpong and Jacques (1999:131) suggests that "according to Merton , the degree of anomie found in any community depends on the wideness or narrowness of the gap between goals and means; for example, the gap can be attributed to change from a rigid class structure, that is one with no cultural expectation of upward mobility, whilst the available means such as access to education, employment opportunities remain constant; here the goals change but not the means expected to be used in order to achieve these goals."

There are always circumstances that are beyond human understanding and thus lead them to behave in ways they otherwise would not. This is emphasized by Callinicos (2007:134) who suggests that, "social life must be explained not by the conception of it formed by those who participate in it, but by the profound causes which escape their consciousness." This simply shows that anomie is deregulation (Callinicos, 2007:136). The fact that anomie is deregulation means that it can be overcome by creating the right moral regulation which could include a series of institutional reforms (Callinicos, 2007:137). This therefore has to be done by government institutions because the state is the custodian of the labour law. Furthermore, Callinicos (2007:137-138) shows that "a properly functioning state is a necessary condition of the realization of the individual more particularly the state is a special organ whose responsibility it is to work out certain representations which hold good for the collectivity because the state is the very organ of social thought." The government should always put the well-being of citizens first and try to resolve impediments that could stand in the way of proper public service delivery.

2.3 LITERATURE REVIEW

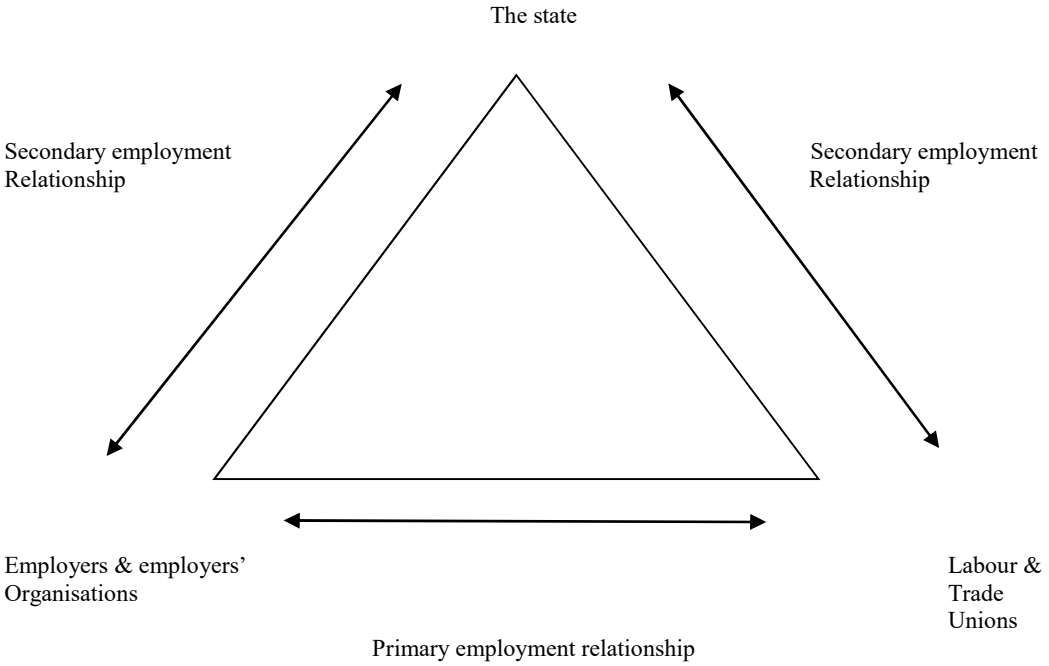
2.3.1 Labour relations

Labour relations (LR) is the relationship between government, employers (employers' organizations) and employees (trade unions). According to Venter, Levy, Conradie and Holtzhausen (2009:3), "labour relations is an all-encompassing term used to describe the dynamic complexities of the various relationships between parties to the employment relationship. It provides a theoretical and practical framework by means of which the relationship between individual employees and employers, and also the relationship between collectives (such as trade unions, employers' organizations and the state) and individuals, or between one collective body and another and are regulated and governed." In Lesotho LR is governed by the state and there are a number of laws regulating employee/employer relationships. One example is the Labour Code Order Number 24 of 1992. In the Ministry of Labour and Employment, Labour Department there is an Industrial Relations (IR) section which specifically deals with ensuring proper LR in the country with labour inspections and handling of labour disputes. Venter, Levy, Conradie and Holtzhausen (2009:3) explains that, "the term LR has come to replace IR as a way of describing the tripartite employment relationship." Tripartism simply means that the government of Lesotho works in close co-operation with employers (employers' organizations) and employees (trade unions) in all labour related issues especially during decision-making. Government has to consult these social partners before making any changes to laws and other labour matters. The ILO Convention No.144 on tripartite consultation shows that each member of the ILO which ratifies this convention undertakes to operate procedures which ensure effective consultations between representatives of the government, employers and workers.

LR like any other relationship is not without challenges. According to Venter et al. (2009: 4), “the public generally perceives LR as an arena for conflict and conflict management.” This perception is correct in relation to the LR climate in Lesotho where there are often strike actions. Venter et al. (2009:4) continues that, “the interactions between employee, employer, and government are dynamic and occur within a particular social, economic, and political framework.” Therefore it is always important to look at the environment in which LR is taking place to fully understand the triangular relationship that occurs between employees, employers and the state. According to Venter et al. (2009:4), “the organization is often seen to be a microcosm of society at large. Its workforce in turn reflects the socio-political and economic conditions, as well as the beliefs, culture, norms and different personal interactions of and between members of the various societies from which they are drawn.”

It has been explained that LR is governed by a set of laws which means that the issue of institutionalization of LR requires great consideration. Institutionalism is about laws, policies and procedures. Therefore Venter et al. (2009:4) emphasizes that, “LR is governed by an intricate system of laws, policies, and procedures that regulate and facilitate the labour relationship.” This is depicted in Figure 1 below.

Figure 1: The tripartite relationship



Venter et al., 2009:9

The secondary employment relationship is between government and the social partners. This kind of relationship is best understood as a facilitative relationship in which government provides the necessary laws, policies and regulations of conducting the employment relationship between employer and employee.

The primary relationship is specifically between two parties; the employee and employer. According to Venter et al. (2009:11), "a key feature of this relationship is the conflict that arises as a result of divergent interests between the parties, largely due to differing expectations of the various roles played." It is thus not unexpected that this relationship is fuelled by conflict at times. Such conflict can evolve into disputes requiring the intervention of external institutions. External institutions that could intervene in Lesotho include the Labour Department, DDPR, Labour Court, and Labour Appeal Court.

Effective LR depends on positive communication as Venter et al. (2009: 19) explains: “all too often organizations rely extensively on top-down communication, with the top echelons often seen to be dictating to the lower levels of the organizations. This detracts from principles of participation and co-operation, which form the basis of much of the new labour dispensation. Fostering more open bottom-up channels of communication where workers feel comfortable expressing their opinions to top management actually reduces the propensity for conflict and helps forge new working relationships based on trust.” Communication should not only be limited to the organization. Government should also be seen to foster communication between the social partners. In the same manner when government allows social partners to fully participate in issues that affect them they will trust government. Government should thus foster public participation, involvement and co-operation.

It is important for establishments to have policies and procedures that could help minimize conflicts and prevent them from evolving into disputes. According to Venter et al. (2009: 20), “policies and procedures are the elements that provide direction in and regulate the activities of an organization and its members.” Policies are the plans of action that set the course and direction for achieving objectives, whereas procedure is the game plan, or alternatively, the manner in which the organization will go about accomplishing its objectives (Venter et al. 2009:20).

2.3.2 Dispute resolution

A labour dispute can be resolved amicably if the parties involved understand the labour laws that govern Labour Relations (LR). A disruption in labour relations between employees and employers may result in serious financial losses to establishments, disruption of the industrial sector and national economy which could ultimately lead to various socio-political and economic problems (van Jaarsveld & van Eck, 1998:5). In the past many people

worked on farms and agriculture was the only sector offering employment; therefore the common law practices guided the relationship between an employee and employer (Van Jaarsveld & van Eck, 1998:6). As industry evolved the labour market went through a lot of changes and these expansions brought statutory enactments to regulate labour relations. Lesotho as an independent country enacted its first labour law in 1967. According to Van Jaarsveld and van Eck (1998:6), “the situation today is such that the collective labour relations between employer and employee are regulated by a sophisticated system of statutory labour measures.”

The aim of the labour law may be described as the regulation of the rendering of services by means of common law, case law and statutory measures which are applicable to the employee on the one hand and management on the other hand, in such a manner that labour harmony and peace is created, so that the country and all its people may enjoy a prosperous and democratic co-existence (Van Jaarsveld & van Eck, 1998:7). In Southern Africa, South Africa is historically the first country with first stage industrialization, hence men from Lesotho, Swaziland, Botswana and Zimbabwe worked in the mines in South Africa. South Africa also has high levels of unionization in industries. This led to South Africa being one of the first countries to lead on issues dealing with labour relations. As a result, some of the labour laws in Lesotho derive from those in South Africa. one example is the Labour Code Order Number 24 of 1992 which is a combination of the Labour Relations Act (LRA) of South Africa and the Basic Conditions of Employment Act (BCEA) of South Africa. According to Van Jaarsveld and van Eck (1998:10), “large scale unrest and strikes took place in 1922 on the Rand, especially amongst miners; these strikes resulted in the institution of conciliation machinery during 1924 so that employers and employees could negotiate conditions of employment in an orderly fashion.” This marked an era in dispute resolution which is still used at the present time. All these developments contributed to a current context where

consultation and negotiation are important elements in labour dispute resolution.

Fundamentally labour law should be done in such a way that it is quick to resolve disputes and is easily accessible to the citizens. For this reason, Judge Wallis in Froneman (2015:828) stated that “law must be accessible and so far as possible intelligible, clear and predictable.” According to Van Niekerk (2015:837), “speedy social justice is the fundamental value on which the statutory dispute resolution system is based; systematic delays in the processing of labour disputes threaten to undermine the statutory goals, especially in the labour court.” In labour relations, courts should always be the last option in dispute resolution, and everything should be resolved on the ground level to avoid unnecessary delays.

The ILO member states often utilise an approach of government working with other social partners in issues relating to labour relations. These social partners include employees and their representatives and employers with their representatives. Tripartism is used to bring social cohesion in labour relations in these member states. According to Van Jaarsveld and van Eck (1998:14), “in the determination of institutional rules in respect of labour matters or other measures for regulating development of the labour situation, South Africa has a tripartite system in that the state, employers and trade unions co-operate closely or are otherwise participants in the creation of laws regulating labour relations (LR).” Lesotho also functions in the same manner as South Africa, where tripartism is pivotal in IR/LR. Labour policy is important since it also plays a crucial role in IR. The Labour policy could be evident in various labour laws, regulations and administrative rules and practices regarding the labour market.

Labour disputes usually occur because there is a relationship between an employee and employer. However, the state also has a relationship with both the employer and the employee. The relationship between an employer

and employee is in most cases authoritarian, with the employer being the holder of the authority. According to Van Jaarsveld and van Eck (1998:26), “the relationship of authority between the employer and the employee usually contains three components, namely that services are rendered in a subordinate relationship by the employee, supervision and controls are exercised during the rendering thereof, and lastly the employer furnishes guidance with regard to the performance thereof.” With this kind of relationship disputes are bound to happen in the workplace either because someone will be rebelling against authority or someone will be using/enforcing too much power unnecessarily. The relationship that the state/government has with employees and employers is that of a regulator. It regulates the relationship of employers and employees through labour laws.

The nature of the employment relationship is such that disputes between an employer and employee (or trade unions) occur frequently (Du Plessis & Fouche, 2006:319). For this reason, in 2000 the Directorate of Dispute Prevention and Resolution (DDPR) was established so that disputes could either be conciliated or arbitrated. All matters relating to the powers of the DDPR and how it resolves disputes are found in the Labour Code Amendment Act of 2000 (see Annexure D).

An important element in labour dispute resolution is to distinguish between a dispute of right and a dispute of interest. Disputes of right are generally concerned with the interpretation and enforcing of existing rights, irrespective of whether they arise from individual contracts of employment or labour laws (Van Jaarsveld and van Eck, 1998:341). Disputes of interest, however, are concerned with the acquiring of rights or the amendment of contracts of employment (Van Jaarsveld and van Eck, 1998:341). An example of a dispute of interest can be when workers demand an increase in their wages, higher than those stipulated in the Minimum Wages Amendment Act.

The proper economic transition of any country could be reached through sound labour relations. However, according to Van Noord, Hwang and Bugeja (2011: iii) “most countries experience an increase in disputes between labour and management as they embark on the process of economic transition”. The institutions and practices established to resolve disputes thus determine not only the industrial relations but also influence the course of economic progress (Van Noord et al. 2011: iii). In Asia, for example, Cambodia has successfully introduced a functioning labour dispute resolution system (Van Noord et al. 2011: iii) and Lesotho can take lessons from this country. As explained by Van Noord et al. (2011: 3), “Labour dispute resolution projects in Cambodia led to an improvement in social dialogue between management and unions, a less chaotic labour relations environment and better capacity to resolve disputes.”

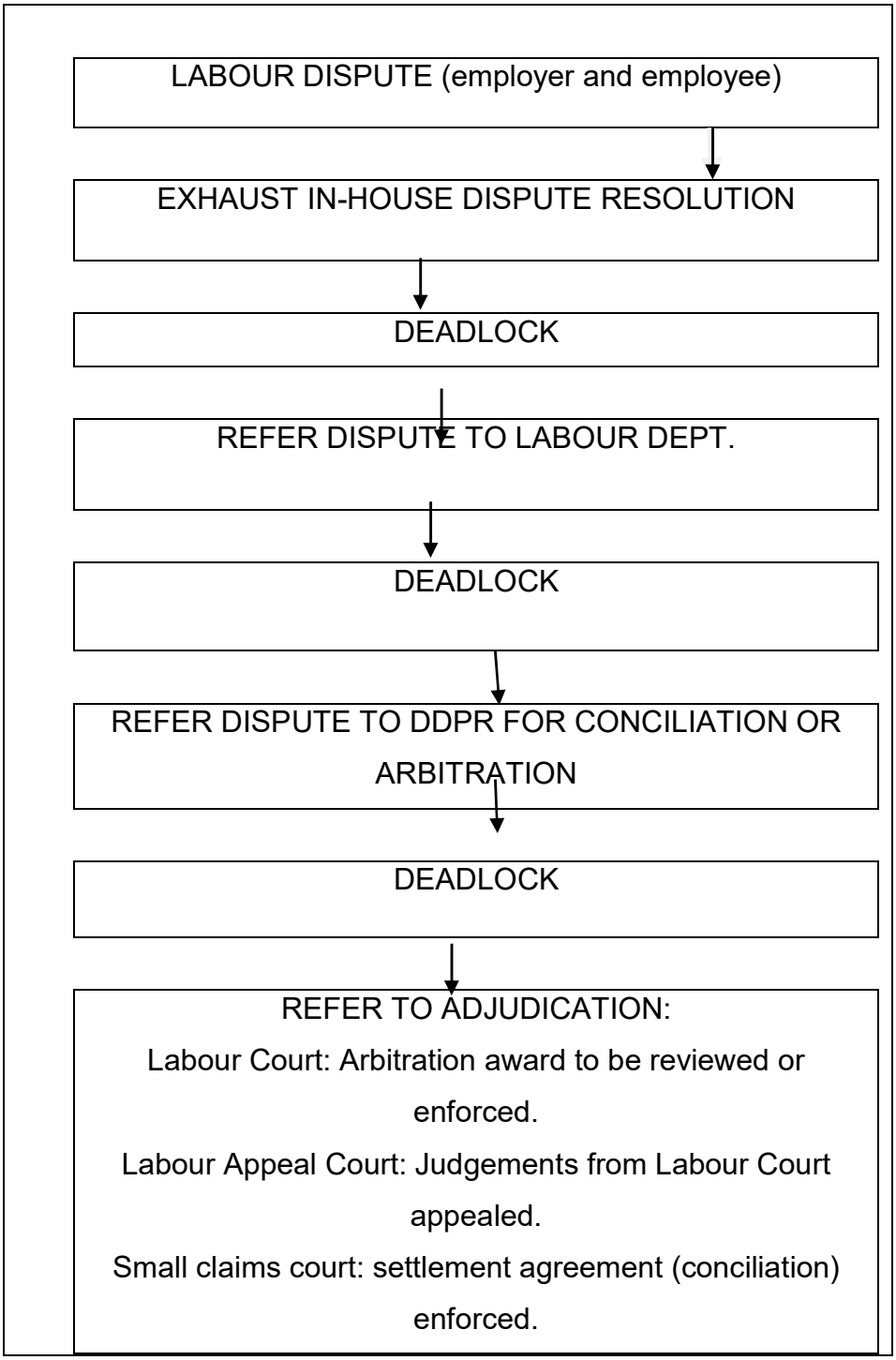
While some scholars consider disputes as destructive, others consider them as opportunities to create awareness about problems and improve internal management (Rai, 2004: 2). There should therefore be an effective dispute resolution mechanism to improve working conditions. According to Rai (2004: 5), “a dispute resolution system is complementary only when the dispute resolution components interact to mitigate the limitations of each individual component and the synergy can be obtained only when employees can use any type of component for any kind of conflict and can use multiple components to address the same conflict.” A dispute resolution system becomes effective when all those that are involved commit to the process. In most cases it works better if employees have a general commitment to the labour resolution regime because they are the ones who are in most cases badly affected by labour disputes. According to Rai (2004: 13), “employee involvement enables employees to respond to resolve problems, act at work within their own authority while providing them with a high degree of self-esteem, empowerment, learning environment, opportunities for personal growth and development, and a sense of

achievement. Involvement can have an empowering culture which translates into increased acceptance of decisions and continuous improvement."

As depicted in the dispute resolution process in Figure 2 below, labour disputes occur when an employer and employee are in conflict over labour issues. These labour issues may include but are not limited to wages, dismissal, hours of work, rest days, leave days, and sick leave. These disputes are resolved through mediation, conciliation and arbitration. Adjudication which mostly happens at the Labour Court and Labour Appeal Court is always used as the last measure. Disputes between an employee and employer are in most cases firstly taken to the Department of Labour (Maboee, interview, 03 October 2014). The Labour Inspector who receives a claim from either party will write a letter to the respondent calling the respondent for discussions with the complainant while acting as a mediator. However, since a Labour Inspector has no powers to make binding contractual agreements, whatever is agreed upon by the two parties is recorded but it is not binding (Maboee, interview, 03 October 2014). Due to the fact that agreements made at the Department of Labour are not legally binding many people do not adhere to the agreements, therebycausing disputes to be referred to the DDPR for conciliation and arbitration as a judicial institution. At conciliation, settlement agreements are made and arbitration awards are also made after arbitration. However, the problem with settlement agreements is that when they are not honoured it is a problem to take them to court for enforcement (Mejaro, interview, 03 October 2014). The Labour Court says it does not deal with settlement agreements and the Magistrates Courts say they do not have jurisdiction over labour matters (Mejaro, interview, 03 October 2014). This is problematic because the Department of Labour where things go back to should things not go well then reaches a dead end and that leaves applicants, who in most cases are employees, frustrated and unsatisfied with the whole process. Awards from the DDPR go to the Labour Court if

either the applicant or respondent feels there are discrepancies in the award. Should the dissatisfaction persist, the matter is then taken to the Labour Appeal Court. The Labour Appeal Court is the highest court but the matter can also go to the High Court which is the last option.

Figure 2: Summary of general dispute resolution process in Labour Relations



2.3.3 Public Administration

Effective public policy is achieved through proper public administration. For this reason, public administration is important in ensuring that institutions dealing with labour dispute resolution in Lesotho are effective. Public institutions dealing with labour dispute resolution render a service to the public of ensuring implementation of labour laws. The services may differ from one institution to the next. Examples would be the Department of Labour that offers inspections with the ultimate aim of preventing workplace disputes by giving advice to both employees and employers if either party is not adhering to the labour laws. The DDPR offers the service of conciliation and arbitration of disputes, the Labour Court reviews awards and cases of retrenchment and workmen's compensation, and the Labour Appeal Court is where cases from labour dispute are taken on appeal. All these services are rendered by public servants. According to Du Toit and van Der Waldt (1999:8), "government institutions are established primarily to create and maintain law and order, provide collective products and services on a non-profit basis." The purpose or function of government institutions is to promote the general welfare of society by implementing national policy (Du Toit & van Der Waldt, 1999:9). According to Du Toit and van Der Waldt (1999:9), "public administration as an activity refers to the work done by officials within the total spectrum of government institutions to enable different government institutions to achieve their objectives." Public administration consists of policy making, organizing, financing, personnel provision and utilization, work procedures and control (Du Toit & van Der Waldt, 1999:10).

Lesotho has experienced globalization and industrialization and all these have brought better prospects of employment. There are a lot of foreign and local investors investing in the country across a wide spectrum of sectors. This has led to services offered at the Department of Labour to be offered nationally and regionally from all the ten districts making up the country.

Inspections and dispute resolution at the Department of Labour are only done regionally in all the districts. The DDPR is represented in three regions which include the North region (office in Leribe District), South region (office in Mohale'sHoek District) and the Central region (office in Maseru District). However, the Labour Court and Labour Appeal Court offer services in Maseru only. This indicates that the government tries to meet the needs of its citizens in a context of constrained resources, especially since the Labour Court and the Labour Appeal Court are found only in Maseru.

It is through the process of public administration that institutions are created and in which people work to achieve the objectives of these institutions (Du Toit & van Der Waldt, 1999:46). According to Du Toit and van Der Waldt (1999:46), "… in public administration through its activities an environment is created in which the executive institutions (including functional departments of government institutions) are enabled to implement the policies of governments." Public administration provides a framework and infrastructure in terms of which government institutions can operate (Du Toit & van Der Waldt, 1999:46). Public administration not being provided well causes services rendered to the public to be offered inadequately and below the expected service level. This can result in dissatisfaction amongst the citizens who will ultimately not trust the rules and regulations by which they are governed.

An administrative action cannot take place if specific goals and objectives have not been set (Kuye, Thornhill, Fourie, Brynard, Crous, Mafunisa, Roux, van Dijk & Van Rooyen, 2002:71). Each government institution has to set its own objectives and everything should be based on the actual needs of the society (Kuye, et al., 2002:71). One of the common objectives amongst institutions concerned with labour relations in Lesotho is to ensure sound labour relations that will ultimately lead to zero disputes in the workplace. Objectives may be static but policies are amended to suit the changing environment.

2.3.4 Public policy analysis

This research is a policy analysis study. According to Kuye, et al., (2002:75), “policy analysis is an attempt to measure the costs and benefits of various policy alternatives or to evaluate the efficacy of existing policies; in other words, to produce and transform information relevant to particular policies into a form that could be used to resolve problems pertaining to those policies.” Policy analysis should therefore generate and present information in a manner that will improve the basis for policy-makers to exercise their judgment (Kuye, et al., 2002:75).

Policy making is a cycle. This process or cycle consists of the following phases: agenda setting, policy formulation, policy adoption, policy implementation, and policy assessment (Dunn, 1994:15). As a result of these processes policy analysts may produce information relevant to one, several, or all phases of the policy making process (Dunn, 1994:15). Policy analysis can thus be used as a tool to improve the whole process of policy making. The following are the ways in which policy analysis can improve policy making (Dunn, 1994:17): “Firstly, problem structuring can supply policy relevant knowledge that challenges the assumptions underlying the definition of problems reaching the policy-making process through agenda setting; secondly, forecasting can provide policy-relevant knowledge about future states of affairs which are likely to occur as a consequence of adopting alternatives including doing nothing; thirdly, recommendation yields policy relevant knowledge about the benefits and costs of alternatives the future consequences of which have been estimated through forecasting, thus aiding policy makers in the policy adoption phase; fourthly, monitoring provides policy relevant knowledge about the consequences of previously adopted policies thus assisting policy makers in the implementation phase; lastly, evaluation yields policy relevant knowledge about discrepancies between expected and actual policy performance thus assisting policy

makers in the policy assessment phase of the policy-making process." The abovementioned phases are crucial so that when a policy is taken to parliament to be turned into laws or regulations it is sound. However, the previous government prior to 28 February 2012 failed in this respect because there is a lack of labour policy. However, it is not yet clear whether the present coalition government will be able to formulate a labour policythat will work towards uplifting labour relations in Lesotho and which may even lead to zero labour disputes.

Policy communication is important and has to be done in a manner that is engaging. However, a common medium of communication is pamphlets or books that people buy and often put in their workplace or at home without reading them. According to Dunn (1994:24), "the major limitation of this medium is the probability that a document will reach intended beneficiaries but then sit on the shelf whereas the probability of utilization is enhanced when the substance of policy documents is communicated through policy presentations because policy presentations, conversations, conferences, briefings, meetings and hearings constitute an interactive mode of communication that is positively associated with the utilization of policy-relevant knowledge."

2.3.5 Public policy

Lesotho's national agenda is to accomplish its Vision 2020. It is a framework of how the Basotho people want to see the development of Lesotho by the year 2020. Vision 2020 identifies seven pillars of development which are democracy, unity, peace, education and training, economic growth, management of the environment, and advancement of technology (Vision 2020, Government of Lesotho). Amongst the seven pillars, democracy and economic growth are at the forefront of labour relations. Vision 2020 suggests two groups of strategies to achieve the vision. The first group comprises grand strategies that target the key factors of political

commitment, namely foreign direct investment and public sector management; while the second group is made up of thematic strategies that target the seven pillars mentioned above (Vision 2020). Public sector management is important because institutions that have more power in labour relations are in the public sector. There should be rules and regulations or policies governing how these institutions in the public sector should be conducted.

Policies should address problems. According to Dye (2002:1), “public policy is whatever governments choose to do or not to do. They regulate conflict within society thus public policies may regulate behaviour, organize bureaucracies, or even distribute benefits.” Government plays a crucial role in public policy and that is why institutions which play a major role in dispute resolution are governed by the state. A further definition of public policy according to Hogwood and Gunn (1984:23-24) is that, “public policy is a series of patterns of related decisions to which many circumstances and personal, group and organizational influences have contributed; which means that policy requires an understanding of behaviour especially behaviour involving interaction within and among organizational relationships.” Therefore, for a policy to be regarded as a ‘public policy’ it must to some extent have been generated or at least processed within the framework of governmental procedures, influences and organizations (Hogwood and Gunn, 1984:23-24).

According to Cloete and Wissink (2000:3), “policy specifies the basic principles to be pursued in attaining specific goals; it also interprets the values of society and is usually embodied in the management of pertinent projects and programmes.” A policy has several phases which have to be well articulated. These phases “include initiation, design, analysis, formulation, dialogue and advocacy, implementation and evaluation.”

According to Kalu (2003:1), “for African scholars and policy makers, the central task since the 1960s remains how to achieve viable and sustainable economic growth and political stability.” This means that those in power want to bring change to the members of the society (Kalu, 2003:1). Even though those in power want to bring change they have to follow certain standards set by the country. The International Labour Organization (ILO) sets standards that regulate labour relations around the world. These standards may not apply in the context of Lesotho even though it is a member state. This is the reason why Kalu (2003:3) suggests that some of those policies fail because “African policy makers have tended to blindly implement these contextually and externally derived, but irrelevant policies to various African state realities.” This could be attributed to the fact that the ILO donates money and funds to most labour related projects in Africa. Kalu (2003:3) further states that “it is clear that post-colonial African states continue to struggle with issues of political and economic development with no clear and generalizable framework for explaining how decisions are made to achieve the goals of development by different governments.” These post-colonial African states lack innovative thinking which could ultimately help them make sound policy decisions.

Public policy making is a single concept that includes both the processes and contents of government and governance practices (Venter, 2001:233). Public policy becomes useful and meaningful once it is implemented (Venter, 2001:233). Policy making is done by the national government but policies are executed or implemented regionally in most instances. Planning, decision-making and co-ordination should be executed well to improve policy implementation (Venter, 2001:234). However, should participation and consultation not be done well to execute implementation then legitimacy would not be created. For these reasons, according to Venter (2001:235), “policy is one of the major factors that structure the outcomes on which governments are judged.”

There are a number of different categories of public policy based on how they impact the society. The public policy suitable for this study is the regulatory frameworks. According to Venter (2001:236), “regulation which either increases or diminishes the options that individuals or groups can exercise, can be applied to everything including labour regulations.” Governments are becoming increasingly involved in regulation (Venter, 2001:236). In this form of policy, public participation is also very important. According to Venter (2001: 239-240), “public participation is the direct involvement of citizens in the search for information about decisions related to public issues and how they are made.” Venter (2001:240) explains that, “one of the fallacies about public participation is that the mere act of participation satisfies people and makes them believe that justice has been done.” It is therefore important for people to express opinions on issues affecting their lives.

Policy makers in Lesotho should focus more on governance. According to Joseph (1999:185), “governance refers to the aspect of politics that aims to formulate and manage the rules of the political arena in which state and civil society actors operate and interact to make authoritative decisions.” It incorporates the making of rules to overcome conflicts. The conflicts may be the typical workplace conflicts or disputes. The rules may translate into laws which can provide the framework for the formulation and implementation of policy decisions (Joseph, 1999:185). Joseph (1999:186) further shows that, “governance allows us to examine in more open-ended fashion the challenges inherent in creating an enabling environment that is generally believed to be crucial to human welfare and security, as well as to national development.” Accountability and transparency are also elements of good governance, therefore public servants should be transparent when serving the public and should always account for their actions.

2.4 SUMMARY

This chapter discussed institutions and what they entail and how they can affect labour relations, more specifically labour dispute resolution in Lesotho. It also examined all aspects that government should have in place in order to provide good services for its citizens, especially in relation to good public administration. Labour disputes affect the labour climate negatively, which is why it is important to have a proper LP which however seems non-existent in Lesotho at the moment. This brings a number of challenges to institutions dealing with labour dispute resolution as has been discussed.

A labour dispute goes through a number of channels before it can reach the level of litigation, which is why it is important to have proper mediation, conciliation, and arbitration procedures. Theory shows that institutionalism is concerned with certain value systems and processes are utilized to ensure those value systems therefore these processes should be utilized in a manner that enables proper decision-making. However, the rapid social changes that are experienced in modern societies undermine proper decision-making.

Chapter Three will examine the methodology that was used for this study.

CHAPTER THREE
RESEARCH METHODOLOGY

3.1 INTRODUCTION

This chapter looks at the methodology the researcher used in the study. The following are worth giving attention to: research approach, design, sampling method, and how analysis was done. The researcher will also discuss data analysis looking at themes that emerged from the raw data.

3.2 RESEARCH APPROACH

3.2.1 Qualitative research study

The researcher used a qualitative approach for this study because it looks at behaviour within certain social settings instead of bigger settings. The study looked holistically at how people are affected by institutional operations dealing with labour dispute resolution with more emphasis placed on how people experience the effectiveness of institutions dealing with dispute resolution. This type of approach relies more on the experiences of people in their surroundings which places greater emphasis on words than on numbers; that is, people's opinions are important and interaction with them is of essence. The researcher used this approach because she engaged on a personal level with the participants (Wagner, Kawulich & Garner, 2012:125). Qualitative research is based on making observations that are summarized in a report (Gravetter & Forzano, 2009:147). Human beings always view their societies differently that is why it is important that when one studies them this is kept in mind. The observations may thus be varied. Social reality can therefore be studied well through qualitative research. According to Strauss and Corbin (1998:4), "research moves us increasingly toward a greater understanding of how the world works."

This approach allows for flexibility in a sense that the way the researcher handled interviews with the participants was not in a rigid manner; for example, people were allowed to elaborate more when answering questions which in turn brought new ideas. The researcher allowed for new ideas within the research framework to be tabled. According to Strauss and Corbin (1998:5-6), “flexibility and openness are linked with having learned to sustain a fair amount of ambiguity, it is not that the researcher does not want to pin down things analytically, but the urge to avoid uncertainty and to get quick closure on one’s research is tempered with the realization that phenomena are complex and their meanings are not easily fathomed or just taken for granted.”

3.2.2 An inductive study

There are different theories that the researcher used for this study, including institutionalism, elite theory, and social disorganization; these theories were used because the researcher believes they relate to the study conducted. The theories are the basis of reasoning for the researcher in order to understand the experiences of people affected by labour relations and how they are affected by the effectiveness of institutions dealing with labour dispute resolution in Lesotho. Due to the fact that there is a relationship between theory and research, an inductive study was used for this research. The theory that was used should be able to match the responses made by participants during data collection. According to Bryman (2012:26), “an inductive stance leads to theory being the outcome of the research.” This means the researcher checked whether the theory holds. The researcher ensured this as, “once the phase of theoretical reflection on a set of data has been carried out there will be further collection of data in order to establish the conditions in which theory will and will not hold,” (Bryman, 2012: 26). The condition of checking whether theory holds is called iterative and according to Bryman (2004:10), “it involves a weaving back and forth

between data and theory." Ultimately, the cornerstone that saw this study as inductive is the fact that knowledge was reached by gathering facts (Bryman, 2004: 11).

An inductive reasoning always moves from the particular to the general (De Vos, Strydom, Fouche & Delport, 2005:47). To emphasize this, Leedy (2001:35) suggests that, "in inductive reasoning people use specific instances or occurrences to- draw conclusions about entire classes of objects or events." This is evident in the study because the researcher observed a sample and then drew conclusions about the population that the sample emanates from. According to De Vos et al. (2005:48), "induction is a creative mode." Therefore, the researcher used it to tap deeply into people's minds and thoughts to find out what they make of their surroundings.

3.3 RESEARCH DESIGN

3.3.1 Paradigm

There are different lenses that a researcher can use to look at the world and everything surrounding it. These lenses enable the researcher to make sense of what is being studied. According to De Vos et al. (2005:40), the "researcher must decide within what paradigm he/she is working, know the nature of his selected paradigm very well and spell this out in his/her research report in order to keep communication with his/her reading public clear and unambiguous." Hence the researcher used the interpretivist paradigm for this study.

People have different viewpoints and interpretivist research acknowledges this. According to Henning, van Rensburg and Smit (2004:19), "twenty to thirty years ago, as a result of the linguistic turn in research (in which language became central to the process), the qualitative project took an interpretive turn and by now researchers were inquiring into the way social

meaning comes about in discourses and how these discourses are maintained." Furthermore, according to Henning et al. (2004:19), "the interpretive researcher realizes that observation is fallible and has error and that all theory is revisable." The interpretivist approach believes the goal of scientific research is to hold steadfastly to the goal of getting it right about reality or multiple realities even if the goal is difficult to attain (Henning et al. 2004:20). This means that, "knowledge is accumulated not only by observable phenomena, but also by descriptions of people's intentions, beliefs, values and reasons, meaning making and self-understanding." The researcher therefore looked at different policy actors affected by labour relations in relation to labour dispute resolution in order to understand the phenomena. According to Henning et al. (2004:20), "the types of knowledge frameworks that drive society, also known as its discourse, become key role-players in the interpretive project." That is the reason why the researcher used labour laws/policies governing labour relations in Lesotho as a basis to establish how effective institutions are in dealing with labour dispute resolution.

3.4 DATA COLLECTION AND ANALYSIS

3.4.1 Data collection

The researcher collected data through semi-structured interviews (see annexure C for the interview schedule and C1 for translated version) and a public document (see annexure D for the coalition agreement) because the approach of the study was qualitative. This allowed the researcher to talk personally with each participant and understand how each of the participants feel/thinks about the world of labour relations and more specifically the effectiveness of institutions dealing with labour dispute resolution. The researcher explored the experiences of all policy actors involved in labour relations.

The researcher had questions for the participants on an interview schedule. According to Ruane (2005:154), “when the researcher is interested in standardizing the interview process (i.e., making the experience the same for all participants), the interview guide of the qualitative interview is replaced by an interview schedule” (see annexure C for the interview schedule and C1 for translated version). The questions that were asked in the interview schedule were not leading questions to enable participants to express themselves fully. The intention was for the researcher to gather information on what was on the participants’ minds. However, since interviews seem formal the researcher always had to keep the participants engaged in order to remove any sense of formality. According to Ruane (2005:154), “scripting can make standardized interviews feel unnatural to the participant hence the burden is on the interviewer to keep the whole process engaging and informative.” The researcher resourcefully used active listening skills in all the interviews. The interviews were not longer than 60 minutes.

The researcher used a cellular phone to record interviews. According to Ruane (2005:161), “despite the clear importance of the human touch and social skills in conducting successful interviews, the interviewer is well advised to acknowledge the critical supporting role of technology in the interview process.” However, confidentiality was assured (see annexure B for consent form). Furthermore, Ruane (2005:161) explains that, “this step merely acknowledges the importance of faithfully capturing the data without introducing any errors.” Notes were also taken by the researcher during the interviews.

The public documents that were examined in this study are official documents. According to de Vos et al. (2005:317), “official documents imply documents that are compiled and maintained on a continuous basis by large organizations such as government institutions.” These documents include minutes and agendas of meetings, inter-office memos, financial records,

statistical reports, annual reports and process records (de Vos, et al. 2005:317). The researcher also used the DDPR's annual report for this study.

3.4.2 Sampling

The sample that the researcher was interested in included all the policy actors involved in labour dispute resolution such as participants from the Department of Labour (3 Labour Officers), DDPR (2 Arbitrators), Labour Court (1 Officer from Labour Court), Labour Appeal Court (1 Officer from Labour Appeal Court), Trade unions (2 trade unionists), Employers' organizations (2 organizations' representatives), Employees (10 employees), and Employers (10 employers). There was a total of 31 participants for this study.

Non-probability sampling in the form of purposive sampling was used for this study. The researcher purposefully chose participants that would meet the criteria of what is being studied. Participants were the people who are affected by labour dispute resolution in Lesotho. According to Bryman (2012:418), "the goal of purposive sampling is to sample cases/participants in a strategic way, so that those sampled are relevant to the research questions that are being posed." This form of sampling was necessary for the study because "qualitative researchers seek out individuals, groups and settings where the specific processes being studied are most likely to occur and a process of constant comparison between the individuals and groups being studied is essential, since the researcher is in pursuit of understanding all aspects of his/her research topic" (De Vos et al., 2005:328). The sample size comprised 31 participants.

3.4.3 Types of persons that were interviewed

All the participants interviewed are policy actors. They are all affected by laws/policies governing labour relations in one or another. The researcher interviewed the following participants: three participants from the Department of Labour, two participants from the DDPR, two trade unionists, two employers' organization, ten employees, one participant from the Labour Court, one individual from the Labour Appeal Court, and ten employers.

3.4.4 Policies/laws that were reviewed

The following documents were reviewed: Labour Code Order Number 24 of 1992; Labour Code Wages Amendment Act of 2015; Labour Code Amendment Act of 2000; DDPR's annual report of 2014; and Lesotho's current coalition agreement (2015).

3.4.5 Data analysis

Recording of data and the analytic insights during data collection form part of analysis. Data was analyzed away from site. The researcher tried to write up own impressions immediately after interviews to transcribe and analyze the interview while it was still fresh (Greeff in Mamakwa, 2012:46). This improved the quality of information that the researcher got because it was still new and therefore it gave the researcher the actual picture of what each participant is saying or thinking.

After organizing data, the researcher read and re-read the data and listened to the recordings made to validate data, to correctly get the meaning out of data and to become familiar with the data on a personal level (De Vos in Mamakwa, 2012:47). This enabled the researcher to form categories and

themes from collected data. During the qualitative data analysis process, the researcher examined patterns of similarities and differences from the different policy actors and tried to engage with their diversity (Rigan in Neuman in Mamakwa, 2012:47).The researcher began with an area of study and what was relevant to the area of study gradually emerged. Grounded theory was used as a form of data analysis. According to Strauss and Corbin (1998:19), “researchers attempt to make sense out of their data by organizing them according to a classificatory scheme; in the process items are identified from data and are defined according to their various general properties and dimensions.” All these developed into theory. Theory, according to Strauss and Corbin (1998:22) “denotes a set of well-developed categories (e.g. themes, concepts) that are systematically interrelated through statements of relationship to form a theoretical framework that explains some relevant social phenomenon.” Theory was used as an offering about explanations regarding phenomena in this study.

There are tools used and outcomes expected when using grounded theory as a strategy for analysis. The researcher used coding as a tool for analysis in this study. According to Bryman (2004: 401), “coding is whereby data are broken down into component parts which are given names and it begins soon after the collection of initial data.” Bryman (2004:402) explains that “coding entails reviewing transcripts and/or field notes and giving labels (names) to component parts that seem to be of potential theoretical significance and/or that appear to be particularly salient within the social worlds of those being studied.” Coding is an important first step in theory generation.

The outcomes that emerged when analyzing data for this study include concepts and themes. Concepts are the labels that the researcher used to give to discrete phenomena and these concepts were the building blocks of theory (Bryman, 2004:403). On the other hand, themes are concepts that have been elaborated so that they are regarded as representing real world

phenomena; themes may subsume two or more concepts which place them at a higher level than concepts (Bryman, 2004:403). According to Bryman (2004:403), “a theme may become a core theme around which the other sub-themes pivot.” It is then through the themes and sub-themes that the researcher was fully able to analyze the study.

The nine steps of Creswell’s analytic spiral of data analysis cannot be followed rigidly but may overlap or even move in circles (De Vos in Mamakwa, 2012:47). The following are the steps that were followed:

- **Planning for the recording of data:** The first step in data analysis was the planning for the recording of information (De Vos in Mamakwa, 2012:47). As has been previously shown an interview schedule (see Annexure C) was used as a guide during interviews to understand how policy actors are affected by the effectiveness of institutions dealing with labour dispute resolution. Permission was granted by participants to record them and a consent form was signed by participants (see Annexure B), and notes were compiled by the researcher during interviews.
- **Data collection and preliminary analysis:** As the interaction between data collection and analysis is a distinguishing feature of qualitative research, the researcher collected data from policy actors affected by labour policies while provisionally formulating meanings in terms of what their experiences were in regard to their work (De Vos in Mamakwa, 2012:47). The researcher formulated meanings according to the different participants as their experiences differ because of the different institutions they come from.
- **Managing data:** The researcher put data collected in a folder. All questionnaires were put in a folder separated by plastic sheets and in each plastic sheet the researcher put answers of respondents of the same profile together. Raw data from the phone used during

recording was moved onto a flash drive to make the researcher's job easier during analysis.

- **Reading and writing memoranda:** The researcher re-read data a number of times to get a sense of what policy actors said during interviews and wrote notes on separate pieces of paper, attaching the notes to the interview schedule of the relevant participant to identify patterns (De Vos in Mamakwa, 2012:48). The researcher used the notes to formulate a trend in answers because inasmuch as the respondents were from different institutions, some of their answers were the same and the pattern is what enables good data analysis.
- **Generating categories, themes and patterns:** After completing the process of reading and writing memos, the researcher generated categories, themes and patterns (Mamakwa, 2012:48). This process entailed "identifying salient themes, recurring ideas or language, and patterns of belief" (De Vos in Mamakwa, 2012:48). The researcher derived themes and sub-themes from respondents' answers. This is provided in Table 5 below.

Table 5: Themes and Sub-themes

THEMES	SUB-THEMES
1. Expectations of parties affected by Labour relations.	i. Clear Labour laws. ii. Easy access to Labour laws. iii. Transparent government.
2. Availability of resources for doing work especially government institutions.	i. Staff capacity. ii. Transport.
3. Communication as a platform for change	i. Information dissemination.
4. Public participation in decision making	i. Enough representation of employees and employers in decision making processes. ii. Involvement of employees and employers in processes of decision making.
5. Proper Public administration.	i. Removal of unnecessary formal and long administrative processes in resolving disputes. ii. Better salaries for public servants.

- **Coding the data:** The researcher used abbreviations of key words to code the data in ways the researcher understood (De Vos in Mamakwa, 2012:48). Some respondents were giving too much information or elaboration therefore the researcher used her own shortcuts to fully understand what was being said by the respondent, and abbreviations and pictures were used by the researcher for this purpose.
- **Testing emergent understandings:** During this step the researcher evaluates data for usefulness and centrality (De Vos in Mamakwa,

2012:48). The researcher looked at how the available data answered the question about the effectiveness of institutions dealing with labour dispute resolution. The questions that the researcher wanted answered include what the explanation might be for the fact that labour disputes take long to be resolved as opposed to being resolved out of court or through consultations; how do relevant institutions (DDPR, Labour Department and Labour Court) handle the escalation of labour disputes; how effective are institutional modalities for decision-making given the escalating incidents; and how do labour disputes affect the state of labour relations overall in Lesotho?

- **Searching for alternative explanations:** The last step in the information analysis will be the search for alternative explanations (De Vos in Mamakwa, 2012:48). The researcher looked at the various ways in which policy actors have experienced the effectiveness of institutions dealing with labour dispute resolution. The final result was a general description of the effectiveness of institutions dealing with labour dispute resolution (Mamakwa, 2012:48). As mentioned earlier, respondents were from different institutions and their experiences were not the same; that is why even when the researcher was digging deeper she would ask different questions to get to the bottom of the different experiences of the policy actors.
- **Writing the research report:** The researcher tried to present the report in a manner that will be easy to understand by the generalpublic. Technicalities were removed, and the language used and the writing style used by the researcher are very simple.

3.5 SUMMARY

A qualitative research approach was used for this study. Semi-structured one-on-one interviews were used to obtain an in-depth understanding of how policy actors view the effectiveness of institutions dealing with labour

dispute resolution. There were 31 participants chosen in Maseru through non-probability sampling which was purposeful since the researcher wanted a calibrer of participant who is involved in labour relations matters.

Data was analyzed by identifying similarities and differences across cases, to derive the meaning and generate categories and themes (Mamakwa, 2012:49)

Chapter four will focus on research findings.

CHAPTER FOUR
RESEARCH FINDINGS

4.1 INTRODUCTION

The study considers the effectiveness of institutions dealing with labour dispute resolution in Lesotho. This chapter explores the findings of the researcher from data collected from participants through one-on-one interviews (see Annexure C). The findings are organised in such a way that the four research questions were answered. The study examined how policy actors have experienced the effectiveness of institutions dealing with labour dispute resolution in Lesotho. The thoughts and feelings of participants are important for qualitative study and for this study in particular, hence the findings will be simplified so that future readers will find it accessible. The 31 participants interviewed in this study were made up of three Labour Officers (Labour Inspector, Junior Labour Officer, Legal Officer), two Arbitrators, two Employers' organizations, two Trade Unions, one official from the Labour Court, one official from the Labour Appeal Court, ten Employees and ten Employers.

4.2 UNDERSTANDING THE NOTION OF LR AND DISPUTE RESOLUTION

It was necessary for the researcher to establish whether respondents fully understood what LR entails and how they view labour dispute resolution by various institutions. The views of each respondent remained independent but on some questions the respondents shared the same ideology. These views were not associated with a specific respondent necessarily for the purpose of the study but an holistic representation and general view was used.

4.3 DISCUSSION OF RESEARCH FINDINGS

4.3.1 Labour Officers

LR is defined by the three labour officers as having good relations between an employee and employer at the workplace. They go on to define labour dispute resolution as a process in which government comes in as a third party to resolve industrial disputes. The Ministry of Labour and Employment (Department of Labour) as the custodian of labour law in Lesotho bears the burden of ensuring that disputes are resolved effectively. Therefore, the three labour officers answered interview questions which were derived from the research questions and the following findings were derived to that effect.

4.3.1.1 Resolving disputes within prescribed time-frames

Mediation is a form of Alternative Dispute Resolution used by the Department of Labour to resolve disputes. This simply means that as a Labour Officer one has to be neutral when resolving a dispute as a third party. This form of dispute resolution requires a Labour Officer to sometimes conduct his or her own investigations before any resolution is made. Investigations involve a Labour Officer going to an establishment which may be problematic since there is a lack of transport at the Department of Labour. The Maseru District office has only one car which is sometimes borrowed by other departments. A dispute can continue for three weeks without resolution simply because a Labour Officer has no transport to go to an establishment. However, if it is a dispute that needs no investigation it is resolved within a week and referred to the DDPR if need be, but in most cases issues have to be investigated before resolution. Administrative issues also result in a matter taking longer to be transferred to the Legal section from the IR section. This may be experienced as a huge delay by the parties involved (employees and employers).

The practice of transferring a dispute from the IR section to Legal may be seen as delaying disputes but the literature shows that LR is governed by an intricate system of laws, policies and procedures that regulate and facilitate the labour relationship (Venter, et, al. 2009:4) and for this reason Labour Officers have no alternative but to follow rules and regulations that govern the way they work even if it means dispute resolution is going to be delayed. The rules cannot be circumvented.

4.3.1.2 Managing labour disputes institutionally

It has been previously explained that the Department of Labour is the custodian of labour law in Lesotho and this institution has to ensure that it manages disputes well to an extent that there should be zero disputes in the workplace. The most important thing that this institution can do to manage disputes is through regular training of employees and employers. However, it seems the Department is unable to hold regular training interventions and this is evident in the number of disputes taken to Labour Department daily, which averages 20. Regular training for employees and employers depends on how well the Department has budgeted for them and since budget is limited the training is not done or is inadequate. One of the Labour Officers indicated that only two training sessions were held in the 2014/2015 financial year.

4.3.1.3 Institutional modalities for decision-making and case escalation

Lesotho as a member state of the ILO functions as a tripartite; that is, government can never make a labour related decision without consulting the social partners (employees and employers). NACOLA is a platform used by government to bring social partners together about labour matters. However, social partners are often reluctant to participate in issues that concern them. An example is when the Labour Code Wages Amendment

Act of 2015 was promulgated, where before parliament could pass it social partners were asked to give recommendations and only a few did this. This resulted in the law being passed with few recommendations but people subsequently complained about salaries, amongst other things. The reluctance of employees and employers to fully participate in labour issues causes them to lose trust in government. Policy actors (employees and employers) are also policy makers in this context. The literature shows that institutions shape the choices which policy makers make but they do not eliminate the free will of policy makers (Hall, 1986:256). This simply means that it is the free will of employees and employers to decide whether they want to participate or not.

4.3.1.4 Ways in which disputes affect labour relations climate in Lesotho

Labour Officers are of the opinion that labour disputes negatively affect LR in Lesotho so much that the number of disputes keeps on increasing. The relationship between an employee and employer is without a doubt a complex one and if there are no remedies to ease the complexity the relationship becomes negative. Literature shows that LR is an all-encompassing term used to describe the dynamic complexities of the various relationships between parties to the employment relationship (Venter, et, al. 2009:3). Government therefore has to ensure that dynamic relationships are smooth to enable good working relations.

4.3.2 The Directorate of Dispute Prevention and Resolution (DDPR)

Arbitrators define LR as the relationship between employees and employers and it should also include employers' organizations and trade unions as they represent employees and employers in most cases. Proper LR is an indicator of a well functioning company with the possibility of yielding more profits. Labour dispute resolution was according to arbitrators defined as a

way a neutral body like the DDPR resolves disputes using two forms of ADR, which are conciliation and arbitration. From these definitions the arbitrators provided answers to the interview questions and the following findings were derived.

4.3.2.1 Resolving disputes within prescribed time-frames

The DDPR resolves disputes within a reasonably short time because within a month a case is resolved even though some parties do not appear for hearings thus applying for rescissions which causes a case to be delayed for up to three months on average. However, cases which are taken to the Labour Court for review or enforcement take longer to be resolved and they believe it is because both the Labour Court and Labour Appeal Court are understaffed and they serve the whole country. One has to remember that unlike the DDPR which is found in three regions, the Labour Court and Labour Appeal Court are only found in Maseru District.

4.3.2.2 Managing labour disputes institutionally

Arbitrators showed that the DDPR manages labour disputes by conducting training through its IPAPU section. These training interventions are paid for by those who want training which equips employees and employers with the right tools in resolving disputes and how these disputes can be prevented. However, since the Department of Labour is the custodian of labour law it should do more but it seems to be failing through its inspectorate section if one considers some of the cases referred to the DDPR. Some cases are petty and it is only through effective inspections that employees and employers can deal with these conflicts before they evolve into disputes.

4.3.2.3 Institutional modalities for decision-making and case escalation

Arbitrators are of the opinion that the DDPR has a lot of instruments in place for people to know about labour laws and labour dispute resolution. They showed that DDPR sells a lot of documents that deal with labour issues at a very reasonable price ranging from R2 to R10. They also showed that everywhere in their offices there are placards for people to read and gain knowledge.

4.3.2.4 Ways in which disputes affect labour relations climate in Lesotho

Arbitrators are of the opinion that labour disputes negatively affect LR to the extent that policy actors take LR issues for granted. Some policy actors do not appear for their cases on the stipulated dates and there are many applications for rescission. This delays the process of dispute resolution. However, literature shows that the nature of the employment relationship is such that disputes between an employer and employee occur frequently (Du Plessis and Fouche, 2006:319) and for this reason in 2000 the DDPR was established with the aim of promoting industrial peace.

4.3.3 Employees

Employees described LR and labour dispute resolution in brief. They defined LR as how they relate with their employers and labour dispute resolution was defined as the way the Department of Labour resolves labour disputes. They were not very clear about the functions of the following institutions: Department of Labour, DDPR, Labour Court and Labour Appeal Court. Most of them only knew about the Department of Labour and DDPR even though they could not clearly state what each respective institution

does with regard to labour dispute resolution. The following findings were derived from interview questions which stem from the research questions. The findings therefore are an answer to the respective research questions.

4.3.3.1 Resolving disputes within prescribed time-frames

Out of the ten employees, eight are of the opinion that disputes take longer to be resolved at the Labour Department because employers tend to request postponement which can take up to two months. Two of the employees said the Labour Department served them well in time when they had disputes with their employers. However, all employees were of the opinion that Labour Officers are often on the employers' side hence the extension of cases. Eight employees are of the opinion that if an incentive (bribe) is not offered to a labour officer then a delay is likely. The remaining two are of the opinion that one can be served well irrespective of whether a bribe is paid or not.

4.3.3.2 Managing labour disputes institutionally

Labour disputes should be managed by government to avoid unnecessary labour disputes. Unlawful strikes, unfair dismissals, and unfair retrenchments occur because there was no management of disputes to avoid their escalation.

All ten employees are of the opinion that government is not doing enough to manage disputes especially through training or information dissemination. They highlighted that they have heard that the Labour Department provides training but in most cases invites employers only. They are of the opinion that they do not know about most of their rights at work because information is not shared, including via radio, and they mostly blame the Labour Department. Literature shows that in the modern state the position of the elites is related to the development of large scale

organizations in many areas of life, with the result that there are different kinds of elites and elite power may be based on different sources which includes wealth. Therefore, it is not surprising that employers because of their status (wealth) obtain training while employees are not. An employee that goes for training during work time causes the company to lose some income because there will be no productivity when the employee is absent. An employer makes an economic decision in going to the training instead of his/her employees to avoid loss of productivity.

4.3.3.3 Institutional modalities for decision-making and case escalation

Employees are of the opinion that the instruments being used by government to make them aware of LR in Lesotho are not enough. They are of the opinion that laws are not easily accessible and sometimes when they go to the Government Printer to purchase information publications they are told that there is no printing paper. They are of the opinion that they mostly know about labour law when there is a labour dispute and an official has to explain it.

4.3.3.4 Ways in which disputes affect labour relations climate in Lesotho

Employees are of the opinion that labour disputes affect their socio-economic well-being. They are of the view that labour disputes often end in dismissals and this contributes to unemployment. Unemployment causes poverty in their families and it can sometimes lead them to following illegal avenues of making money to provide for their families.

Literature shows that the interactions between employee, employer, and government are dynamic and occur within a particular social, economic and political framework (Venter, et al. 2009:4). These interactions can cause

negative relations if disputes are a norm. The LR environment should be conducted and managed in such a way that it avoids unnecessary disputes and it should curb conflicts from evolving into disputes because a negative LR climate is detrimental to all social partners (government, employers, and employees).

The fact that the relationship between an employee and employer is authoritarian means disputes are inevitable in the workplace. This authoritarian climate in the workplace is what sees disputes escalating because individuals may oppose the power structure in order to avoid feeling that they are being oppressed. However, literature shows that employee involvement enables employees to respond to resolve problems, act at work within their own authority while providing them with a high degree of self-esteem, empowerment, learning environment, opportunities for personal growth and development, and a sense of achievement (Rai, 2004:13).

4.3.4 Employers

Employers define LR as good working relations between them (employers) and their employees. They believe that a happy employee is a productive employee. They defined labour dispute resolution as the use of different mechanisms by government to resolve disputes, and these mechanisms are found in different institutions dealing with labour dispute resolution. Therefore, the following findings were derived from the interview questions which were responding to the four research questions.

4.3.4.1 Resolving disputes within prescribed time-frames

It is always helpful for a conflict to be resolved before it evolves into a dispute. Therefore, it is positive if Labour Officers come to establishments to resolve conflicts and disputes. However, in most cases when a Labour

Officer promises to come to an establishment they fail to appear and their reason for failing is always the scarcity of transport at the Department of Labour. It would improve the service offering if government ensured that transport is available for Labour Officers. Labour Officers also teach employees about labour laws through regular inspections and failure to conduct these inspections leads to LR problems in the workplace.

Labour Officers as bureaucrats do not seem to be working well together because sometimes during the inspections they give conflicting information. This causes employees to be misinformed as to what is expected of them. Literature emphasizes this point by showing that bureaucracy is the focus for much institutional analysis because of the importance of government but bureaucrats do not seem to work well in harmony because they have different agendas (John, 2005:44). Bureaucrats compete with each other for influence on policy (John, 2005:44).

4.3.4.2 Managing labour disputes institutionally

Government's relationship between employees and employers is secondary. This simply means that government plays a facilitative role. It should facilitate LR and manage labour disputes. Disputes could be managed if government through the Department of Labour trains employers regularly on LR issues. Training offered by the Department of Labour is free which is a positive thing but their limited frequency is of great concern to the employers. In the 2014/2015 financial year there were only two training sessions offered by the Department of Labour. Employers are of the opinion that training could help enhance their knowledge of labour law so that they can work in harmony with their employees. They are also of the opinion that training can help them manage labour disputes internally, thus curbing cases that escalate to a point where they have to be mediated, conciliated, arbitrated or adjudicated.

4.3.4.3 Institutional modalities for decision-making and case escalation

Employers are of the opinion that only elite employers are represented at NACOLA and that representation is not inclusive. They also believe that emerging and smaller employers are not represented at all hence they do not become part of the decision-making process.

4.3.4.4 Ways in which disputes affect labour relations climate in Lesotho

The relationship between employees and employers is primary. In this primary relationship there are divergent interests which cause disputes to occur. Literature shows that the key feature in this primary relationship is the conflict that arises as a result of divergent interests between the parties, largely due to differing expectations of the various roles played (Venter, et al. 2009:11). Employers are of the opinion that the divergent interests cause labour disputes which affect them economically. They also believe that labour disputes lead to hostility on the part of some employees thus lowering their productivity. Disputes can also lead to the loss of an employee and the deficit that employee leaves in an organization or establishment leads to lower productivity. Employers are also of the opinion that labour disputes could not negatively affect them if they had proper in-house conflict management processes but since they do not have full knowledge of LR they sometimes fail to act appropriately to address concerns.

4.3.5 Labour Court and Labour Appeal Court

Officials from these two courts define LR as an holistic relationship between employees and employers which is facilitated by government to ensure they relate well. Labour dispute resolution was defined as the way government uses different institutions to resolve disputes from the Department of Labour

where it is the first contact for complaints on labour issues up to the level of courts where adjudication is done. The following findings were derived from the answers the officials gave to the interview questions. The aim of the interview questions was to answer the research questions which are the foundation of this study.

4.3.5.1 Resolving disputes within prescribed time-frames

Rapidly implemented social justice is the fundamental value on which the statutory dispute resolution system is based; systematic delays in the processing of labour disputes threaten to undermine the statutory goals, especially in the Labour Court (Van Niekerk, 2015:837). It is therefore important to resolve matters quickly at the Labour Court and the Labour Appeal Court. However, resolving disputes quickly in these two institutions does not happen often or easily. Some cases take up to a year before they are resolved and this is attributed to the fact that these two Courts serve the whole country and they are understaffed. The amount of work at these two institutions is excessive and cannot be handled by only one judge at the Labour Appeal Court and only two judges at the Labour Court.

Warrants of arrest take time to be issued to the parties to be arrested because transport is scarce at these two institutions. Sometimes an individual is issued with a warrant of arrest only after a month because there was no car to go to that individual's establishment.

4.3.5.2 Managing labour disputes institutionally

Management of labour disputes can be used as a foundation for sound LR. LR management means fewer disputes because government would have done all that is necessary to prevent labour disputes. Prevention is always the preferred option and this could only be done by one institution which is the Department of Labour. Courts are in place to address problems that

have already occurred, and it is not within their remit to teach the public how to abide by the law. However, the Department of Labour through its inspectorate section has the opportunity to prevent labour disputes through education. Inspections are a platform the Department of Labour should use effectively because that is where people are taught about labour laws and how they should abide by them. The Department of Labour does not use the inspection opportunity effectively because there are still many disputes from the DDPR taken to the Labour Court and ultimately the Labour Appeal Court.

4.3.5.3 Institutional modalities for decision-making and case escalation

Officials from the two courts are of the opinion that the instruments used by these courts for decision-making are actually in order. However, they showed that these two institutions do not deal with social partners concerning the enactment of laws but they believe the Ministry of Labour and Employment is doing enough to ensure proper participation since there is NACOLA. Officials explained that these two institutions are only implementers.

4.3.5.4 Ways in which disputes affect labour relations climate in Lesotho

Officials at the Labour Court and the Labour Appeal Court are of the opinion that LR is negatively affected by labour disputes. They believe that the negative effect causes a lot of people to take labour law for granted to an extent that a person who has offended will remain reluctant to comply with the law unless there are harsh penalties enforced, such as a prison sentence.

4.3.6 Employers' organizations and trade unions

Officials from these two institutions (employers' organizations and trade unions) define LR as the relationship between employees and employers including trade unions and employers' organizations as their representatives. Labour dispute resolution was defined as all the mechanisms government has put in place to resolve disputes. Furthermore, collective bargaining was also used by these two institutions as a way to define labour dispute resolution since these institutions use it in order to ensure that disputes do not occur, especially considering disputes of interest. The following findings were therefore derived from the answers of the officials as to how they have experienced institutional involvement in labour dispute resolution and their feelings in this regard. The findings answer the four research questions of this study.

4.3.6.1 Resolving disputes within prescribed time-frames

Officials from these two institutions are of the opinion that since they mostly work with the DDPR to resolve disputes it addresses disputes fairly rapidly. It takes one month on average for a dispute to be resolved at the DDPR. However, trade unionists are of the opinion that the Labour Department where cases of their deceased members have to be resolved takes very long, over six months to be resolved and they therefore believe that the law should change to enable them to resolve issues of their deceased members. However, literature shows that decision-making can be determined through the power structures (Parsons, 2003:248) and for this reason it is not unusual that the Department of Labour as the custodian of labour law should deal with cases of deceased employees.

4.3.6.2 Managing labour disputes institutionally

Participants from employers' organizations are of the opinion that the Department of Labour is not doing enough through its inspectorate unit in the IR section to manage labour disputes. For this reason, they believe petty issues are taken to the DDPR. On the other hand, trade union officials are of the opinion that they are responsible for teaching their members how to manage conflict in their respective workplaces. However, because of lack of funds they are unable to train their members regularly and they believe that government could help them financially to do some of the training because they would like to see conflicts not being escalated to the dispute level. Employers' organizations officials, however, do not have problems with their members because they believe they are doing enough to equip their members with knowledge of labour law.

4.3.6.3 Institutional modalities for decision-making and case escalation

Trade unions and employers' organizations believe that some of the instruments used in labour dispute resolution are outdated, especially the important Labour Law in Lesotho which is the Labour Code Order Number 24 of 1992. Furthermore, they indicated that when resolving disputes they have to rely more on judgements. They are also of the opinion that laws are not easy to interpret and that has resulted in a lot of employees and employers not knowing what is expected of them. Literature shows that institutions embody cultures and past political decisions (John, 2005:40) so this indicates that it is not unusual that the Lesotho government is still using outdated laws. The use of past political decisions is therefore one of the many characteristics of an institution.

4.3.6.4 Ways in which disputes affect labour relations climate in Lesotho

Trade unions and employers' organizations are of the opinion that labour disputes negatively affect the LR climate in Lesotho because government has not done enough to equip employers with the right tools that will help them to undertake in-house conflict management processes at the establishments or organizations. Trade unions and employers' organizations stated that these processes could help reduce the evolution of a conflict into a dispute if they are empowered to resolve it internally. This would mean it does not have to be resolved externally.

4.3.7 Legislature and Report

Findings from the legislation reviewed and the report aim to answer the four research questions of this study. These were aligned with the interview questions and the following findings were derived.

4.3.7.1 Resolving disputes within prescribed time-frames

Administration is important in any institution because it helps an institution to function well. Institutions involved in labour dispute resolution have different administrative processes. The DDPR's administration is worth noting because this tribunal was set up to bring industrial peace and to resolve disputes effectively and efficiently. According to the Labour Code Amendment Act of 2000, the DDPR has rules and regulations governing its administration of processes concerning labour dispute resolution (see Annexure D). According to this law all disputes of right should be referred to the DDPR within a period of three years with the exception of cases of unfair dismissal which should be referred within a period of six months. Failure of a party to refer a dispute within the prescribed time-frame can lead to that party applying for condonation. Condonation is when a party

gives reasons as to why it failed to refer a case to the DDPR during the prescribed time-frame and pleads with the tribunal to allow its case to be heard. A labour officer can represent employees in conciliation and arbitration processes. However, this law has not stipulated the time-frame in which a dispute of right should be conciliated or arbitrated in order to reach a resolution. The fact that a party may fail to refer a dispute in time confirms what some of the respondents have indicated, that sometimes employees and employers do not know enough about labour law enough because of lack of training and ineffective labour inspections. The fact that government uses outdated laws causes people to ignore the law because they feel it is not serving its purpose in their changed environments.

The Department of Labour, the Labour Court and the Labour Appeal Court do not have specific rules and regulations guiding them on how long they should take to resolve labour disputes.

4.3.7.2 Managing labour disputes institutionally

According to the DDPR annual report for 2014 (see Annexure E) which was published in March 2015, 23 workshops were held focusing on BCLL, CDH, WG, PCDH, and RDI.

4.3.7.3 Institutional modalities for decision-making and case escalation

According to the DDPR 2014 annual report (see Annexure E) the institution used different media as an instrument for the public to know about ADR. The institution used a newspaper known as Public Eye on the 18th July 2014 to write about nature and types of contract employment; 22nd August 2014 it released an article named “Is the new employee automatically on probation”, 5th September 2014 it released an article on “Express and implied terms of contract”, and lastly on 31st October 2014 it released an

article on “Fixed term contracts”. According to the report the institution also used two different radio stations to provide the public with information.

4.4 SUMMARY

Labour disputes are escalating despite the regulatory framework that sets boundaries for what should and should not happen in Lesotho. Findings from 31 participants suggest a number of issues causing the escalation of disputes. However, due to the different profiles of participants their opinions on one issue differ and are sometimes contradictory.

Labour officers are generally of the opinion that things are going well in LR in Lesotho except for a few challenges which they believe are departmental. Arbitrators are generally of the opinion that the institution they work in is doing a good job but failure seems to lie in other institutions. Employees (trade unions) and employers (employers’ organizations) are generally of the opinion that the burden lies with the government and when things fail the government should be held accountable.

The next chapter will examine the data analysis.

CHAPTER FIVE
DATA ANALYSIS

5.1 INTRODUCTION

In this chapter the researcher analyses data from 31 participants aided by the findings in chapter four. Data was analyzed based on the answers given by participants during one-on-one interviews (see Annexure C). The questions were asked in such a manner that they answered and elaborated more on the four research questions. The findings in this study were analyzed and presented based on themes and sub-themes identified from participants' answers.

5.2 DATA ANALYSIS

According to De Vos (2005:338), "identifying salient themes, recurring ideas or language patterns of belief that link people and settings is the most intellectually challenging phase of data analysis." Data collected from the 31 participants is categorized and presented in the form of themes and sub-themes (see Table 5). These themes and sub-themes are what informed the analysis of data.

5.2.1 Expectations of parties affected by labour relations

The first theme identified what employees and employers expect from government institutions in relation to them having good LR to avoid Labour disputes. Employees and employers expect Labour laws to be clear, Labour laws to be easily accessible, transparent government. Literature emphasizes that public policy is a series of patterns of related decisions to which many circumstances and personal, group and organizational influences have contributed (Gunn, 1984:23-24). These many patterns and influences are what may cause laws to be unclear, inaccessible and even the government is not sufficiently transparent. However, the following sub-

themes explain this in more detail. This theme was therefore divided into three sub-themes which include clear labour laws, easy access to labour law, and transparent government.

5.2.1.1 Clear labour law

Literature shows that the situation today is such that the collective labour relations between employer and employee are regulated by a sophisticated system of statutory labour measures (van Jaarsveld and van Eck, 1998:6). This sophistication of statutory labour measures is what has led most participants to feel that labour law is not clear, thus causing it to be difficult to interpret. Furthermore, since statutory labour measures are sophisticated; this has led to the country using outdated labour laws especially the Labour Code Order Number 24 of 1992 until another more sophisticated law is put into place. It is therefore not surprising that the country is still using this law to date because sophisticated products take long to produce; they need people to pay attention to detail.

Lesotho is a developing country with most of its laws borrowed from elsewhere. This makes it difficult to put new laws into place because a lot of revenue is needed to do that. Finances are a challenge in Lesotho's development as a country performing badly economically cannot simply change its laws without having the resources to do so.

In developing countries there are a lot of different interests at play because of unstable government and this has been discussed in social disorganization theory. The Lesotho government was changed in February 2015 from the one that had ruled for two years since 2012. This means that within a short period of time there were different people with different interests hence the delays in improvements of laws. Parties to labour relations in Lesotho will continue using outdated laws until the country reaches an improved level of stability.

5.2.1.2 Easy access to labour law

Literature shows that law must be accessible and as far as possible intelligible, clear and predictable (Van Niekerk, 2015:837). However, underlying information from this study shows that people who are mostly affected by LR (employees and employers) cannot easily access labour law even though their counterparts (Labour Officers and Arbitrators) suggest that labour law is easily accessible. Therefore one would have to look at a factor that satisfies accessibility and it seems government is unable to fulfil the requirements because in most cases employees and employers would have to buy pamphlets or books and put them in their workplace or at home. Dunn (1994:24) suggests that, “the major limitation of buying pamphlets or books is the probability that a document will reach intended beneficiaries but then sit on the shelf whereas the probability of utilization is enhanced when the substance of policy document is communicated through policy presentations because interactive mode of communication is positively associated with the utilization of policy relevant knowledge.” It is therefore not practical to say laws are there for people to buy when people are not going to gain knowledge from what they have bought.

Government is doing all it can to ensure the laws are accessible but it overlooks the important matter of communication channels in this regard. The reality is that channels of communication should be effective in order for policy information to be transmitted well. However, since policy actors (employees and employers) affected by labour laws in Lesotho are of the opinion that these laws are not easily accessible this means that government has chosen the wrong communication channels. It usually happens that inadequate communication channels are chosen because one is fearful or they simply want to take the easiest route. It is highly unlikely in this case that the government is fearful but the likelihood is government wants to take the easiest route because of financial constraints usually

faced by developing countries. This results in long term problems which are seen in the escalating number of labour disputes because policy actors (employees and employers) cannot easily access laws governing their behaviours in the workplace.

5.2.1.3 Transparent government

The Government of Lesotho is committed to principles of transparency. Some of the participants showed that LR in Lesotho is like a three-legged pot in that the government, employees (trade unions), and employers (employers' organizations) always work together. This means that government can never make a labour related decision without consulting the social partners which are employees (trade unions) and employers (employers 'organizations). Literature shows that in the determination of institutional rules in respect of labour matters or other measures for regulating development of the labour situation, South Africa has a tripartite system, where in that the state, employers and trade unions co-operate closely or are otherwise participants in the creation of laws regulating LR (Van Jaarsveld & van Eck, 1998:14). This is what also happens in Lesotho but not all the social partners utilize the opportunity as indicated by labour officers that sometimes they (employees and employers) become reluctant to participate in issues that concern them.

A government can be transparent but if its citizens are not willing to utilize the tools for public participation then government should not be blamed for policy failure. The fact that employees and employers often do not want to participate in issues concerning them for reasons only known to them poses a challenge to the labour relations climate in Lesotho. Some disputes are caused by ignorance, and eradication of such ignorance could ultimately lead to the reduction of labour disputes. Therefore, government's transparency does not serve its purpose when policy actors (employees and employers) do not shift their mind set.

5.2.2 Availability of resources in government institutions

The second theme identified that availability of resources is very important in aiding government officials to do their work. The lack of necessary resources leads to institutions not being able to perform to the best of their abilities. The following resources are essential for government institutions to perform well: human resources and transport. This theme is therefore divided into two sub-themes which include staff capacity and transport.

5.2.2.1 Staff capacity

Participants have shown that the Labour Department, Labour Court and Labour Appeal Court take longer to resolve disputes because these institutions are understaffed. This may be true because evidence shows that there are only two presiding presidents at the Labour Court serving the whole country and one judge at the Labour Appeal Court serving the whole country. At the Labour Department there are four officers who specifically deal with labour disputes and they serve the whole district. As literature has shown that today LR uses a sophisticated system of statutory labour measures that is not easy to implement without the necessary skills. These institutions need people with some level of IR expertise. It is therefore not easy to place people in these institutions if they do not have the relevant knowledge. Therefore, until skilled people are found these institutions will continue to function inadequately.

Considering the current economic climate in Lesotho and the social changes it is not easy for government to employ new staff. The only thing that government should do to ensure proper service delivery is to train government officials and broaden their horizons. All participants talked about training for employees and employers but none of them thought that government officials also need training to enhance their skills. Staff capacity

need not be about the number of working officials only but staff should be capacitated in all forms and this will help lower the number of labour disputes because people with the right skills are then able to deliver effectively. The sophistication of labour issues warrants ongoing training for government officials.

5.2.2.2 Availability of transport

Participants have shown that unavailability of transport is one of the major obstacles in the way of officials to do their job properly. Availability of transport therefore depends on how well an institution is administered. Literature shows that public administration consists of financing (Du Toit & van Der Waldt, 1999:10). Therefore, transport has to be on the budget of public institutions so that government officials can be aided in doing their job. However, this unavailability of transport suggests that someone in the institution is not doing his/her job properly because if the job was done well then transport would not be a challenge.

The Government of Lesotho does not have its own vehicles but instead it hires vehicles from private companies. Towards the end of 2015 the Government of Lesotho ended its long renting/hiring contract with Avis. This shows that government is wasting money on renting/hiring whereas it could buy its own fleet (transport). Renting/hiring comes with terms and conditions hence the reason why there seems to be shortage of cars (transport) for officials to perform their duties. The Ministry's budget should not focus on renting/hiring fleet but instead it should focus on buying the Ministry's own fleet (transport).

5.2.3 Communication as a medium of change

Communicating public policy through different platforms is important for citizens to gain policy knowledge in a cost-effective manner. The way

policies are communicated could see a positive change in LR to the extent that labour disputes could be minimised. This theme identified one sub-theme which is information dissemination.

5.2.3.1 Information dissemination

Information is effectively disseminated if there is a match between means to the message and needs of the audience. In this study the audiences are employees and employers. The audiences' needs are to get as much information as possible on labour relations in order to foster good labour relations in their respective workplaces. It is necessary that information concerning LR in Lesotho is widely spread. According to the DDPR 2014 annual report the institution tries to disseminate its information and uses media (radio and newspapers) as a way of dissemination. Radio is a powerful media in Lesotho especially since people do not have to pay to listen to the radio. However, training workshops as a way of dissemination from various institutions seems to be failing the people mostly affected by LR in Lesotho. Evidence shows that the DDPR's trainings are paid for and not everyone can afford them. Evidence also shows that the Labour Department holds training sessions but not as frequent as people (employees and employers) would expect. Training done by the Labour Department is dependent on available budget but public administration consists of financing, therefore this simply means someone overlooks budgeting for training on issues concerning LR in Lesotho. For this reason, there were only two trainings done for the 2014/2015 financial year on LR for establishments in Maseru.

Everything relates to finances and whether the finances for the Department of Labour as an institution to disseminate policy information well are being sufficiently prioritised. It seems funds are insufficient, and that is why Department of Labour is unable to hold training for employees and employers as often as they (employees and employers) would expect and

for this reason these policy actors are of the opinion that there is policy failure.

Policy information cannot and should not only be disseminated through training as there seems to be a problem with training with regards to finances. Radio and printing media should not only be the dominant forms of disseminating policy information especially in an age of information technology. Participants overlooked the fact that social media is a platform that government has not yet explored and it could be an answer to their problems. Almost all participants had cell phones which have applications like Facebook and WhatsApp but they did not suggest that as a means of dissemination of policy information. Social media is used around the clock and it is cheaper to use to disseminate information.

Information is best accepted when distributed by an institution that policy actors believe is the custodian of labour law. Therefore, it is not surprising that participants feel the Department of Labour is not doing well. It is important that the Department works to gain citizen trust by disseminating information effectively.

5.2.4 Public participation in decision-making

It is important for citizens to participate in decisions that are going to affect their lives. Planning, decision making and co-ordination should be executed well to improve policy implementation (Venter, 2001:325). The planning, decision making and co-ordination are all aided by proper participation and consultation for legitimacy to be created. Public participation is defined as the direct involvement of citizens in obtaining information on issues that are going to affect them in future (Venter, 2001:239-240). One cannot talk about public participation without considering governance. Good governance ensures that public participation is done well. Governance is defined as part of politics that aims to formulate and manage the rules of the political arena

in which state and civil society actors operate and interact to make authoritative decisions. If Lesotho has good governance then public participation should not be a problem. Therefore this theme identified two sub-themes which include adequate representation of employees and employers in decision-making processes, and involvement of employees and employers in decision-making processes.

5.2.4.1 Adequate representation of employees and employers in decision-making processes

Evidence shows that Lesotho works as a tripartite system when dealing with issues concerning LR. This is an indication that a decision may never be reached without the input of employees (trade unions) and employers (employers' organizations). However, some participants showed that not everyone is represented when decisions are made since not everyone or every establishment is a member of a trade union or employers' organization; even if they are, not all of them are represented. Theory shows that elites actually shape mass opinion on policy questions more than masses shape elite opinion; therefore public policy becomes property of the elite (Dye, 2001:23). However, Dye (2002:24) shows that, "elitism does not necessarily mean that public policy will be hostile toward mass welfare but only that the responsibility for mass welfare rests on the shoulders of the elites." This simply means that even though not everybody is represented in NACOLA meetings but those who are present bear the burden of ensuring that all the decisions they make will be inclusive. At the end decisions must not be hostile towards either employees or employers.

Not every trade union and employers' organization in Lesotho will be present at NACOLA meetings. The representatives are there to represent all their constituents but because of bad relationships others feel only the elites are allowed in meetings thus causing hostility towards amended laws. ItI is important to build relationships so that all may know and understand

they are represented in their absence. Relationship-building between different trade unions and employers' organizations will foster a sense of unity and eliminate any form of completion in these institutions. Sometimes trade unions fight for members and over petty issues and this makes them lose focus on their ultimate goal which is to help the Basotho people to to bargain collectively in order to enjoy sound labour relations.

Are parties not satisfied that there is not enough participation by all trade unions and employers' organizations or does everything boil down to one issues which is preservation of leadership? The elite theory explores the preservation of leadership. Leaders do preserve their leadership and make decisions that do not necessarily benefit their members. So, it could be leaders from these two institutions preserve their status in NACOLA meetings and forget about their members hence the reason why some parties feel there is not enough representation.

5.2.4.2 Involvement of employees and employers in decision-making processes

According to Venter (2001:239-240), "public participation is the direct involvement of citizens in the search for information about decisions related to public issues and how they are made." Representation alone is not enough but involvement of employees and employers is also important in LR. Involvement means that employees and employers will be able to voice their opinions; that is, they fully participate in decision-making. According to Rai (2004:13), "employee involvement enables employees to respond to resolve problems, act and work within their own authority while providing them with a high degree of self-esteem, empowerment, learning environment, opportunities for personal growth and development, and a sense of achievement and these show that involvement can have an empowering culture which translates into increased acceptance of decisions and continuous improvement." Evidence suggests that

employees and employers are often reluctant to fully engage in platforms that may help voice their opinions. This makes it a bit difficult during policy change to get positive feedback from those affected hence policies are often changed and passed without full involvement of those affected by it. If participation and consultation are not done well to execute implementation then legitimacy would not be created (Venter, 2001:235). Consultations are very important especially since LR in Lesotho is characterized by tripartism even the ILO convention No. 144 emphasizes the importance of consultations for member states.

People usually participate in spheres that they believe will bring change in their lives and surroundings. The reluctance of employees and employers to participate in labour issues is because they feel the system has failed them over a long time. Therefore, they do not find any good reason to participate in issues that concern them. It is difficult to persuade anybody to do anything when their morale is low even if it is for their own benefit.

The Department of Labour as the custodian of labour law should introspect so that it can be in a position to persuade policy actors to participate in issues concerning them. It is obvious that the problem of non-participation does not lie with policy but rather with the Department of Labour as an institution. It seems the problem is so deep-rooted that participants blame the Department of Labour for everything gone wrong in the labour relations sphere in Lesotho. The question is, what is it that the Department is doing wrong?

5.2.5 Proper public administration

Public administration is all about work done by government officials within government institutions to enable the institutions to reach their objectives (Du Toit & Van Der Waldt, 1999:9). Furthermore, public administration through its activities creates an environment in which the executive

institutions which include departmental sections are enabled to implement the policies of governments (Du Toit & Van Der Waldt, 1999:46). Therefore, government's administration should be done well to fulfil the needs of the public. Maladministration can lead to the public losing trust in government, and deterioration of the quality of services offered by public servants in these institutions. Both of these issues can be related to the escalation of unresolved disputes at the labour department and other institutions. This theme therefore identified two sub-themes, namely removal of unnecessary formal and long administrative processes in resolving disputes, and better salaries for public servants.

5.2.5.1 Removal of unnecessary formal and long administrative processes in resolving disputes

Evidence shows that there are some formal processes to be followed at the Labour Department for a dispute to be referred to the Legal section from the IR section. Participants have shown that this formal process delays dispute resolution. According to Van Niekerk (2015:837), "speedy social justice is the fundamental value on which the statutory dispute resolution system is based; systematic delays in the processing of labour disputes threaten to undermine the statutory goals." This simply means that the Ministry of Labour and Employment (Department of Labour) as the custodian of labour law ought to be the last place where delays in resolution of disputes occur. The formal process of transferring disputes therefore unnecessarily delays disputes.

Institutions are about rules and regulations. There should be law and order in an institution. It is not surprising that there are rules and regulations to be followed when transferring a dispute within the Department of Labour. The Department of Labour is using an institutional system therefore rules should be followed when transferring disputes from one section to another. However, the question that is yet to be answered is whether the officials

working in the IR section and Legal section are performing their duties well enough to ensure speedy labour dispute resolution.

5.2.5.2 Better salaries for public servants

A changing economic climate means it is important for people to get salaries that can sustain them throughout the month. Evidence shows that some participants are of the opinion that labour officers take bribes in order to serve them well. According to Frimpong and Jacques (1999:131), “if everyone in the community is equally judged by his status or financial success, but the means for attaining status and money are not equally available, then the ‘rules of the game’ lose legitimacy and people may stop following them.” This simply means that sometimes people are greedy for money because they are not getting enough at work whereas society expects a lot from them; that is, a family expects provisions from a working mother/father without knowing exactly how much they earn. This kind of pressure causes people to take alternative routes to making money, bribes being one of these routes.

Motivation is an important factor because demotivation causes people to behave in ways they otherwise would not if they were motivated. Motivation can be used by government as a way of showing that someone appreciates the good work done by labour officers. Money is one of the instruments that could be used for motivation. That simply means better salaries for all. However, money alone is not enough. There should be incentives like medical aid that labour officers should be getting, which they presently do not have. The unavailability of motivating factors causes dissatisfaction, thus leading to some labour officers taking bribes.

Ethics also play a vital role in people behaving in ways that could be labelled as criminal (taking bribes). It is not all labour officers who accept bribes even though their salaries are low. They do not accept bribes because of ethical

considerations. Therefore, labour officers need regular training on how to behave ethically at work but if training is not conducted then corruption will continue and be on the rise. Labour officers with ethical considerations will ensure that all are served well and disputes are resolved quickly irrespective of their salaries.

5.3 SUMMARY

This chapter examined the analysis of data. Data from 31 participants was divided into themes and sub-themes for analysis. The researcher merged facts from findings, theoretical framework, and literature reviewed to make sense of everything for analysis.

The researcher looked at how participants expect LR to be in Lesotho and further showed that laws take time to be changed. However, it was realized in this research that labour law is not as simple as people assume, hence the reason it takes time to be changed. Government tries to make laws accessible even though that is not feasible to an extent that the transparency of government is questioned.

Resources are also an important element in aiding officials to do their work but lack of these resources hinders proper service delivery and this could be attributed to poor public administration. The way policy information is communicated is very important because it can help bring change in LR and media is a good platform to drive change especially radio. Public participation is also important in promoting the legitimacy of public policies. The way government reaches out to its employees (government officials) in terms of pay and benefits can curb the spirit of greed and will encourage officials to provide more professional services to the public.

The final chapter will focus on conclusions and recommendations.

CHAPTER SIX
CONCLUSIONS AND RECOMMENDATIONS

6.1 INTRODUCTION

This chapter provides an overview of the study while giving conclusions and recommendations for policy information. The aim of the study was to find out why, despite the existing rules and legal framework governing LR in Lesotho, labour disputes seem to be escalating. For this reason, a qualitative study was undertaken to establish how policy actors experience the effectiveness of institutions dealing with labour dispute resolution in Lesotho. Legislation was examined and the 2014 annual report from the DDPR was reviewed. These informed the researcher in the findings and during analysis.

Labour dispute resolution should be at the forefront of the Ministry of Labour and Employment's agenda because as a Ministry that ensures that there are high levels of employment in Lesotho it should not overlook the challenges that could be brought about by unemployment. Employment relationship like any other relationship will over time be disrupted by some disputes. The national government should therefore take a leadership role in ensuring that LR in Lesotho is of a good standard compared to other countries especially since Lesotho is a member state of the ILO.

6.2 CONCLUSIONS

The following conclusions from findings and analyzed data are based on the four research questions.

The first conclusion with regard to the first research question is that labour disputes cannot be resolved within a reasonable time-frame because there is a shortage of personnel in some institutions and the workload does not

allow these personnel to function to their fullest potential. It has also been shown that disputes take longer to be resolved because employers are favoured over employees, therefore whatever an employer says goes without considering facts from the other party. Transport also surfaced as one of the reasons why government officials take time to resolve disputes because unavailability of transport means they cannot go to establishments to ensure that they adhere to labour laws and are practicing good LR.

Incentives given to the government officials in the form of bribes have also proven to be a reason why disputes take long to be resolved because if one does not give an incentive then they are not helped well and in time. Administrative problems especially at the Labour Department have emerged as one of the reasons why disputes are drawn out especially looking at the formal process of transferring a case from the IR section to the Legal section.

The Labour Department and the DDPR where ADR is mostly used try to ensure that disputes are managed to avoid litigation. These two institutions do this by having training for various establishments on labour laws and LR/IR. The DDPR uses its section IPAPU to hold trainings even though these trainings are paid for. According to the DDPR 2014 annual report 23 trainings/workshops were held which could suggest that on average two trainings were held. This is an increase when compared to the two trainings held by the Labour Department in the 2014/2015 financial year. However, this study has shown that training at the Labour Department depends on budget which suggests that there is not enough budget for training to be done.

There are different instruments that government uses for decision-making despite the escalation of labour disputes. NACOLA is a committee that is vested with the powers to ensure that meetings are held where LR is discussed even though the study showed that the elites are mostly

represented. However, that does not mean that those who are misrepresented get decisions that do not favour them. In these meetings the representatives are tasked with ensuring that decisions are inclusive.

Another instrument that government uses for decision-making is that of allowing citizens to voice their opinions through making recommendations when laws are to be changed. However, this study has shown that citizens are often reluctant to participate in these social dialogues and thereafter blame government for policy failure. This study has shown that instruments are there for participating in decision-making but once laws have been passed they are not easily accessible. This could be a suggestion as to why citizens are reluctant to participate in decision-making because they feel that laws are not meant for them since they cannot access them. The use of outdated laws can undermine the morale of citizens who then do not find a reason why they should be involved in change when major laws affecting them are not being changed.

The DDPR on the other hand has proven to be an institution that utilizes different platforms for decision-making. Media is one strong platform utilized by this institution. Media in Lesotho is a powerful platform to communicate policy information, especially the radio. Information dissemination through radio is the best thing that any institution dealing with labour disputes resolution in Lesotho can do.

The rise in disputes affects LR in Lesotho negatively. Establishments are affected economically because money is lost if a productive employee has to be dismissed due to a dispute. Employees suffer socio-economic problems due to escalation of disputes because if they lose their jobs due to disputes then poverty affects them and may lead to them taking illegal avenues in making money.

6.3 RECOMMENDATIONS

Recommendations in this study are made to all the relevant institutions that deal with labour dispute resolution in Lesotho. The recommendations are also made for policy actors so that all may know what is necessary for LR/IR in Lesotho to be improved.

According to Barzelay and Gallego (2005:11), “organizational interests of international bodies are a source of widely accepted beliefs about what kinds of goals and technologies are appropriate in a rationalized world.” As has been mentioned earlier Lesotho is a member state of the ILO and therefore it accepts goals that are appropriate and that serve the interests of the ILO. These interests may not apply in Lesotho’s context as an African country and definitely as a developing country. Therefore some policy decisions should be made in such a manner that they suit a country’s context because when they do not do so, then policy failure ensues.

The Government of Lesotho does not have a Ministry that deals specifically with Monitoring and Evaluation (M&E) neither does the Ministry of Labour and Employment have such a department. M&E would help decision-makers in the policy processes because monitoring provides policy relevant knowledge about the consequences of previously adopted policies thus assisting policy makers in the implementation phase, while evaluation yields policy relevant knowledge about discrepancies between expected and actual policy performance thus assisting policy makers in the policy assessment phase of the policy-making process. These reasons substantiate the importance of having an independent Ministry that deals with M&E to monitor and evaluate policies from various government ministries and it would also serve the Ministry of Labour and Employment well if it also had such a department.

Government should ensure the well-being of its citizens and make sure service delivery is done well without hindrance. This simply means that the Ministry of Labour and Employment should go back to basics in ensuring good LR/IR delivery in Lesotho as one of its main mandates.The Ministry should be capacitated enough to have staff that will deliver services, transport should not be an obstacle in service delivery therefore it should be budgeted for, trainings on LR/IR should be done regularly and they should be budgeted for, and lastly government officials should get better salaries and other benefits to curb the spirit of greed.

According to John (2005:44), “bureaus compete with each other for resources and influence on policy.” Labour department mediates while DDPR does the same as well. Should parties not adhere to the mediation agreement done at the DDPR then they are sent to the Labour Department with referral forms and the Labour Department is expected to represent employees. This is a repetition of a resolution process especially since it is done by two institutions which are both involved in labour dispute resolution. This suggests there might be competition on the influence of policy. It would be best if the Labour Department mediated and if all fails refer a dispute to DDPR. This would avoid both the DDPR and Labour Court litigating on the same matter. There must be a separation of powers between these two institutions. It is not wise for two institutions belonging to the same government to do the same job. This provides a recommendation for future research to establish how effective and efficient mediation done at the Labour Department is.

6.4 SUMMARY

The research was qualitative and interpretive in nature as the researcher explored the thinking and experiences of several policy actors involved in LR in Lesotho.

Theoretical framework in chapter two formed a basis to work with as a background on the experiences of policy actors on the effectiveness of institutions dealing with labour dispute resolution in Lesotho. Literature reviewed in chapter two looked at what labour disputes are, public policy analysis, public policy, and public administration.

One-on-one semi-structured interviews were conducted to establish the experiences from different policy actors on the effectiveness of institutions dealing with labour dispute resolution. All forms of ethical consideration were looked at when the research was conducted; participants were asked to sign consent forms (see Annexure B) and confidentiality was provided at all times while preserving the dignity of participants (see Chapter Three). Data was analysed by dividing it into themes and sub-themes (see Chapter Five).

Recommendations were made by the researcher after the completion of the study. The recommendations were made to the Ministry of Labour and Employment, DDPR, Labour Court, Labour Appeal Court, Employees and Employers to serve as guidelines to improve LR in Lesotho.

The researcher is of the view that the research was completed successfully and that the four research questions were appropriated addressed.

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ANNEXURES

ANNEXURE A

Interviews:

DDPR OFFICE. 08 December, 2014. Interview.

Maboee, T. 08 December, 2014. Interview.

Maboee, T. 03 October, 2014. Interview.

Mejaro, K. 03 December, 2014. Interview.

Mejaro, K. 03 October, 2014. Interview.

Ntema, R. 05 June, 2014. Telephonic interview.

ANNEXURE B

Consent Form

Study title: The effectiveness of institutions dealing with Labour disputes resolution in Lesotho.

Dear participant please read this document carefully. Your signature is required for participation. Should you want a copy of this consent form one will be made available at your request.

Your participation is voluntary and you have a right to withdraw at any time, without prejudice, should you object to the nature of the study. You are entitled to ask questions and you will be offered answers after your participation.

Purpose of the study: to find out how relevant institutions are involved in labour disputes resolution in Lesotho. The relevant institutions include: Department of Labour, DDPR, Labour court, Labour appeal court, Trade unions, Employer's organizations, Employees, and Employers.

Confidentiality: you will be assigned a code number to protect your identity. All data will be handled with confidentiality and the electronic recorder that is going to be used to record the interview will be kept in place of safety. All identifying information will be removed from the interview schedule as soon as your participation is complete. No one will know which your interview responses are.

Availability of study results: in all likelihood the results will be fully available when the researcher completes her study. If you wish to be told of the results of this study please make the researcher aware of that.

Participant's signature: ……..
Date: ……..
Place: …… …….
Signature of the researcher:……

ANNEXURE B1

CONSENT FORM (TRANSLATED INTO SESOTHO)

Foromo ea boitlamo

Sehloho sa boithuto: Boiphihlelo ba litsi tse sebetsanang le ho rarolla likhang tsa bosebetsi le khiro Lesotho.

Ka kopo bala tokomane ena ka ho hlaka .Motekeno oa hao o netefatsa feela ho nka karolo ha hao ho faneng ka boitsibiso boithutong bona. Haeba o ka thabela foromo ena ea boitsibiso o tla hlalosetsa motho ea etsang boithuto bona.

Ho fanakamaikutlo ha hao ho lokolohile ‘me o kaikhulaneng kappa neng ha o batlantle le ho lahleheloakeletho. O na le bolokolohiba ho botsalipotso le ho fumanalikarabosephethongsapuisanoeahao le moithuti.

Sepheo sa boithuto: Ho fumana hore na litsi tse nang le kobo ea bohali linthleng tsa tharollo ea likhang tsa bosebetsi le khiro li ikakhetse ka setotsoana ha kae. Litsi tseo li akarelletsa: Department of Labour, DDPR, Labour court, Labour appeal court, Trade unions, Employer’s organizations, Bahiri, le Bahiruoa.

Sephiri: O tla fumana boits’ereletso ba boitsibiso ba hao. Litaba tsohle tseo o faneng ka tsona li tla ts’oaroa ka seriti ‘me sesebelisoasa ho hatisa se sebelisitsoeng ha o ntse o botsoa lipotso se tla bolokoa moo ho sireletsehileng. Taba e kabonoang e pepesa boitsibiso ba hao e tlatlosoa hang ha boithuto bona bofelile. Ha ho motho ea tla tseba likarabo tseo o faneng ka tsona.

Ho fumaneha ha sephetho sa boithuto: Sephetho sohle sa boithuto bona se tla fumaneha hang ha moithuti a qetile lithuto tsa hae. Ha o batla sephetho sa boithuto bona, tsebisa moithuti ka boikutlo boo.

Motekeno oa ea fanang ka likarabo:……..
Letsatsi:……..
Sebaka:……
Motekeno oa moithuti:……

ANNEXURE C

INTERVIEW SCHEDULE

Interview Questions

Q. Which institution has more power when it comes to the formulation and implementation of policies regulating Labour issues in Lesotho?

A.

…….....

Q. How does the institution with more power ensure that every institution comes on board?

A.

……

Q. How accessible are laws/ policies/ rules that regulate Labour issues to institutions in Lesotho?

A.

……

Q. How committed is the state/government in ensuring proper implementation of all laws regulating labour issues in Lesotho?

A.

……

Q. How do institutions participate in the formulation and implementation of Labour policies in Lesotho?

A.

……

Q. How do institutions resolve Labour disputes?

A.

……

Q. How do institutions cooperate in the resolution of Labour disputes especially looking at the speed with which they resolve disputes?

A.

……

Q. What are the consequences for an institution that does not follow laws regulating labour issues in Lesotho?

A.

……

Q. How are government officials working in institutions involved in Labour disputes resolution fair and transparent to the public they serve?

A……

Q. How effective are the mechanisms used for Labour disputes resolution?

A……

ANNEXURE C1

INTERVIEW SCHEDULE (TRANSLATED TO SESOTHO)

Lipotso

Q. Kesetsi se fe se nang le matla haholo ntlheng ea ho etsa maano le ho kenya ts'ebetsong maano a laolang litaba tsa bosebetsi Lesotho?

A……

Q. Setsi se boletsoeng kaholimo se netefatsa joang hore litsitsi tse ling li ba le kobo ea bohali maanong?

A……

Q. Ho bobebe ha kae ho fumana melao, maano, melaoana, tse laolang litaba tsa bosebetsi le khiro litsing tsa tharollo Lesotho?

A……

Q. 'Muso/naha li ithukhubelitse ha kae ntlheng ea ho netefatsa hore melao e laolang taba tsa kihro le bosebetsi li etsehala ka ho loka?

A……

Q. Litsi li ikakhela ka setotsoana joang ho etseng maano le ho a kenya ts'ebetsong Lesotho?

A……

Q. Litsi li rarolla khang ea khiro le bosebetsi joang?

A……

Q. Fetisetsano ea mosebetsi ho litsi e joang ha ho rarolloa khang ea khiro le bosebetsi?

A……

Q. Likotlo ke li fe ho sitsi se sa lateleng melao le meloana ea khiro le bosebetsi Lesotho?

A……

Q. Bahlanka ba sebetsang litsing tse amehang ba sebetsa joang ho netefatsa hore ho na le ponaletso mosebetsing oa bona ha bathusa sechaba?

A……

Q. Methati e sebelisoang ho rarolla khang lipakeng tsa bahiri le bahiruoa e sebethantle ho le ho kae?

A……

ANNEXURE D

PUBLISHED IN SUPPLIMENT NO. 1 TO GAZETTE NO. 30 OF 25TH APRIL, 2000

LABOUR CODE (AMENDMENT) ACT 2000

An Act to amend the Labour Code Order, 1992, to establish an Industrial Relations Council and to provide for its appointment and functions; to establish the Office of the Director of Dispute Prevention and Resolution and to provide for its appointment and functions; to establish a Labour Appeal Court; to provide for the appointment and tenure of the President and Deputy President of the Labour Court; to provide for the conciliation and arbitration of disputes; to authorize the Minister, in the national interest, to appoint a conciliator to prevent or resolve disputes; and to provide for the prevention of disputes by making the failure to bargain in good faith an unfair labour practice.

ENACTED BY THE PARLIAMENT OF LESOTHO

1. **Short title**

   This Act may be cited a the Labour Code (Amendment) Act, 2000.

2. **Interpretation**

   The principal law is amended in section 3 –

   (a) by inserting the following definitions in their appropriate alphabetical order :
   "Constitution" means the Constitution of Lesotho of 1993;

   "Council" means the Industrial Relations Council established in terms of section 46A;

   "Director" means the Director of Dispute Prevention and Resolution appointed in terms of section 46B(3) (a);

   "Directorate" means the Directorate of Dispute Prevention and Resolution referred to in terms of section 46B;

   "dispute" includes an alleged dispute;

   "dispute of interest" means a trade dispute concerning a matter of mutual interest to employees but does not include a dispute of right;

"dispute of right" means a dispute concerning the application and interpretation of any provision of the Labour Code or any other labour law, collective agreement or contract of employment;

"Principal Secretary" means the Principal Secretary responsible for Employment and Labour";

(b) by deleting and substituting the following definitions :
"Collective agreement" means any written agreement entered into between a registered trade union and an employer or employers' organization in respect of any matter of mutual interest and includes agreements on recognition, agency shops and grievance, discipline and dispute procedures;

"Court" means either the Labour Court or the Labour Appeal Court depending on the context;

"Registrar" means either the Registrar of the Labour Court or the Registrar of Trade Unions and Employer Organizations depending on the context;"

3. Powers of the Minister

The principal law is amended in section 9 by inserting the following sub section after subsection (2) –

(1) …….
(2) …….

(3) If the Minister believes that it is in the national interest, the Minister may, after consultation with the Industrial Relations Council, appoint a person to prevent or resolve any trade dispute by conciliation.

(4) The Minister may, on the recommendation of the Industrial Relations Council, publish codes of good practice, model collective agreements and guidelines on conciliation and arbitration."

4. The principal Act is amended in section 15 by the deletion of that section.

5. The principal law is amended in Part III by deleting the heading to Division D and substituting it with the following heading :

"Division D: Labour Court and Labour Appeal Court".

6. Establishment of Labour Court and Registrar of Court

The principal law is amended in section 22 by deleting subsection (2) and substituting the following subsection:

(1)…..

(2) "There shall be –

(a) a Registrar of the Labour Court who shall be a person qualified in law and who shall be appointed by the Judicial Service Commission, after consultation with the Industrial Relations Council for the purpose of carrying out duties in relation to the decisions, awards, other records and docketing of the Court;

(b) so many Deputy Registrars as the President of the Court may determine."

7. **Composition of Court.**

The Principal law is amended in section 23 –

(a) by deleting subsections (1) and (1A) and substituting the following ;

"(1) (a) The Judicial Service Commission shall appoint as members of the Court –

(i) a President; and

(j) such number of Deputy Presidents as the Judicial Service Commission may consider necessary.

(b) The Judicial |Service Commission shall consult with the Industrial Relations Council before making the appointment in terms of paragraph (a).

(c) Before deciding on the number of Deputy Presidents, the Judicial Service Commission shall consult with the Industrial Relations Council."

By deleting subsection (3) and substituting the following :

"(3) (a) The President and the Deputy President shall not hold office in the Public Service.

(b) The Minister shall determine the terms and conditions of the President and Deputy President –

(i) in consultation with the Minister of Finance;

(j) after consultation with the Judicial Service Commission; and

(k) after consultation with the Industrial Relations Council.

© The President and Deputy President may be removed from office by the Judicial Service Commission but only for inability to perform the functions of their respective offices (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(c) Before removing a member of the court under paragraph © the Judicial Service Commission shall, in consultation with the Industrial Relations Council, appoint a committee to enquire into the matter and report on the facts thereof to the Commission and advise on what action should be taken. ";

(c) by deleting the words "ordinary members" wherever they appear in that section and substituting the word "assessors";

(d) by deleting subsection (5) and substituting the following :

"(5) The Court when hearing any matter referred to it under the Code, shall be duly constituted if it consists of-

(a) a member of the Court; and

(b) two assessors chosen by that member –

(i) one from the panel of employer assessors appointed in terms of subsection (6) (a) (i); and

(ii) the other from the panel of employee assessors appointed in terms of subsection (6) (a) (ii);

(c) Notwithstanding paragraph (b), a member of the Court may appoint any suitable person as an assessor in any particular case if there is no appointed assessor able to sit as an assessor".;

(d) by deleting subsection (6) and substituting the following :

"(6) (a) The Minister shall appoint assessors to –

(i) an employer panel of assessors from nominations made by the employer members of the Industrial Relations Council; and

(ii) an employee panel of assessors from nominations made by the trade union members of the Industrial Relations Council.

(b) Each panel of assessors shall consist of so many assessors as there are members of the Court.

(c) The assessors shall be persons having experience or knowledge of labour relations.

(c) The full time assessors shall be appointed for a period of five years on such terms and conditions as may be determined by the Minister -

(iii) in consultation with the Minister of Finance;

(iv) after consultation with the Judicial Service Commission; and

(v) after consultation with the Industrial Relations Council.

(d) An assessor may be removed from the panel by the Minister acting on the advice of the Industrial Relations Council for inability to perform an assessor's functions (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.";

(e) by deleting subsection (7) and substituting the following :

"(7) The decision of the Labour Court shall be –

(a) the majority of the Court, on matters of fact; and

(b) the members of the Court, on matters of law.";

(f) by inserting after subsection (11) the following subsection:

"12) No proceedings of the Labour Court are invalid because –

(a) the appointment of an assessor was defective; or

(b) after the commencement of the proceedings, the Court proceeds without an assessor because –

(i) the assessor is unable to sit as an assessor; or

(ii) the member of the Court removes the assessor from the proceedings in the interest of the administration of justice."

8. The principal law is amended by deleting section 24 and substituting it with the following :

"24. Jurisdiction and powers of the Labour Court

(1) Subject to the Constitution and section 38A, the Labour Court has jurisdiction in respect of all matters that elsewhere in terms of this Act or in terms of any other labour law are to be determined by the Labour Court.

(2) The Court shall have the power –

(a) to inquire into and decide the relative rights and duties of employees and their respective organizations in relation to any matter referred to the Court under the provisions of the Code and to award appropriate relief in case of infringement;

(b) to impose at civil law, in the case of any infringement of the provisions of the Code, any fine provided for thereby;

(c) to inquire into and make awards and decisions in trade disputes, when so requested by the Minister or the Director;

(d) to inquire into and make awards and decisions in any matters relating to industrial relations, other than trade disputes, which may be referred to it;

(e) to rescind any contract of employment and make such consequential orders as may be just in the circumstances;

(f) to assess the fair value of services rendered by an employee in any case in which such services are to be assessed in accordance wit the provisions of the Code or in any case where the rate of wages or other benefits to which an employee should be entitled were not agreed between the employer and employee or it is uncertain what was greed;

(g) to fix the amount of compensation for loss of or damage to the property of an employer where such loss has been occasioned by the wrongful act or omission of his or her employee;

(h) to adjust and set off one against the other all claims on the part either of the employer or of the employee arising out of or incidental to such relation between them as the Court may find, whether such claims are liquidated or unliquidated or are for wages, damage to person or property or for any other cause, and to direct payment of the balance found due by one party to the other;

(i) to make any appropriate order, including an order of costs;

(j) to commit and punish for contempt any person who disobeys or unlawfully refuses to carry out or to be bound by an order made against him or her by the Court under the Code;

(k) When brought to its attention by any party, to resolve an ambiguity in its own award, or decision;

(l) To rescind any decision made in the absence of a party to the litigation;

(m) To perform such acts and carry out such duties as may be prescribed under the Code or any other written law.

(3) The Court shall take into account any code of conduct or guide line, published by the Minister in accordance with this Act, that is relevant to a matter being considered in the proceedings."

9. The principal law is amended by deleting section 25 and substituting it with the following:

"Exclusive civil jurisdiction

(1) The jurisdiction of the Labour Court is exclusive and on court shall excise its civil jurisdiction in respect of any matter provided for under the Code –

(a) subject to the Constitution and section 38A; and

(b) notwithstanding section 6 of the High Court Act, 1978 (Act No. 13 of 1973).

(2) The Minister, the Labour Commissioner, the Director of Dispute Prevention and Resolution and an aggrieved party shall have the right to present a claim to the court as provided under the Code."

10. **Power to summon witnesses, etc.**

The principal law is amended in section 29 by numbering the un-numbered paragraph as subsection "2)" and renumbering the subsequent subsections accordingly.

11. Power to summon witnesses, etc.
The principal law is amended in section 30 by numbering the un-numbered paragraph (following subsection (1) as subsection (2) and renumbering the subsequent subsection accordingly.

12. The principal law is amended by deleting section 38 and substituting the following sections:

"38 Establishment and composition of the Labour Appeal Court

(1) There shall be a Labour Appeal Court.

(2) The Labour Appeal Court is the final court of appeal in respect of all judgments and orders made by the Labour Court.

(3) The Labour Appeal Court consists of –

(a) a judge of the High Court who shall be nominated by the Chief Justice acting in consultation with Industrial Relations Council; and

(b) two assessors chosen by that judge –

(i) one from a panel of employer assessors nominated by the employer members of the Industrial Relations Council; and

(ii) one from a panel of employee assessors nominated by the employee members on the Industrial Relations Council.

(4) The Minister shall appoint, in a full-time capacity, one of the assessors from each of the panels referred to in subsection (3)(b).

(5) Notwithstanding subsection (3)(b), the judge of the Labour Appeal Court may appoint any suitable person as an assessors in any particular case if there is no nominated assessors able to sit.

(6) The assessors shall be persons having experience or knowledge of labour relations.

(7) The full time assessors shall be appointed for a period of five years on such terms and conditions as may be determined by the Minister –

(i) in consultation with the Minister of Finance;
(j) after consultation with the Judicial Service Commission; and

(k) after consultation with Industrial Relations Council.

(8) The decision of the Labour Appeal Court shall be –

(a) on matters of fact, the majority of the court; and

(b) the judge, on matters of law.

(9) No proceedings in the Labour Appeal Court are invalid because –

(a) the appointment of an assessor was defective; or

(b) after the commencement of proceedings, the Court proceeds without an assessor because –

(i) the assessor is unable to continue to sit as an assessor in the case; or

(ii) the judge removes the assessor from the proceedings for good cause.

(10) The Registrar of the Labour Court shall be the Registrar of the Labour Appeal Court.

38A Jurisdiction of the Labour Appeal Court.

(1) The Labour Appeal Court has exclusive jurisdiction –

(a) to hear and determine all appeals against the final judgments and the final orders of the Labour Court;

(b) to hear and determine all reviews –

(i) from judgments of the Labour Court;

(ii) from arbitration awards issued in terms of this Act; and

(iii) of any administrative action taken in the performance of any function in terms of this Act or any other labour law.

(2) Notwithstanding the provisions of any other law, the Labour Appeal Court may hear any appeal or review from a decision of any Subordinate Court concerning an offence under this Code and any other labour law.

(3) Notwithstanding the provisions of subsection (1), the judge of the Labour Appeal Court may direct that any matter before the Labour Court or a matter referred to the Directorate for arbitration in terms of section 227 be heard by the Labour Appeal Court sitting as a court of first instance.

(4) Subject to the Constitution of |Lesotho no appeal lies against any decision, judgment or order given by the Labour Appeal Court.

38B Rules for the Labour Appeal Court

The Chief Justice of the High Court may, by notice in the Gazette, make rules for the purpose of regulating the procedures of the Labour Appeal Court.

13. National Advisory Committee on Labour

The principal law is amended in section 42(1) be deleting subsection (d) and substituting the following :

"(d) to advise the Minister on any matter –

(i) referred to it under any provision of this Code;

(j) connected with the employment of workers, industrial relations or organizations of employers or workers as is referred to it by the Minister."

14. National Advisory Council on Occupational Safety, Health and Welfare.

The principal law is amended in section 46 by inserting a new subsection (8):

"(8) For the purposes of this section, "Council" means the National Advisory Council on Occupational Safety, Health and Welfare referred to in subsection (1)."

15. The principal law is amended by inserting the following sections after section 46:

"46A Industrial Relations Council

(1) There shall be established an Industrial Relations Council.

(2) The Council shall consist of –

(a) the Principal Secretary, who shall chair the Council;

(b) three members representing the Government;

(c) three members representing the employers; and

(d) three members representing the employees.

(3) The Director of Dispute Prevention an Resolution shall be an officio member of the Industrial Relations Council and shall be the secretary.

(4) The Minister shall –

(a) appoint the members representing –

(i) the Government;

(ii) the employers, after consultation with the employer representatives of the National Advisory Committee on Labour; and

(iii) the employees, after consultation with the trade union representatives of that Committee; and

(b) publish the names of the members in the Government Gazette.

(5) The Principal Secretary and the Director of Dispute Prevention and Resolution are not entitled to vote.

(6) The members of the Council shall be appointed for a term of three years.

(7) The Minister shall remove a member from membership –

(a) if that member has committed misconduct rendering that member unfit to be a member; or

(b) if the member is an employer or employee member, on the recommendation of the employer or employee representatives of the National Advisory Committee on Labour, as the case may be.

(8) The functions of the Council shall be –

(a) to advise on the qualifications and appointment of –

(i) the judges and the assessors of the Labour Court and the Labour Appeal Court;

(ii) the Director of Dispute Prevention and Resolution and the Deputy Director; and

(iii) the conciliators and arbitrators contemplated in section 46B

(c) make the rules for conciliation and arbitration proceedings under the auspices of the Directorate of Dispute Prevention and Resolution;

(d) to make recommendations to the Minister on –

(i) codes of good practice, model collective agreements and guidelines on conciliation and arbitration;

(ii) a tariff of fees for part-time conciliators and arbitrators; and

(iii) for the improvement of dispute prevention and resolution;

(e) to make annual reports to the Minister on the state of dispute prevention and resolution in Lesotho and to table that report with the National Advisory Committee on Labour.

(9) The Council shall determine its own rules and procedures for the conduct of its functions.

(10) The Minister shall, in consultation with the Minister of Finance determine the allowances payable to the members of the Council.

46B Directorate of Dispute Prevention and Resolution

(1) There shall be a Directorate of Dispute Prevention and Resolution.

(2) The Directorate shall be –

(a) a juristic person; and

(b) independent of the Government, any political party, trade union, and employer or employers' organization.

(3) The Directorate shall consist of –

(a) the Director, Deputy Director, conciliators and arbitrators who shall be appointed by the Minister after consultation with the Council; and

(b) staff seconded by the Principal Secretary.

(4) The Minister shall determine the terms and conditions of employment of the persons appointed in terms of subsection (3)(a)-

(i) in consultation with the Minister of Finance;

(ii) after consultation with the Judicial Service Commission; and

(iii) after consultation with the Industrial Relations Council.

(5) The functions of the Directorate shall be –

(a) to attempt to prevent and resolve trade disputes through conciliation;

(b) to resolve trade disputes through arbitration;

(c) to advise employers, employers' organizations, employees and trade unions on the prevention and resolution of trade disputes;

(d) to compile and publish –

(i) information about its activities;

(ii) statistics on dispute prevention and resolution; and

(iii) significant arbitration awards.

(6) In order to perform its functions the Directorate may appoint a conciliator in the Directorate or a part-time conciliator to –

(a) conciliate a dispute referred to it;

(b) attempt to prevent or resolve a dispute if the Director apprehends that a dispute may arise or escalate.

(7) The Directorate shall be financed from monies appropriated by Parliament.

(8) The Director is the Chief Accounting Officer for the Directorate.

(9) The Director is responsible for the proper management and functioning of the Directorate.

(10) The Director may delegate any of the functions conferred on the Director by this Act except the functions referred to in subsection (8).

(11) The Directorate or its officers shall not be liable for any loss suffered by any person as a result of any act performed or omitted in good faith in the performance of its functions.

(12) The Directorate or its officers shall not disclose to any person or in any court any information, knowledge or document that it or one of them acquired on a confidential

basis or without prejudice in the performance of its functions except on the order of a court.

16. The principal law is amended by deleting the heading to section 66 and substituting "**Unfair dismissal**".

17. Evasion of employer's obligations

The principal law is amended in section 67 by inserting the words "or arbitrator" after the words "Labour Court".

18. **Written statement of reasons for dismissal**

The principal law is amended in section 69(5) by deleting the words "the Court" and substituting the words "the labour Court or arbitrator".

19. Time Limit

The principal law is amended by deleting section 70.

20. Remedies

The principal law is amended in section 73 by inserting the words "or arbitrator" after the word "Court" wherever it appears in that section.

21. Charges; costs

The principal law is amended in section 74 –

(a) in subsection (1), by inserting the words "or arbitrator" after the word "Court"; and

(b) in subsection (2), by inserting the words "or arbitrator" after the word "Court" in that subsection.

22. Discrimination against union members and officials

The principal law is amended in section 196 by deleting subsection (1) and substituting the following subsection:

"(1) (a) Every person has the right –

(i) to participate in forming a trade union;

(iii) to join a trade union; and

(iv) to participate in its lawful activities.

(c) No person may discriminate against an employee, or a person applying for employment, for excersing any right conferred by this Act.

(d) Any breach of the provisions of this subsection is an unfair labour practice.".

23. The principal law is amended by inserting, after section 198, the following sections:

"198A Duty to bargain in good faith.

(1) For the purposes of this section –

(a) "a recognized trade union" means a registered trade union that has been recognized by an employer or employers' organization as a collective bargaining partner;
(b) "a representative trade union" means a registered trade union that represents the majority of the employees in the employ of an employer;

(c) "a majority of employees in the employ of an employer" means over 50% of those employees.

(2) An employer shall bargain collectively in good faith with a representative trade union.

(3) In any collective bargaining relationship –

(a) a recognized trade union shall bargain in good faith with any employer or employers' organisation;

(b) an employer or employers' organization shall bargain in good faith with the recognized trade union.

(4) A breach of the provisions of this section shall be an unfair labour practice.

198B Summary determination of representativeness dispute

(1) Any dispute about whether a registered trade union is representative for the purpose of this section shall be referred to the Directorate for summary determination by an arbitrator appointed by the Director.

(2) In order to make that determination, the arbitrator may –

(a) make any necessary inquiries;

(b) if appropriate, conduct a ballot of the employees;

(c) take into account any other relevant information."

24. Liability and rights in contract.

The principal law is amended in section 219 by –

(a) deleting the colon at the end of subsection (2)(c);

(b) deleting the proviso; and

(c) inserting a new subsection (3) as follows:

"(3) Nothing in this section renders the agreements referred to in subsection (2) unlawful."

25. The principal law is amended by deleting sections 225 to 228 and substituting the following:

"Division A: Dispute of interest

225 Settlement of disputes of interest

(1) Any party to a dispute of interest may, in writing, refer that dispute to the Directorate.

(2) The party who refers the dispute shall satisfy the Director that a copy of the referral has been srved on all the other parties to the dispute.

(3) The Directorate shall appoint a conciliator who will have the responsibility for conciliating the dispute until it is settled.

(4) The conciliator shall attempt to resolve the dispute through conciliation withion 30 days of the referral.

(5) If a dispute is resolved –

(a) the conciliator shall issue a report; and

(b) the settlement shall be reduced to writing and signed by the parties to the dispute.

(6) If the dispute remains unresolved after the 30 day period –

(a) the conciliator shall issue a report that the dispute is unresolved; and

(b) that dispute shall be referred to arbitration if –

(i) the parties to the dispute consent in writing to do so;

(ii) the parties to the dispute are engaged in an essential service as defined in section 232(1) as amended.

(7) Subject to subsection (8), the conciliator shall issue the report referred to in subsection (6) (a) as soon as the 30 day period expires unless the party who refers the dispute fails to attend a meeting convened by the conciliator, in which case the report shall only be issued after 30 days calculated from the date of the meeting.

(8) If the other party to the dispute fails to attend the meeting referred to in subsection (7), the conciliator may issue the report immediately.

Division B: Disputes of right

226 Dispute of right

(1) The Labour Court has the exclusive jurisdiction to resolve the following disputes:

(a) subject to subsection (2), the application or interpretation of any provision of the Labour Code or any other labour law;

(b) an unfair labour practice;

(c) an unfair dismissal if the reason for the dismissal is –

(i) for participation in a stride;

(ii) as a consequence of a lockout; or

(iii) related to the operational requirement of the employer.

(2) The following disputes of right shall be resolved by arbitration –

(a) a dispute referred by agreement;

(b) a dispute concerning the application or interpretation of –

(i) a collective agreement;

(ii) a breach of a contract of employment;

(iii) a wages order contemplated in section 51;

(c) a dispute concerning the underpayment of any monies due under the provisions of the Act;

(d) an unfair dismissal for any reason other than a reason referred to in subsection (1)©.

(3) Notwithstanding the provisions of this section, the Director may refer a dispute contemplated in subsection (2) to the Labur Court for determination if the Director is of the opinion that the dispute may also concern matters that fall within the jurisdiction of the Court.

227 Settlement of disputes of right

(1) Any party to a dispute of right may, in writing, refer that dispute to the Directorate –

(a) if the dispute concerns an unfair dismissal, within 6 months of the date of the dismissal;

(b) in respect of all other disputes, within 3 years of the dispute arising.

(2) Notwithstanding subsection (1), the Director may, on application, condone a late referral on good cause shown.

(3) The party who refers the dispute shall satisfy the Director that a copy of the referral has been served on all the other parties to the dispute.

(4) If the dispute is one that should be resolved by arbitration, the Director shall appoint an arbitrator to attempt to resolve the dispute by conciliation, failing which the arbitrator shall resolve the dispute by arbitration.

(5) If the dispute is one that should be resolved by adjudication in the Labour Court, the Director shall appoint a conciliator to attempt to resolve the dispute by conciliation before the matter is referred to the Labour Court.

(6) If the dispute is resolved –

(a) the conciliator or arbitrator shall issue a report; and
(b) the settlement shall be reduced to writing and signed by the parties to the dispute.

(7) If a dispute contemplated in subsection (4) remains unresolved after the arbitrator has attempted to conciliate it, the arbitrator shall resolve the dispute by arbitration .

(8) If a party to a dispute contemplated in subsection (4) fails to attend the conciliation or hearing of an arbitration, the arbitrator may –

(a) postpone the hearing;

(b) dismiss the referral; or

(c) grant an award by default.

(9) If a dispute contemplated in subsection (5) remains unresolved after 30 days from the date of the referral –

(a) the conciliator shall issue a report that the dispute remains unresolved;

(b) any party to the dispute may make an application to the Labour Court.

(10) In the report contemplated in subsection (9)(a), the conciliator shall record any failure to attend a meeting convened by the conciliator to resolve the dispute.

(11) In determining any order of costs contemplated in section 24(1), the Labour Court shall take into account any failure to attend a conciliation meeting referred to in the report contemplated in subsection (10).

228 **Urgent proceedings**

(1) Any party to a dispute that has been referred in terms of section 227 may apply to the Labour Court for urgent relief, including interim relief pending the resolution of a dispute by arbitration.

(2) Notwithstanding the provisions of this Part, if the Labour Court grants urgent interim relief in terms of subsection (1), the Court shall give such directions on the conduct of the conciliation or, if applicable, the arbitration of the dispute as may be appropriate.

Division C: General provisions concerning conciliation and arbitration under this Part

228A Representation in proceedings

(1) In any proceedings under this Part, a party to the dispute may appear in person or be represented only by –

(a) a co-employee;

(b) a labour officer, in the circumstances contemplated in section 16(b);

(c) a member, an officer of a registered trade union or employers' organization; or

(d) if the party to the dispute is a juristic person, by a director, officer or employee.

(2) Notwithstanding subsection (1), a party to a dispute contemplated in section 226(2) may be represented by a legal practitioner if –

(a) the parties agree; or

(b) the arbitrator concludes that it is unreasonable to expect a party to deal with the dispute without legal representation, after considering –

(i) the nature of the questions of law raised by the dispute;

(ii) the complexity of the dispute; and

(iii) the comparative ability of the opposing party or representatives to deal with the arbitration of the dispute.

228B Process of conciliation

In any conciliation proceedings under this Part the conciliator or arbitrator shall determine the process of conciliation the dispute which may include –

(a) mediating the dispute;

(b) conducting a fact finding exercise; and

(c) making a recommendation to the parties, which may be in the form of an advisory arbitration award.

228C Conduct of arbitration

(1) In any arbitration proceedings under this Part, the arbitrator may conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the dispute fairly and quickly, but shall deal with the substantial merits of the dispute with the minimum of legal formalities.

(2) Subject to the discretion of the arbitrator as to the appropriate form of the proceedings, a party to the dispute may give evidence, call witnesses, question the witnesses or any other party, and address concluding arguments to the arbitrator.

228D Codes of good practice and guidelines

The arbitrator shall take into account any code of conduct or guideline, published by the Minister in accordance with this Act, that is relevant to a matter being considered in the arbitration proceedings.

228E Arbitration awards

(1) The arbitrator may make any appropriate award in terms of this Act, including but not limited to, an award –

(a) that gives effect to any collective agreement;

(b) that gives effect to the provisions and the principles of this Act;

(c) that includes, or is in the form of, a declaratory order; and

(d) that includes –

(i) the re-instatement or re-employment of an employee; and

(ii) compensation or damages.

(2) The arbitrator may not include an order for costs in the award unless a party, or the person who represented that party in the arbitration proceedings, acted in a frivolous or vexatious manner –

(a) by proceeding with or defending the dispute in the proceedings;

(b) in its conduct in the proceedings.

(3) Within 30 days of the conclusion of the arbitration proceedings –

(a) the arbitrator shall issue an award with brief reasons signed by that arbitrator;

(b) the Director shall serve a copy off that award to each party to the dispute or the person who represented the party in the arbitration proceedings; and

(c) the Director shall file the original of that award with the Registrar of the Labour Court.

(4) On good cause shown the Director may extend that period within which the award and the reasons are to be served and filed.

(5) An award issued by the arbitrator shall be final and binding and shall be enforceable as if it was an order of the Labour Court.

(6) Any arbitrator who has issued an award, acting on the arbitrator's own accord or, on the application of any affected party, may vary or rescind an award –

(a) erroneously sought or erroneously made in the absence of any party affected by that award;

(b) in which there is an ambiguity, or an obvious error or omission, but only to the extent of that

ambiguity, error or omission; or

(c) granted as a result of a mistake common the parties to the proceedings.

228F Review of arbitration awards

(1) Any party to a dispute who seeks to review any arbitration award issued under this Part shall apply to the Labour Appeal Court for an order setting aside the award –

(a) within 30 days of the date the award was served on the applicant, unless the alleged defect involves corruption; or

(b) if the alleged defect involves corruption, within 30 days of the date that the applicant discovers the corruption.

(2) On good cause shown, the Labour Appeal Court may condoned the late filing of an application to review an arbitration award.

(3) The Labour Appeal Court may set aside an award on any grounds permissible in law and any mistake of law that materially affects the decision.".

26. The principal law is amended by deleting sections 229 and 230 and substituting the following sections :

"229. When a strike is lawful –

(1) A strike is lawful if –

(a) it concerns a dispute of interest;

(b) that dispute of interest has been referred to the Directorate in terms of secdtion225;

(c) that dispute remains unresolved;

(d) the time periods contemplated in section 225 have expired;

(e) a notice of intention to commence a strike has been served on the other party to the dispute and on the Directorate; and

(f) at least 7 days from the date of that notice has expired.

(2) The notice referred to in subsection (1)(e) may be served before the expiry of the time periods contemplated in section 225.

(3) A strike is unlawful if –

(a) it is not in accordance with the provisions of subsection (1);

(b) the parties to the dispute have consented to having the dispute resolved by binding arbitration.

230. When lockout is lawful

(1) A lockout is lawful if –

(a) it concerns a dispute of interest;

(b) that dispute of interest has been referred to the Directorate in terms of section 225;

(c) that dispute remains unresolved;

(d) the time periods contemplated in section 225 have expired;

(e) a notice of intention to initiate a lockout has been served on the other party to the dispute and on the Directorate; and

(f) at least 7 days from the date of that notice has expired.

(2) The notice referred to in subsection (1)(e) may be served before the expiry of the time periods contemplated in section 225.

(3) A lockout is unlawful if –

(a) it is not in accordance with the provisions of subsection (1);

(b) the parties to the dispute have consented to having the dispute resolved by binding arbitration."

27. Offences in connection with strikes and lockouts declared unlawful

The principal law is amended by inserting "229" after the word "section" and before "220 or 232(5).

28. Threat to essential services

The principal law is amended in section 232 by replacing the words "Labour Commissioner" with "Director" wherever they appear in that section.

29. PART XX – PICKETTING, INTIMIDATION AND OTHER MATTERS RELATING TO TRADE DISPUTES.

The principal law is amended in all the sections under Part XX by deleing the words "section 230" wherever they appear and substituting them with "sections 229 and 230".

30. The principal law is amended by deleting section 240 and substituting the following section:

"240 Regulation and codes of good practice

(1) The Minister may, after consultation wherever appropriate with employers' and employees' organizations representative of the interest concerned, make Regulations for the purpose of giving effect to the provisions of the Code.

(2) The Minister shall, in consultation with the National Advisory Committee on Labour, at intervals of no more than two years, review the fines and fees provided by the Code and adjust them if deemed necessary.

(3) The Minister may, after consultation with the Industrial Relations Council, publish codes of good practice.

(4) Any person interpreting or applying this Act shall take any relevant code of good practice into account.".

31. Transitional Provisions

The principal law is amended by the insertion of the following new section after section 242;

"243 Transitional provisions

(1) Notwithstanding the provisions of section 38(3), the first judge to be appointed to the Labour Appeal Court shall be appointed in terms of section 120 of the Constitution of Lesotho.

(2) Before the Judicial Service Commission makes a recommendation in terms of section (1), it shall -

(a) Call for nominations for the office from both sitting judges and from persons who are not judges but meet the requirements for appointment as a judge; and

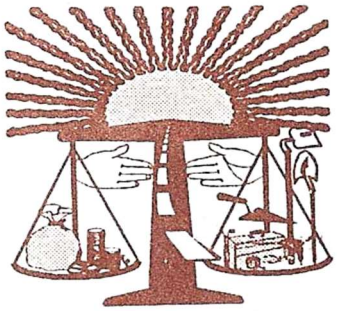
(b) consult with the industrial Relations Council on the recommendation.

(3) In the case where the person to be appointed judge of the Labour Appeal Court is serving judge, the Chief Justice shall, in consultation with the Industrial Relations Council, assign such person as the judge of the Labour Appeal Court.

(4) In the case where the person to be appointed is not a serving judge, that person shall be appointed in terms of the Constitution of Lesotho after the consultation referred to in subsection (2)(b).

(5) The President, Deputy President and the Registrar of the Labour Court shall be deemed to be appointed under provisions of the Act."

ANNEXURE E



KINGDOM OF LESOTHO

THE DIRECTORATE OF DISPUTE PREVENTION AND RESOLUTION (DDPR)

REPORT FOR THE YEAR 2014

MARCH 2015

1. THE ESTABLISHMENT OF THE DDPR

The DDPR is a semi-autonomous labour tribunal which exercises its judicial functions independently of the Government, any political party, trade union, and employer or employers' organization. It was conceived under the provisions of sections 118 (1)(d) and 127 of the Constitution of Lesotho, and was established as a juristic person under section 46B of the Labour Code (Amendment) Act 2000.

2. DDPR VISION

The vision of the DDPR is the promotion of social justice in cooperation with the social partners to attain peace and stability at workplaces, in order to contribute meaningfully towards the social and economic development of Lesotho and Basotho.

3. DDPR MISSION STATEMENT

The DDPR is proud to be part of the new developments in the history of Labour relations in Lesotho. It is committed to providing high quality, simple, affordable, fair, non-adversarial and effective dispute prevention and resolution mechanisms. Dedication, professionalism, independence and high moral standards are the cornerstones of the commitment

4. Obituaries

During the year under report, we lost a member of the professional staff and some relatives of our staff as follows -

(1) Arbitrator Mamello Khampane passed away on 27/01/2014, and was laid to rest at Masoeling in the district of Berea on 15/02/14;

(2) 'M'e `Mamonatsi Linah Monatsi, the mother of 'M`e `Masekake Thamae (Finance Manager), passed away on 5/04/2014. She was laid to rest at Mapholaneng (Mokhotlong) on 26/04/2014;

(3) 'M'e `Masekhonyana Baholo, the younger sister of 'M'e Thakane Harebate (Receptionist at DDPR-Maseru), passed away on the 20/05/2014. She was laid to rest at Khubelu (Ha-Abia - Maseru) on the 7/06/2014; and

(4) `M`e `Mapoloko Mohloare Lieta, mother-in-law to Mrs. `Matšepiso Lieta (Receptionist at DDPR-Hlotse) passed away on the 27/06/2014, at Motebang Hospital. She was laid to rest, at Mankoaneng (Hlotse) Leribe, on Saturday 12/07/ 2014;

(5) 'M'e Halemakale Ntene, mother of Arb. Lieketso Ntene, passed away on 07/09/2014 and laid to rest at Maputsoe Ha Nyenye on 20/09/2014

(6) The DDPR held a memorial service for the late Arbitrator Khampane.

(7) May their souls rest in peace. Amen.

5. <u>The Industrial Relations Council.</u>

(1) The legislation establishing DDPR, omitted to establish its Governing Body. The Industrial Relations Council (IRC) established under the provisions of section 46A of the Labour Code (Amendment) Act 2000 has since acted as an overseer.

(2) The fourth Council was inaugurated by the Honourable Minister Keketso Rants'o on 2nd April 2014;

(3) The members of the Council comprised of –

(a) Mr. T. Mabetha — Chairperson
(b) Mrs. M. Ledimo — Government's representative
(c) Mrs. M. Matsoso — Government's representative
(d) Mr. M. Koalepe — Government's representative
(e) Ms L. Sephomolo — Employer's representative
(f) Mr. G.T. Monaheng — Employers' representative

(g) Mr. T. Kao — Employers' representative
(h) Mr. T. Ramochela — Workers' representative
(i) Mrs. M. Mosoang-Ocran — Workers' representative
(j) Mr. N. 'Nena — Workers' representative
(k) Mr. M. Khotle — Director & Secretary

(4) The Council held three Ordinary meetings on 07/05/14, 06/08/14 and 19/11/14. It also held one Extra Ordinary meeting on 23/07/14.

6. THE DDPR STAFF

The staff of the DDPR remained the same as reported in 2013, except the following few changes that took place -

(1) Retirement of Mrs. 'Mathabo Nkoko

'M'e 'Mathabo retired from the DDPR effective from 01/10/2014. She had worked for the DDPR from 2001. We wish her a very happy retirement.

(2) New appointments.

The following appointments were made -

(a) Messrs Pitso and Xaba (who were both SCMOs in the DDPR) were appointed to fill the two vacant positions of Arbitrator;

(b) Ms. Kelello Pulumo was newly appointed to fill the third vacant position of Arbitrator.

(c) Mrs. Ts'episo Masibuyisiso Mohapi Hlojeng and Mrs. Ts'oana 'Malifuo Mapetla were appointed to fill the two vacant positions of Senior Case Management Officer;

(d) Ms. Mina Grace Saba, Mrs. Nts'onyana Motlabane Poulo and Ms. Nthabiseng Makhele were appointed to fill the three newly created positions of Assistant Case Management Officer, following the opening of three new full-time offices in the districts of Butha-Buthe, Berea and Mafeteng.

(3) Promotions

Ms. Celina Ramaqele was promoted from the position of Case Management Officer to the position of Senior Case Management Officer.

(4) Staff Training

(a) Two Arbitrators, Kalake and Monoko attended two courses on Conciliation/mediation of labour disputes and Building Effective Labour Dispute Prevention and Resolution Systems respectively. Both courses were held in Turin Italy by the International Training Centre (ITC) of the ILO in October and November 2014 respectively;

(b) The following staff members attended a two day (06- 07 January 2014) training workshop on Leadership skills at the Institute of Development Management (IDM). They are 'M'e Malebanye; Ntate Monoko; Ntate Keta; 'M'e Mofoka; 'M'e Mokitimi; 'M'e Thamae; 'M'e Nkoko; Ntate Xaba; 'M'e Ramaqele; le 'M'e Sefale. We expect them to share their knowledge with us by actions;

7. DDPR Policies

(1) Leave Policy

With effect from the 1st day of April 2014, the annual leave with full pay for staff appointed by Director was revised as follows hereunder –

(a) The positions of SCMO, DPO, FM, OA earned 27 days per year;

(b) The positions of CMO and Accountant earned 24 days per annum; and

(c) All the remaining junior positions earned 21 days per year.

(2) Medical Aid Policy

The medical aid policy was amended by removing a limit of M1,000.00 on the reimbursable cost of Frame of spectacles. All other conditions remain the same;

(3) New salary structure

It was with great pleasure that with effect from April 2014, the DDPR finally got the salary structure for both contract employees and other staff;

8. DDPR Website

The DDPR Website was up and running at www.ddpr.org.ls.

9. Motor Vehicle Accident

On the 19th June 2014, Arb. Shale and CMO Kajane were involved in a motor vehicle accident at or near Seaka Bridge and Holy Cross RCM. Both officers were not injured, while a female girl aged around 21 years old, who was a pedestrian, was seriously affected, admitted at Quthing hospital, transferred to 'Mamohato Memorial hospital, and later discharged. The vehicle became a write off.

10.The DDPR Functions

The functions of the DDPR as spelt out in section 46B (5) of the Labour Code (Amendment) Act 2000 are:

- To attempt to prevent and resolve trade disputes through the process of conciliation;
- To resolve trade disputes through the process of arbitration;

- To advise employers, employers' organizations, employees and trade unions on the prevention and resolution of trade disputes;
- To compile and publish :
    - information about its activities;
    - statistics on dispute prevention and resolution; and
    - significant arbitration awards.

1. DISPUTE PREVENTION ACTIVITIES

(1) Training workshops

(DDPR Initiated Training Workshops
Key:
BCLL - Basic Concepts of Labour Law
CDH - Proper Conduct of Disciplinary Hearing for Misconduct Cases
WG - Proper Handling of Workplace Grievances
PCDH - Preparing a Case for DDPR Hearing
RDI - Resolution of Disputes of Interest

WORKS HOP	NAME OF FACILITATOR(S)	DATE	NUMBER OF PARTIC-IPANTS	LOCATION	TARGET GROUP	SECTOR
BCLL	B.Mokitimi, K.Molefetsane, M. Keta	11/07/14	24	Maseru	Trade Union Officials & Shop Stewards	Trade U & Mixe Sectors
BCLL	B.Mokitimi, K.Molefetsane, M. Keta	23/07/14	35	Leribe	Shop Stewards & Workers Committees	Textile
PCDH	B.Mokitimi, K.Molefetsane, M. Keta	01/08/14	21	Maseru	Trade Union Officials	Trade U
BCLL	B.Mokitimi, K.Molefetsane, M. Keta	08/08/14	39	Maseru	Workers Committees	Textile
CDH	B.Mokitimi, K.Molefetsane, M. Keta	14-15/08/14	41	Maseru	Shop Stewards & Workers Committees	Textile
CDH	K.Molefetsane, M. Keta	21-22/08/14	30	Leribe	Shop Stewards & Workers Committees	Textile
RDI	K.Molefetsane, M. Keta	05/09/14	22	Maseru	Trade Union Officials	Trade U
WG	K.Molefetsane, M. Keta	19/09/14	17	Maseru	Shop Stewards & Workers Committees	Textile
WG	K.Molefetsane, M. Keta	03/10/14	29	Leribe	Shop Stewards & Workers Committees	Textile
BCLL	K.Molefetsane, M. Keta	10/10/14	24	Maseru	Shop Stewards & Workers Committees	Retail

BCLL	K.Molefetsane, M. Keta	17/10/14	33	Mokhotlong	Local Govt. Councillors	Local Govern
	TOTAL NO OF WORKSHOPS HELD	**11**	**315**			

(2) In-House Training Workshops:

Key:

BCLL - Basic Concepts of Labour Law

CDH - Proper Conduct of Disciplinary Hearing for Misconduct Cases

WG - Proper Handling of Workplace Grievances

PCDH - Preparing a Case for DDPR Hearing

RDI - Resolution of Dispute of Interest

A&E – Evidence & Evidence

	WORKSHOP	**ORGANISATION**	**DATE**	**# OF PARTICIPANTS**	**TARGET GROU**
1	CDH	Maluti Mountain Brewery	25-26/02/14	10	Management P
2	CDH	G4S Security Company	27-28/02/14	20	Management P
3	CDH	Lesotho Tourism Development Corporation (LTDC)	05-06/06/14	16	Management P
4	PCDH	Scenery Guest House	30/07/14	6	Management P
5	BCLL	Seboche Mission Hospital	21/10/14	22	Management P

6	PCDH	Seboche Mission Hospital	22/10/14	10	Management P
7	A&E	Seboche Mission Hospital	27-28/10/14	9	Management P
8	CDH	Lesotho Revenue Authority (LRA)	04-05/11/14	11	Management P
9	CDH	Lesotho Revenue Authority (LRA)	06-07/11/14	23	Management P
10	CDH	Seboche Mission Hospital	24-25/11/14	11	Management P
11	CDH	Lesotho Revenue Authority (LRA)	02—03/12/14	19	Management P
12	CDH	Lesotho Revenue Authority (LRA)	04-05/12/14	22	Management P
TOTAL				**197**	

(3) **PUBLICATION OF INFORMATION BULLETIN**

During the period under report, the publication of Information Bulletin together with corresponding articles by Arbitrators were effected and the following topics were covered:

VOLUME NO.	TOPIC	CORRESPONDING ARTICLE	AUTHOR
Vol. 14 Issue 1	Other Reasons for Dismissal	When does Constructive Dismissal Amount to an Unfair Dismissal as Contemplated by Section 68 of the Labour Code	Arb. L.Shale
Vol. 14 Issue 2	Alternatives to Retrenchment as a Reason for Dismissal for Operational Requirements	An Overview on the Employer's Approach Towards Legitimate Lay-Off	Arb. N. Mosae

(4) PUBLIC EYE PUBLICATIONS

18th July 2014 – Nature and types of contract of employment
22nd August 2014 – Is the new automatically on probation
5th September 2014 – Express and Implied terms of contract
31st October 2014 – Fixed term contract

	22/07/2014	Crabtree

Strikes and Lockouts	29/07/2014	Hippo Knitting
	07/08/2014	Tlotliso Holdings
	19/08/2014	Eversuccessful
Notice Severance pay	09/09/2014	Lesotho Carton Square
Strike and Lockout	10/09/2014	Lesotho Carton Square
Weekly Restdays & Public holidays Maternity Leave	16/09/2014	Lesotho Carton Square

(5) PRESENTATIONS IN THE TEXTILE SECTOR

(5) PUBLIC EDUCATION THROUGH ELECTRONIC MEDIA

A two hours joint presentation by IPAPU in partnership with Labour Department, was conducted at *People's Choice Radio (PC FM)* about DDPR and its Functions on the 10th October 2014. This was initiated by the Labour Department – Communications Office

This was a live, phone-in programme in which listeners were given an opportunity to comment and ask relevant questions on the subject under discussion. The presentation was aimed at educating and ensuring that the general public develops an understanding of the important issues relating to the establishment, functions, types of trade disputes, prevention & resolution of trade disputes et cetera.

A similar programme was jointly conducted at *Harvest Radio* on the 31st October 2014 under the same arrangement and with the similar purpose. It was as well a live broadcast and phone-in programme in which listeners were given an opportunity to comment and ask relevant questions on the subject under discussion

(6) MISCELLANEOUS ACTIVITIES

DATE	ACTIVITY	DESCRIPTION	LOCATION
16/10/2014	Meeting with the Labour Officers & Inspectors from Mafeteng, Maseru, Berea, Leribe, B.Bothe, Mokhotlong and Thaba-Tseka	A consultative meeting to discuss respective functions of DDPR and Labour Department and where such functions over-lap. The meeting was facilited by the Director of DDPR and Senior Inspections Manager Labour Department	Mount Maluti – Mohale's Hoek
12/11/2014	Meeting with the Labour Officers & Inspectors from Mohale's Hoek, and Quthing, and Qacha's Nek	A consultative meeting to discuss respective functions of DDPR and Labour Department and where such functions over-lap. The meeting was facilited by the Director of DDPR and Inspections Manager Labour Department	Mountain View - Leribe

2. DISPUTE RESOLUTION ACTIVITIES

12.1 Referral of disputes

REFERRALS BY PROCESS	2013	2014
Balance B/Forward	349	294
No. of disputes of right – Con-Arbitration	1,616	1,570
No. of disputes of right – Con-Adjudication	27	6
No. of disputes of interest – Conciliation	17	18
TOTAL	**2,009**	**1,888**
REFERRALS BY ISSUE		
Balance B/Forward	349	294
Unfair dismissals	680	555
Unfair labour practices	54	13
Employment benefits	807	893
Collective bargaining	27	13
Rescission/ Variation	92	120
TOTAL	**2,009**	**1,888**
REFERRALS BY SECTOR		
Balance B/Forward	349	294
Wholesale/Commercial/Retail	291	349
Textile/Leather	239	214
Private Security	229	262
Essential Services	23	21
Construction/Building	381	284
Transport/Motor	91	104
Hotel/Food/Catering	71	64
Domestic	3	7
Manufacturing	48	25
Education	59	57
Finance	18	30
Others	196	177
TOTAL	**2,009**	**1,888**

12.2 DISPUTES RESOLVED

SERIAL NO.	DESCRIPTION	2013	2014
(a)	Disputes settled by Agreement	605	696
(b)	Disputes settled by Arbitration Awards	840	855
(c)	Unresolved disputes of interest	26	4
(d)	Unresolved disputes of right	63	55
(e)	No. of disputes withdrawn	171	112
(f)	Cases closed for none-prosecution	0	5
(g)	**Total No. of referrals resolved**	**1,705**	**1,727**

11.2 ANALYSIS OF DISPUTES RECEIVED

11.2.1 The total disputes dealt with during the year 2014, including 294 cases brought forward from last year, were 6% less than those dealt with last year (2013);

11.2.2 The new referrals concerning employment benefits were 47.2% of the total referrals (1,888), followed by referrals concerning unfair dismissal, amounting to 29.3%. The third highest No. of referrals (6.3%) concerned applications for rescission and/or variation of awards;

11.2.3 The disputes of interest were only 18, which amounted to 0.9%. Six (6) of them were settled, eight (8) were withdrawn, three were dismissed for want of jurisdiction and one is still ongoing in the form of lockout by Lesotho Sun (Pty) Ltd.

11.2.4 The highest No. of new referrals came from the Wholesale, Commercial, and Retail sector with 18.4%; the second highest came from the Construction and Building sector with 15%; while the third highest came from the Private Security sector with 13.8%;

12 ANALYSIS OF DISPUTES RESOLVED

12.2 The DDPR resolved through conciliation and arbitration (con-arb) proceedings, 91.4% of all disputes dealt with during the year;

12.3 The process of arbitration resolved 48.6% while the conciliation process resolved 40.3%. The other 6.4% were withdrawn by the parties and 3.4% was shared between disputes of interest and disputes to be resolved by adjudication in the Labour Court;

12.4 A significant case of interest was a case between the Union of NUCCAW on the one hand, and Lesotho Sun (Pty) Ltd. on the other hand. The conciliation proceedings commenced on 11/11/2014 until the 05/12/2014 when the parties reached a deadlock.

12.5 Both the employer and the Union duly notified each other of the intension to resolve the dispute by economic power (a strike and a lockout respectively), but the union later withdrew its notice. The employer went ahead with the lockout from 22/12/2014 until the writing of this report (March 12, 2015).

3. DDPR TRUST FUND

The DDPR operates a Trust Fund in which the monies emanating from the processes of conciliation and arbitration are administered in the best interests of the beneficiaries.

At the beginning of the year 2014, the outstanding balance in the Trust Fund was M355,876.81. During the year, the DDPR received a total sum of **M3, 079,791.47.** At the end of the year, the DDPR had paid out **M3, 115, 319.96** to the rightful beneficiaries, and the closing balance was M320,347.50.

4. APPLICATIONS FOR REVIEW OF ARBITRATION AWARDS

Out of 148 applications for review filed with the Labour Court, only **124** notices were served upon the DDPR. The DDPR managed to process **90**. 34 were pending.