Chapter one: Introduction

"As the world evolves toward a single economy in which capital, commodities, and in some cases workers move freely across international borders, the ability of any single state to regulate successfully in socio-economic areas is challenged" (Burkett & Graig, 2001:1). Fundamental questions are being asked, including: Can the world economy be regulated by domestic laws and policies? If not, will the world economy go largely unregulated, or should international legal mechanisms be developed to replace domestic systems? In either case, how can democracy be preserved as domestic institutions become less effective due to globalization? These questions are relevant to the regulation of employment which is a matter that straddles both social and economic policy in all nations (Ibid).

The political and economic changes, brought upon by economic neo-liberalism, have affected labour in past decades and put pressure on labour administrations, region wide, to respond more swiftly to domestic demands. These neoliberal development strategies have undermined states' capacity for intervention at the workplace by creating a sense that states must choose between job creation and labour law enforcement" (Seidman, 2006). National governments are forced to compete for foreign investment by rolling back legal protections for workers and fair trade advocates are enlisting consumers to put market pressure on companies to treat their workers fairly. Even though transnational consumer movements can increase the bargaining power of the global workforce, they cannot replace national governments (Ibid).

National governments remain the key actors of employment regulation because as much as neoliberal globalization has attempted to shift power to the hands of multinational corporations; they still operate within the boundaries of nation states. If it is the case that multi-national corporations are able to dictate social policy through their ability to transfer capital and jobs out of jurisdictions that impose social costs, then this obviously has important implications for democracy. This means that no single nation can regulate a multi-national corporation, and so long as nations are pitted against each other to attract the investments of such a corporation, the likelihood of nations co-operating in their regulatory efforts remains slim. The Anti-Globalization Movement therefore argues that in a global economy, multinational corporations effectively operate above the laws of individual states. Therefore, the laws must “go global” to have an impact (Burket & Craig, 2001)

To “go global” means to have a multi-level regulation of labor rights at the international, supranational and national levels. In this sense the international is the United Nations (UN) and ILO Conventions, the supranational is the African Union and the national includes the pieces of legislation that workers need in order to guarantee theirs rights (Lopez, 2007). Nevertheless, the domestic level is the focus of this report and also remains the most important reference for local workers’ rights. As a result, the only way that workers’ rights can reach and protect workers is through effective implementation and enforcement which is handled mainly by state departments of labour inspections units.

Labour inspectors, also known as street-level bureaucrats, are crucial decision makers when it comes to policy implementation and enforcement (Winter, 2003). These individuals make discretionary decisions when delivering policies by means of service, enforcement, monitoring and regulating policies. As a result, the role that street-bureaucrats play makes them essential actors in the implementation of labour policies because low levels of enforcement and monitoring undermine the purpose of labour laws, whether on a local or global scale (Ibid).

It is generally undisputed that all policies signal desired courses of action (May, 2005). However, concern has been expressed that 'labour policies are simply symbolic politics, giving the appearance of action with little done to tackle the problems' (Rycroft & Jordan, 1990: 4). There appears to be a disjuncture between labour laws and implementation, or rather, enforcement. For instance, a large fraction of the labor force in less developed countries faces poor working conditions. Available estimates indicate that about half of employees do not have any state-sponsored protection against unemployment, work related injuries and diseases, or old age (IADB, 2004).

In South Africa there are approximately 5, 8 million workers who are not registered with the Unemployment Insurance Fund (UIF). This is half of the workforce. Furthermore 4, 1 million workers in this country do not have paid leave entitlements and there has been an increase in the number of hours worked by approximately 1.5 hours, from 47.6 hours in 2000 to 49.1 hours in 2005. These statistics imply that these poor working conditions faced by many workers, even worldwide, are not driven by a lack of regulation. In fact, most less developed countries have extensive labor regulations and social security systems with de jure universal coverage, however compliance and enforcement levels are low (Ibid).

In this light, labour regulation in the era of globalization is faced by a myriad of challenges. One of the aims of this study was to focus on the challenges faced by labour inspectors in the Department of Labour South Africa. This aim is in line with the way in which globalization has changed employment patterns in the workplace and how this has affected the states' ability to ensure compliance of labour laws. Labour law regulation cannot only be the responsibility of the Department of Labour's inspection unit, but also the responsibility of the employers and unions. Therefore, there needs to be a forged partnership between labour inspectors and global unions so as to tackle the challenges in the workplace that have been brought about by globalization.

This study also aimed at assessing the extent to which the policies that inform the definition of 'fair labour practices' or decent work, which includes the Labour Relations Act of 1995 (LRA), the Basic Conditions of Employment Act of 1997 (BCEA), the Skills Development Act (SDA), the Occupational health and Safety Act (OHSA) as well as the Employment Equity Act (EEA) and the Unemployment Insurance Fund Act (UIF), are implemented and enforced by labour inspections. This means assessing the challenges that arise in the enforcement and monitoring of labour laws with particular focus on the parallel relationship between the design of the labour legislation as well as the instruments used to carry out these labour laws. Elaborated further, this means gaining an understanding the shortfalls of implementation and enforcement of labour laws with particular emphasis on labour inspectors.

To achieve the afore mentioned objectives, this thesis is organised into eight chapters. Chapter two develops the conceptual and theoretical framework that has guided this study. This section will discuss theoretical concepts of labour law regulation and implementation as well as the debates centering on core elements of achieving 'fair labour practices' or decent work. Chapter three will discuss the methods used in this research which are informed by the theories analysed and draw from original key informant interview data which was obtained and analysed. This section will also discuss the potential external and internal biases that could have affected the study. Lastly, this section discusses the limitation of the methodologies used and how these weaknesses have been overcome.

Chapter four provides the context of our labour relations regime dating back to the apartheid era. The aim of this chapter is to show how the unique nature of South Africa's colonialism has influenced the structure of our workplace culture today. Chapter five to seven are all sections which discuss my findings and analyses. Chapter five discusses challenges faced by inspectors during routine inspections and highlights themes and findings pertaining to this title. Furthermore, this chapter explores the shortfalls of implementation from the labour inspectors' point of view and relies on the interviews conducted with the inspectors as well as the participant observation method. Chapter six discusses a different aspect of inspections, titled Mediations. This section shifts toward shortfalls of the inspectorate from an institutional point of view. In this section I discuss the challenges faced by inspectors which are directly linked to issues of capacity, training and resources.

Chapter seven discusses a very important aspect of inspections. It talks about blitz inspections and combines the shortfalls of policy implementation from both the 'bottom-up' and 'top-down perspectives'. This section further highlights the importance of the inspectorate as a collective and demonstrates how this role has been weakened or undermined. Finally, chapter eight concludes by discussing theoretical conclusions, policy implications for the study's findings and offers a set of recommendations for improving and strengthening the inspectorate in the Department of labour.

Chapter 2

The role of enforcement in implementation and regulation of labour law

2.1. Introduction

This chapter will refer to existing literature on labour regulation to illustrate the complex nature of labour inspections and how this has exacerbated problems in monitoring and enforcing labour laws. Labour inspections form part of a broader framework in labour market regulation which is constituted by various elements that directly affect the extent to which labour laws can be enforced by labour inspections. These key elements include- but are not confined to- the context of globalization within which labour laws are operating today, the capacity of states to regulate both local and international capital, the structure and design of labour laws locally as well as the capacity of the implementers themselves to carry out the implementation process effectively.

As a result, the aim of this literature review is to highlight some of the broader debates around the shortfalls of labour law implementation in the era of globalization. Moreover, this literature review is aimed at combining theories of implementation discussed by scholars from business management and those from sociology. The business management school focuses mainly on design and implementation whilst the school of sociology focuses mainly on structure (being the design and bureaucratic institutions) and agency (being the implementers). Due to the fact that labour law inspections are rooted in both disciplines, it is necessary to incorporate both perspectives.

In order to achieve the afore mentioned objectives this chapter is divided into various sub-sections and will begin with a theoretical framework discussing how the objectives of globalization -one being to expand the self-regulation of markets- cannot be sustained for long because of the fictitious nature of key elements of an economy being land, labour and money. The aim of this section is to demonstrate how, even though globalization has changed employment relations in the workplace, these changes still need to be regulated effectively by the state in order to preserve law and order in society.

The following sub-sections will then discuss issues pertaining to shortfalls of implementation and where the problems might lie. The aim here is to discuss elements of labour law regulation pertaining to policy design, implementation and enforcement. Because of the convoluted nature of labour policy implementation, its constituencies are further broken down. For instance, policy design focuses more on consultative processes, bureaucracy and structuration of a labour policy, while implementation and enforcement entails issues of adequate resources, skills development as well as the level of agency of implementers.

2.2 Theoretical framework

Like Marx, Polanyi recognized that labour differed in crucial ways from true commodities and that difference shaped labour market relations and regulations. Marx emphasized power relations, 'arguing that the asymmetrical social relations of the 'hidden abode' of production had a distorting effect on the labour market (Peck, 1996:25). Marshall conceded that the peculiarities of the labour market rendered distinct in many ways from the conventional commodity markets, whilst Polanyi explored the social and cultural foundations of labour's fictive commodity form (Ibid).

According to Polanyi (2001), a market economy can only exist with a market society because a 'free-market' must comprise of all elements of the industry which include labour, land and money. However, to include these three fictitious commodities is to subordinate the substance of society itself to the laws of the market. This means that by reducing labour to a commodity, one eliminates its distinctive human character upon which depends on its usefulness (Burawoy, 2003). As a result, the expansion of the self-regulating market will elicit an inevitable countermovement from society (Munck, 2004).

Polanyi has been critiqued by various authors such as Webster, Lambert & Bezuidenhout (2008) who argue that Polanyi sees a counter-movement against the self-regulating market as an automatic response without providing particular steps within which this process would evolve. Polanyi does not adequately show how society will come together towards an alternative. Furthermore, these authors argue that Polanyi does not link the local and the global because he only worked within the parameters of the nation state (Webster, Lambert & Bezuidenhout, 2008). However, globalization market forces have moved beyond the local to become international and therefore call for an equal understanding of how it functions globally.

More importantly for this study, as Peck (1996) noted, is that local states are the beginning for the effective regulation of labour. As a result, there needs to be an approach to labour market analysis and regulation which is sensitive to ‘both their institutional embeddedness and geographical differentiation’ (Peck, 1996: xv). This is because even though there are similarities, different labour markets have unique elements that are context specific. Therefore, Peck (1996) advocates for the social regulation of labour, meaning that labour markets should be understood as socially regulated and not wage regulated. In Polanyi’s terms, ‘it requires the protective covering of cultural institutions’ (Peck, 1996: 262).

Even though neoliberal development strategies have recently undermined the states capacity for intervention at the workplace by creating a sense that states must choose between job creation and labour law enforcement, states remain the central drivers of regulation. This report advocates for a complimentary system of regulation between states as well as capital. This means having codes of conduct developed by companies that promote decent work and, side by side, have effective labour laws to protect workers.

Seidman (2006) demonstrates, using three different case studies, the role played by the state in each code of conduct campaign. In her book ‘*Beyond the Boycott’ Seidman* examines three campaigns in which activists successfully used the threat of a consumer boycott to pressurize companies to accept voluntary codes of conduct and independent monitoring of work sites. The voluntary Sullivan Code required American corporations operating in apartheid-era South Africa to improve treatment of their workers; in India, the Rugmark inspection team provides ‘social labels’ for hand-knotted carpets made without child labor; and in Guatemala, COVERCO monitors conditions in factories producing clothing under contract for major American brands. Seidman compares these cases to explore the ingredients of successful campaigns, as well as the inherent limitations facing voluntary monitoring schemes. Despite activists' emphasis on educating individual consumers to support ethical companies, Seidman finds that in practice they have been most successful when they mobilized institutions such as universities, churches and shareholder organizations. Moreover, although activists tend to dismiss states' capabilities, all three cases involved governmental threats of trade sanctions against companies and countries with poor labour records. Therefore, Seidman argues that transnational consumer movements can increase the bargaining power of the global workforce but they cannot replace national governments (Seidman, 2006).

It is evident that as the world economy becomes increasingly integrated, companies can shift production to wherever wages are lowest and unions weakest. This creates a dilemma for states to defend workers rights. How then “can workers defend their rights in an era of mobile capital?”. Clearly, the beginning of an effective defense is the strengthening of nation states inspection systems’ as they are at the core of implementation of the labour laws. It is only then that organized labour will have enough ammunition to handle the challenges that have accompanied globalization.

However, the strengthening of the labour inspections system is not as straight forward as has been implied. There are shortfalls in the process which need to be identified and addressed. The next section is aimed at picking out some possible shortfalls within the implementation process as argued by various perspectives.

2.3 Design, monitoring and enforcement of labour laws

2.3.1 "What is labour regulation?"

Labour regulation includes, but is not confined to, the use of legal rules and sanctions for setting and enforcing behavioural norms (Rycroft & Jordan, 1990). The aim of labour laws is to protect workers against insecurity and exploitation at the workplace. Peck (1996) states that labour regulation and labour markets have historically tended to 'grow up together'. They cannot be separated.

Approaches to labour market regulation are dominated by two opposing perspectives, what Freeman (1993) in Betcherman, Luinstra, & Ogawa (2007) call the 'institutionalist' and the 'distortionist' views. The former views job security arrangements, minimum wages and collective bargaining as providing important social protection for workers as well acting as an instrument for encouraging productivity growth. On the other hand, the distortionist view emphasizes the advantages of market processes and is concerned that these institutional forms of regulation impede adjustment to economic shocks and as a result discourage hiring (Betcherman, Luinstra & Ogawa, 2007).

Literature focusing on labour market regulation has tended to place more emphasis on the distortionist view which argues that high labour costs derived from protective labour laws contribute to employers' constraints, hence the increasing levels of non-compliance with labour laws (Marshall, 2007). However, this literature fails to justify, and in the process neglects, the importance of labour standards as a possible contributor, instead of a hindrance, to economic development. Similarly, Storm (2007) shows that in countries that have stricter labour laws, workers were more likely to be motivated and committed to their jobs because of the understanding that as workers they had rights and were protected. Storm (2007) shows that this in turn stimulated labour-saving technological progress and thus raised productivity.

2.3.2. Policy design: "a science in analyzing the costs and impacts of different options"

The central issue for scholars of implementation policy is the extent to which noteworthy distortions can be anticipated and addressed as part of the design of a given policy (May, 2003). This means acknowledging and incorporating the possible unintended consequences of a given policy. However, other scholars like Matland (1995) and Stoker (1991 in May 2003) disagree, and argue that there is very little that can be done to address slippages or unintended consequences. On the contrary, the perspective adopted in this chapter is that implementation difficulties can be partially ameliorated with the crafting of appropriate policy designs that ensure capacity building of the intermediaries (May, 2003).

It is undisputed that policies signal desired courses of action and structure implementation. However, there are ways in which different policy designs hinder or facilitate implementation. According to Mazmanian & Sabatier (1983), policy design can hinder effective implementation when there is lack of goal clarity, the goals are inconsistent and contradictory, there are multiple actors at the decision making level and there is an unsupportive political and economic environment. Therefore, these authors propose a basic prescription for enhancing implementation; to have ‘statutory coherence’ as well as clear and simple goals (May, 2003).

However, this model has been criticized for being over-simplistic. It also fails to recognize the political realities that account for policies with multiple goals. Instead, a different perspective is offered by May (1993), Elmore (1987) and Goggin et al in May (2003), who state that implementation prospects are enhanced through two sets of policy provision, the first being to build the capacity of implementers. This means providing funding, education, training and technical assistance to implementers. Second, are the policy provisions that foster increased commitment of implementers to the basic policy goals. This includes publicity about policy goals, sanctions for failing to act and incentives and publicity about successful implementation (May, 2003)

This model is more inclusive and realistic because it recognizes the value of the implementers of labour policy- which may include labour inspectors, managers, supervisors and other ‘street level bureaucrats’ who deal with the public on a daily basis. Furthermore, this model acknowledges the importance of capacity building and providing support for the intermediaries so as to encourage commitment to the policy that they are enforcing.

2.3.3. Implementation perspectives: “bottom-up” or “top-down”

In addition to the predicaments of policy design, policy implementation perspectives are dominated by two opposing views- the “bottom-up” and “top-down” views. The “top-down” perspective argues that implementation of policy and laws should be structured from above in order to achieve the purpose of the legislation and to minimize the number of decision points that can be vetoed (Winter, 2003). However, according to criticisms from Moe (1989) and Winter (1986 in Winter 2003), this approach overemphasizes the ability of policy proponents to structure implementation, thus ignoring the ability of policy opponents to interfere in this structuring process. Furthermore, this perspective undermines the role which is played by street-level bureaucrats or the people who are on the front line of implementation and who encounter citizens on a daily basis (for example labour inspectors).

In fact, as argued by the second perspective termed “bottom-up”, street-level bureaucrats influence the delivery of policies and are crucial decision makers in policy monitoring and enforcement. Furthermore, as Lipsky (1980 in Winter 2003:214) states, “although these street-level bureaucrats are doing their best, they experience a gap between the demands made on them by legislative mandates on the one side and the citizens on the other”. As a result, they apply a number of coping mechanisms that systematically distort their work in relation to the intentions of the legislation. For instance, they ration services, or make their work less attractive or more difficult for clients to turn up at their offices, or make priorities between their tasks (for instance by upgrading easy tasks and cases at the expense of complicated non-programmed tasks) (Ibid). This is clearly problematic as it undermines the intentions of the legislation. As will be revealed later, these “coping mechanisms” are evident in the South African Department of Labour’s inspection system.

2.4 Bureaucracy matters

Weber viewed bureaucracies as central to the organization of modern industrial societies. He saw no other kind of organization which could handle the efficiency demands of modernity. Weber concluded that an ideal type bureaucracy has certain important characteristics, including the division of labour where activities in the organization are broken down into specialized tasks and are allocated to specific individuals to carry out. The second characteristic is hierarchy which refers to the chain of command in an organization and the acceptance of responsibility of those in higher positions to supervise the actions of the subordinates.

Third, is the existence of rules and regulations which lay down the responsibilities and duties of those in positions of authority as well as the procedures for the performance of regular tasks. The fourth characteristic refers to the manner in which bureaucrats are supposed to conduct themselves. According to Weber, the conduct of bureaucrats is governed by ‘formalist impersonality,’ not by personal feelings or emotions. The fifth characteristic of a bureaucracy is meritocracy meaning that officials are appointed and promoted on merit- their skills, knowledge and proven technical abilities. The last characteristic, according to Weber, is the separation of private and official income. This is because in a bureaucracy official activity is seen a something distinct from the sphere of private life (Buhlungu, Webster &Bezuidenhout, 2003:29).

However, Weber was also concerned that bureaucracies might become an ‘iron cage’ which limited people’s freedom in modern societies. This is because bureaucracies themselves have a tendency to focus more on technical procedures and rules rather than broader organizational aims. In this case, bureaucrats would either strengthen their own position within an organization by bolstering the position of their own departments in opposition to other departments or become caught up in a ‘red tape’ where the rules and regulations becomes so tedious to follow that instead of being efficient, the organization gets bogged down in organizational inertia (Buhlungu, Webster &Bezuidenhout, 2003).

Nevertheless, Weber argued that in capitalist societies bureaucracies would be disciplined by the market. This is because when business organizations become inefficient, then profits decrease which may lead to bankruptcy. On the contrary, for the state -which is a non-profit organization- the same motivation to be efficient is not prevalent. The danger therefore is that the levels of efficiency within state departments may remain low. Weber goes further to explain that the danger for state bureaucracies is that those who are in charge will not use their power to the advantage of society. This is because, as explained by Robert Michels, bureaucracies inevitably produce a ruling elite which asserts dominance by displacing organizational goals. According Michels, this principle is called ‘the iron law of oligarchy’. It argues that: ‘beyond a certain size an organization cannot exist without impersonal bureaucracy. They need complex financial, legal and organizational expertise which becomes difficult for the rank and file to control. They also need leaders who, over time, tend to fight for maintenance of their own power rather than for the goals of the organization. There is therefore, said Michels, an inherent conflict between democracy and organization' (Buhlungu, Webster &Bezuidenhout, 2003:46)

However, Voss and Sherman (2000 in (Buhlungu, Webster & Bezuidenhout, 2003) dispute the inevitability of oligarchic tendencies. These authors argue that revitalization and radicalization of goals and tactics can occur within highly oligarchic and conservative organizations. Even though these authors demonstrated radicalization in trade unions, it is not impossible to attempt the same in state departments.

Weber's critics such as Gouldner, Burowoy and Phakhathi (in Buhlungu, Webster & Bezuidenhout, 2003), have questioned the extent to which bureaucratic organizations are inevitable. They argue that it is not always the most efficient form of work organization. For Alvin Gouldner, some tasks are more suited to bureaucratization than others. For example; in a factory work is routine, tasks are often repetitive and the product is standardized. However, in contexts such as mines, work is unpredictable and workers may bend rules in order to adjust to their work situations (Buhlungu, Webster & Bezuidenhout, 2003).Similarly, for Michael Burowoy, bureaucracy is not necessarily about efficiency and rationality as argued by Weber, it is more about control.

Indeed bureaucracy is more about control. However, up until now the focus of these authors has been on the behaviour of bureaucrats and not on how bureaucratic structures influence behaviour. This is because even the characteristics of a bureaucracy describe mostly behaviour rather than the institutions within which these people operate. Nevertheless, as will later be revealed, bureaucratic structures also hinder the progress of implementation. For instance long and redundant procedures that are required to be followed during inspections undermine the purpose of inspections and, in the process, the labour law legislation. The next section will discuss what a labour court is, its procedures and some of the challenges that arise in the labour court with reference to enforcement.

2.5 Labour Court

The Labour Court is a superior court that has authority, inherent powers and standing in relation to matters under its jurisdiction, equal to that which a court of a provincial division of the Supreme Court has in relation to the matters under its jurisdiction. Subject to the Constitution and the jurisdiction of the Labour Appeal Court, and except where the LRA Act provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters in terms of this Act, except in respect of an offence specified in sections 43, 44, 46, 48, 90 and 92 (LRA, 1995).

The Labour Court has concurrent jurisdiction with the civil courts to hear and determine any matter concerning a contract of employment, irrespective of whether any basic condition of employment constitutes a term of that contract. Subsection (1) does not prevent any person relying upon a provision of this Act to establish that a basic condition of employment constitutes a term of a contract of employment in any proceedings in a civil court or an arbitration held in terms of an agreement (BCEA, 1998).

2.5.1 Labour Court procedures

The Director-General of the Department of Labour may apply to the Labour Court for a compliance order[1] to be made an order of the Labour Court in terms of section 158(1) *(c)* of the Labour Relations Act, 1995, if the employer has not complied with the order and has not lodged an objection against the order in terms of section 71(1). For the purposes of section 158(1) *(c)* of the Labour Relations Act, 1995, a compliance order or an order in terms of section 71(3) is deemed to be an arbitration award.

The Labour Appeal Court[2] has held that compensation arises out of statute and does not relate to patrimonial loss. The Labour Courts have discretion on whether compensation should be awarded or not. If the Labour Courts decides that the case is such that compensation should be awarded, they have no discretion in respect of the amount. Compensation must be awarded from the date of dismissal to the date of adjudication, subject to a maximum of 12 months compensation.

However, this has serious ramifications for procedurally unfair dismissals. In the past a commissioner/arbitrator may have decided to award a month or two's compensation because of the minor nature of the employer's lack of procedural compliance. The Labour Courts are now faced with adopting an "all or nothing" approach and now have to award either 12 months or nothing to an employee who has been visited with a procedurally unfair dismissal. In most instances, other than cases of trivial procedural

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[1] compliance order means a compliance order issued by a labour inspector in terms of section 69(1

[2] Labour appeal court means the Labour Appeal Court established by section 167 of the Labour Relations Act, 1995;

deficiencies, this will result in 12 months compensation being awarded to the employee for procedural unfairness because of the inherent delays in having such matters heard.

2.5.2 Backlogs in Labour Court

“Soaring labour disputes and a shortage of judges have landed Cape Town's Labour Court with the biggest backlog of labour cases in the country - likely to take more than a year to clear. The delays are likely to have serious cost implications for companies, which will be affected at every level, and for employees who may have been unfairly treated or dismissed.” (Salie & Mangxamba, 2007). This claim is not only true for Cape Town labour courts, it is a serious problem of backlogs in the labour court nationwide and these can be attributed to a number of reasons such as the volume of work increasing over the past two years, but also because more judges have not been allocated into the court. (Ibid).

This has created difficulties for the speedy finalization of labour cases brought to the court by the CCMA as well as the Department of labour. This has serious implications for the ability to enforce fair labour practices because as Salie & Mangxamba (2007) indicate "if a case only gets to court in a year's time, there is a strong likelihood that company witnesses will no longer be in the same company, province or country, for that matter. "And the company might well have to bear the costs of flying them back for the hearing, or attempting to run the hearing without them, with the risk of losing the case because of a lack of witnesses." Not only does this affect employers it can also imply that the lengthy process, due to backlogs, enables non-compliant companies to walk away free because they have enough time to close down and re-emerge under a new name.

This poses serious challenges for effective enforcements. Challenges pertaining to labour courts need to be addressed head on because their backlogs and inefficiencies have a trickle down effect on the inspections unit. Nevertheless, this does not imply that the inspections unit is perfect and is brought down solely by the labour court. It is part of the problem but not the only problem for the inspections unit. There are other challenges such as a shortage of skills which will be discussed below. This report argues that recognizing where the problem lies for the inspections unit is the first step towards building capacity.

2.6 Recruiting and retaining skilled public service workers

Retaining and recruiting competent public sector workers is said to be one of the most critical human resource functions because it supplies persons with knowledge, skills and abilities needed to perform public services (Selden, 2003). As has been already emphasised in the literature review, workers in the public sector are the policy implementers and drivers of policy. Therefore, it is crucial to recruit and retain those workers that will improve the current and future operations of government

In order to be competitive, a number of governments have altered their compensation systems to become more competitive and reward performance-based. In search of the best suitable compensation systems governments have adopted several different strategies including performance-based compensation structures, skills and competency pay and market-based pay rates (Selden, 2003). The system which is used in the Department of Labour's inspection unit is a performance-based compensation system where inspectors are given an allowance for good performance. Nevertheless, as will be discussed later, this system has not proven to improve motivation and willingness of inspectors to be eager public service workers.

Perhaps, as a recent report in Selden (2003) indicates, part of this problem is the lower wages and the loss of prestige and mundane job duties that exist in the public sector. This, according to the report, has caused many young graduates as well as senior civil servants to choose a career in the private sector over public service. In addition to this challenge, the South African government is competing for skilled labour in an economy with high unemployment and low skill levels. Just as the private sector recruits aggressively for the best qualified and the most competent, so must the public sector. The following section will discuss in-depth the challenges facing South Africa with reference to skills development in the legal profession.

2.6.1 Scarce and critical skills in the legal profession

Before dwelling on the discussion of which critical skills are needed in South Africa's DoL's inspections department, it is important to provide a global context of what it means to be an inspector in other parts of the world. The aim of this is to stress the seriousness of the labour inspectors' occupation in general and how qualifications and skills prior to appointment as a labour inspector are crucial if we want to build capacity and ensure quality inspections that would translate into decent work for all.

<u>Netherlands</u>

In the Netherlands, the Labour Inspectorate forms part of the Ministry of Social Affairs and Employment (SZW). The key role of the Labour Inspectorate is to supervise compliance with legislation and regulations governing working conditions, working hours, illegal employment of immigrants and the minimum wage.

On appointment, inspectors must hold a higher professional education (HBO) diploma or equivalent qualification based on demonstrable experience or level of intellectual attainment as a basic entry qualification. Team leaders must show evidence of additional managerial qualities. Initial qualifications can be technical, chemical, medical or organisational. In addition to qualifications and experience, candidates for inspection posts are also assessed based on the following qualities: decision-making capacity, awareness of the operating environment, teamwork, analytical capability, inquisitiveness and an ability to plan work.

Hungary

In Hungary there is still a division of labour between those inspectors who monitor issues of occupational health and safety and those who monitor the basic conditions of employment. Nevertheless, the requirements for being an inspector in Hungary are that inspectors should be university or college graduates in a special field in which inspections are required (e.g. chemical engineers, mechanical engineers, architects, legal qualifications etc). The directors of the local inspectorates would then conduct interviews with the applicants, during the course of which the applicants indicate their reasons for applying and the directors inform them about the work to be done, what would be expected of them and how much they would earn.

South Africa

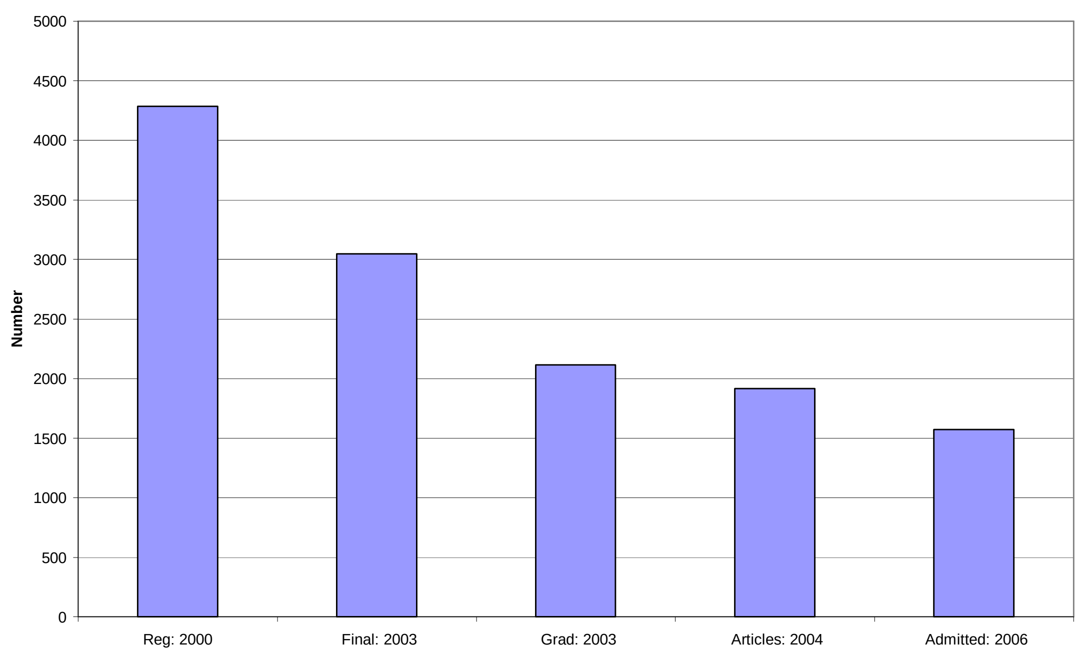
In South Africa it is only those labour inspectors who specialize in OHSA and EE who need to have prior tertiary qualifications. However, all the inspectors are then trained on the basics of OHSA for Integrated Inspections but this does not mean that they can conduct thorough OHS inspections and investigations (Department of Labour annual report 2000/2001). Therefore, for the rest of the other inspectors prior entry requirements are matric and a driver's license (IES strategic documents 2001). This is evidently problematic because the very same inspectors are expected to perform various complex tasks during inspections such as understanding the nature of the case, having analytical capacity, as well as extensive legal knowledge of labour laws.

Furthermore, the level of the qualification's of an individual dictate the level of skills they have and the quality of output. The point made here is that labour laws are inherently complex and this complexity is exacerbated by the inherent shortfalls of implementing these laws. As a result, it is not enough to appoint labour inspectors purely on the basis of matric. This study advocates for a more meaningful and intense training of labour inspectors in order to achieve quality service delivery of inspections.

On the other hand, a recent study by Godfrey & Midgley (2008) on scarce and critical skills in the law profession poses another challenge facing South Africa. According to these authors, there is a national problem of scarcity of skills particularly in the law profession. For definitional purposes a 'scarce skill' in the legal profession would be a shortage of qualified attorneys and/or advocates in the private sector, and a shortage of prosecutors and/or magistrates in the public sector. Also, a 'critical skill' can be broken down into two categories. First, there are those skills that should form a part of the skills profile of a law professional but do not. For example, it might be that 'practice management' is an important skill for attorneys but it is not one that they acquire as part of the academic education or in their vocational training. Low levels of literacy and numeracy amongst candidate attorneys (the term used to describe articled clerks) is another example. Therefore, there is an important gap or weakness in the skills of law professionals that needs to be filled with further training (Ibid).

Figure 1. is an illustration of the contributors to scarcity of skills in the law profession by looking at the number of student who enroll at university and whether they end up in the law profession or not.

Figure 1. The Class of 2000: From registration to admission



(Source: Data supplied by LEAD in Godfrey and Midgley (2008: 77)

What figure 1. suggests is that most of the people who leave the pipeline that runs from universities through to the attorneys' profession do so in the course of their university studies (51%). Once they have completed their LLB degree the vast majority of graduates register for articles (91%) and thereafter become admitted as attorneys (82%). The four-year LLB degree therefore still appears to be a problem for many students that might wish to become attorneys, while articles and the attorneys' admission examination seem to be less of an obstacle (Godfrey and Midgley, 2008: 77).

In this light, instead of adding to the scarcity problems in the law profession, perhaps labour inspectors could be trained through a specialized diploma in labour relations. This would cut down on the lengthy process of attaining a law degree, doing articles and going through admission examinations. This program would still be comprehensive and intense and, more importantly supply quality labour inspectors into the Department of labour.

2.7 "A rights-based approach to labour regulation: Decent work and 'fair labour practices"

Ghai's (2003) definition of decent work states that this concept applies not just to workers in the formal economy but also to the unregulated wage workers, self-employed and casual workers. Furthermore, this concept refers to adequate opportunities for work, remuneration and embraces safety at work and healthy working conditions. In addition social security and income security are also essential components of decent work.

Ghai (2003) begins with the indicators of decent work and assesses both the limitations and advantages of using these measures. He argues that indicators such as employment opportunities, social security measures and other basic rights measures as stipulated in the ILO conventions and can be used to assess the performance and assist in evaluating progress over time. He alerts us to the fact that relevant indicators often vary for different countries, but the ILO has set the international standard for measuring and assessing decent work.

While this author provides us with a framework to assess decent work, he does not engage adequately with a critical distinction between workers who are covered by the standard employment relations[3] and those who are not. Furthermore, this author does not provide a framework which can be used to assess or measure the levels of decent work. Instead a study by Webster et al (2007) has attempted to develop a decent work deficit index that aimed at identifying the links between those at one end of the formality/informality dichotomy and those at the other end through value chain analysis and then developed a decent work deficit index to identify the vulnerabilities in the heterogeneous nature of work in the informal economy.

As a result, the decent work definition which will be used in this study will be based on the decent work deficit index which comprises of seven indicators of work security

[3] SER: employees who are registered and have a permanent contract of employment with their employer. They enjoy all benefits and rights such as UIF, pension fund, medical aid etc.

First, labour market security which is concerned with employment opportunities in the sector. Second, is employment security which is concerned with the protection against arbitrary dismissals. The third indicator is job security including opportunities to build a career and increase income. Fourth, is work security which is concerned with protection against accidents and illness at work, limits to working time etc. Fifth is skills reproduction security including opportunities to gain and retain skills. Sixth is representation security which is concerned with the protection of collective voice in the labour market through independent unions and employers' associations. Finally, is income security which is concerned with regular and minimum income and comprehensive non-wage benefits.

In this light the definition of decent work has overlapping elements with those that define 'fair labour practices'. Therefore, in this study 'fair labour practices' will be used interchangeably with the term decent work. According to Section 23 (1) of the constitution 'fair labour practices' is complying with the obligations of the ILO as well as those stipulated in the BCEA section. Therefore, in this study, the different labour law Acts that are looked at by the labour inspectors will be measured using the indicators that are described above. First, the BCEA will be measured using two security indicators, being income security and work security, whereby workers will be interviewed to see whether or not they are receiving the stipulated minimum wages, working the appropriate hours, receiving all forms of work leave and so forth. Second, the LRA will be measured using three indicators namely, the employment security, job security as well as representation security. Third, the OHSA will be measured using the work security indicator and the SDA will be assessed using the skills security indicator.

The right to decent working conditions can be considered a fundamental human right. Labour inspections are one of the basic instruments for putting this principle into practice and have a pivotal role in promoting compliance with ILO Core Labour Standards. Labour inspectorates are the state authorities for many work-related activities such as health and safety, social dialogue, legislation, market-control mechanisms, working conditions, the fight against illegal work, child labour, etc. The ILO promotes an Integrated Labour Inspection System which entrusts labour inspection with new roles and responsibilities.

2.8 Conclusion

This literature review has posed an enormous number of challenges, but the aim was to emphasise the complex and rather important characteristic of the inspections unit. It is not only about monitoring and enforcing labour laws. There are complexities within this unit which may hinder or promote labour inspections. There are also stakeholders such as trade unions and employers who have direct influence on the success of the labour inspections unit. Moreover, the context within which labour inspections are operating also poses other challenges because, not only has globalization changed traditional patterns of employment, it has also pressured almost every single institution, state and organization to step up and device strategies to ensure that globalization is regulated.

This literature review has attempted to provide a general perspective on bureaucracy, constituencies of labour regulation as well as problems related to design and implementation of labour law policy. As was clear in the literature, effective labour law regulation is made of various elements including design, instruments and administration.

Within each of these elements are further complex processes that may hinder or facilitate effective labour regulation. However, the trick is to develop a comprehensive framework in which different elements of labour regulation compliment each other.

Chapter 3

Methodology

3.1. Introduction

“Implementation research is a two part discipline of political science- public policy or public analysis and public administration” (Winter, 2003: 206). One of the major controversies amongst implementation analysts has been whether implementation should be studied from the bottom-up, starting at actors most proximate to the problems to be solved by policies, or from a top-down perspective as a control problem. This means either assessing the roots of implementation problems via the policy design itself or evaluating the instruments used to carry out the policy. Indeed, a mixed approach is the most comprehensive and holistic approach. However, the scope of this research only allowed for focus on one side, the bottom-up approach, with particular emphasize on the role of inspectors as key instruments or rather ‘street-level bureaucrats’ of labour law enforcement. The aim of this was to provide not only a general view of the shortfalls of implementation, but also to provide a deeper and more theoretical understanding of these shortfalls in enforcements and implementation.

As stated earlier, the purpose of this research was to assess the extent to which the policies that inform the definition of ‘fair labour practices’ (which include the Labour Relations Act of 1995 (LRA), the Basic Conditions of Employment Act of 1997 (BCEA), the Skills Development Act (SDA), the Occupational health and Safety Act (OHSA) a well as the Employment Equity Act (EEA) and the Unemployment Insurance Fund Act (UIF)) are implemented and enforced by labour inspections. This means assessing the impact made by labour inspectors in enforcing 'fair labour practices' in the workplace. Second, this research was aimed at understanding the effectiveness of the mechanisms put in place for non-compliance with particular focus on follow-up visits.

3.2. Participant observation approach

According to Robinson (2002), participant observation is a method in which the researcher or observer participates in the daily life of the people that have been chosen for the study. Nevertheless, there are varying degrees of participant observation but in this study the researcher did participant-as-an-observer whereby the role of the observer is made clear at the beginning of the research. What was intended with this was to establish a trust relationship with the subjects to be observed. It was hoped that with the participant's knowledge of me being an observer they would acknowledge my sense of honesty and this would establish trust between us.

The Department of Labour Johannesburg centre was chosen in this study because it has the second largest number of inspectors after Kwa-Zulu Natal to date and because it was more convenient for me as the researcher in terms of proximity. The Labour Centre where I did my study was called Johannesburg central and consisted of 66 inspectors.

These inspectors were divided into teams of five and reported to a team leader. In the seven weeks of fieldwork I managed to shadow at least one inspector from each team.

Participant observation in this research study refers to the following or shadowing of labour inspectors and observing the process of labour inspection; the procedure, the documents needed during inspections and the field that is covered by inspectors' right through to the writing of inspection reports. In particular, by shadowing the inspectors I observed the effectiveness of follow-up visits as this is the core part of implementation. During the follow-up visits, I also observed what was done differently. For example, is there a different labour inspector who conducts the visits, what happens when the employer has still not incorporated the recommendation made by the inspectors earlier, what procedures follow thereafter? In addition, I wanted to observe the difference in the blitz inspection visits, which are said to happen spontaneously without appointment, and how effective they are.

The advantage of using participant observation is that it uses the researcher as the main tool of research and thus requires little by way of technical support (Greenstein, 2003). This means that it was upon me as the researcher to assess the social processes as they would normally happen by taking very detailed notes. In order to do this effectively, I utilized a research diary to record my thoughts, ideas, experiences and processes as they unfolded in the field.

Furthermore, doing participant observation was useful for this study because it provided me with insight into social processes as they unfold in their natural settings as they would normally happen (Robinson, 2002). I shadowed the inspectors from the offices to the field and this gave me the opportunity to experience the actual process that labour law inspection entails, instead of relying solely on a secondary tool such as interviewing the labour inspectors themselves. I shadowed 33 inspectors from their offices right through to the inspection sites, for seven weeks. This means that per day I accompanied an average of two inspectors. For instance some days I accompanied one inspector to at least three workplaces depending on the type of visit to be done- for example on an average day when an inspector plans his or her day they choose a combination of cases but also cases that are in close areas. Therefore, on an average day the inspector would do one routine visit, one-follow-up visit and one blitz (pro-active) inspection depending on how long he or she takes per visit.

As will be clarified later, there are three types of inspections: first routine visits- involve all the legislations being the Basic Conditions of Employment Act (BCEA), Occupational Health and Safety (OHSA) as well as the Employment Equity (EEA), but on a very shallow level. On inspection, the inspectors are required to fill in a checklist which combines all these Acts and, depending on the nature of the business or the firm, some parts of the checklist are not applicable. For example, in an instance of labour broking companies such as security guards the OHSA part of the checklist is not applicable because this Act deals mainly with companies or firms that have chemicals or hazardous substances. Even though there are some security guards who guard hazardous chemicals, the inspector will be able to assess whether or not this inspection site requires the OHSA part of the checklist needs to be filled in.

There are weaknesses to every research method. For participant observation the main difficulty was the process of ‘role-making’ whereby as a researcher I had to develop a ‘situational identity’ for the duration of the fieldwork (Angrosino & Mayis de Preez, 2000). The difficulty with this is that the decision to insert oneself into a social setting other than one’s own has emotional consequences. This means that as the researcher I had to constantly try to remain objective and distance myself from the respondents’ beliefs and systems. In order to reduce the effects of this weaknesses I constantly reminded myself of the research objectives and purpose and remember to employ a particular level of objectivity which was necessary to evaluate and constantly analyze the processes as it unfolded so as to critically engage in why certain things are happening in particular ways. However, this did not mean interfering with the inspection process by being highly sympathetic and involved.

3.3. In-depth interviews

A second research methodology that was used in this study was in-depth interviews with key informants being team leaders as well as workers in the workplaces inspected. The reason for interviewing the team leaders was to understand from their perspective the challenges around supervising inspectors as well as the inspections bureaucracy itself. The aim was to interview at least 7 team leaders out of 10, however I have only conducted 5 interviews with these team leaders because one team leader stated that she cannot participate in my study because “I am going through something in my life right now, so I’m sorry I can’t do it”. And another stated “my darling, I did not go to school and this questionnaire of yours is too long”. Nevertheless, workers were interviewed because labour laws are supposed to protect them and a crucial way in which this can be measured is by asking the workers themselves how labour laws are impacting on them. Unfortunately, even though the legislation states that routine inspections should involve a few interviews with the workers, this happened very seldomly. Out of the 25 workplaces that I visited with the inspectors, workers interviewed were from only three workplaces. Finally, the aim was to interview some of the advocates at the labour court so as to understand the challenges around enforcement from their perspective. However, this plan did not transpire.

The reason for the use of in-depth interviews was to gather data that is concerned with the subjective experiences of labour inspectors as workers, that may play a role in the lack (or not) of labour law enforcement. Furthermore, in-depth interviews helped measure what enforcement means to workers in ensuring decent work since they are key indicators of examining labour law enforcement. In addition to the above advantage of using in-depth interviews I was be able to clarify ambiguous issues and cases of inconsistencies or to probe when insufficient information was provided. In this light I was able to pose additional questions to follow up on issues which perhaps had not been anticipated (Greenstein, 2003).

On the contrary, the weaknesses of using in-depth interviews are that at first some respondents were not willing or comfortable with sharing everything with the researcher.

As a result, I had to establish good trust relationships with respondents and I could effectively do this through participant observation.

Overall the main barrier of combining research methods is that there is a concern of not fully embracing the qualities of each research method and therefore the effectiveness of each research methodology. But Greenstein (2003) proposes that as opposed to a simultaneous mixing of approaches, the researcher needs to allow each research method to do its best and then use these results to triangulate and inform the next stage of design of each.

3.4 Case study Approach: Why the Private Security Sector?

In this study I chose to focus more deeply on the Private Security Industry (PSI) because it embodies an industry operating openly on the global market and showing signs of growth rather than contraction. Moreover, in South Africa the private security industry is said to be one of the fastest growing industries reporting revenues of up to R40 billion in 2005 (Berg, 2006). However, in this study the case study approach was carried out via the blitz inspection and this entailed participant observation as well as semi-structured interviews with the security officers as well as the inspectors. Blitz inspections, as outlined by the DoL, are aimed at improving compliance in sectors that have shown increased trends of non-compliance. As a result, these sectors are targeted and a particular week in the year is set out by the DoL. This requires that all labour centers nationally target and inspect firms and companies in this sector without prior notice to these firms.

In a nutshell, the Private Security Sector is a fascinating industry because, it is one of the fastest growing industries in South Africa, thus implying that there are parallel challenges with this growth including the need to tighten the regulatory framework.

3.5. Sampling

The importance of sampling is that if flawed it can seriously undermine research findings (Burtan, 2000). Nevertheless, the challenge in this research was the use of a triangulation of research methods and whether or not each should maintain a separate sampling system. In order to solve this, I explored the difference and recommendation for effective sampling methods within each research method and tried to locate and overlap different sampling techniques.

I used purposive sampling to select the 20 cases that I investigated. The criterion for this selection was that the cases had to be in the Gauteng region and that they had to be completed and pending follow-up inspections. These cases then informed how many in-depth interviews were conducted. This is because the selection of cases informed the individual companies to be assessed as well as the workers in these companies. Nevertheless, it is evident that the sampling method for the in-depth interviews was convenient due to the afore mentioned reasons.

3.6. Access

Neuman & Lawrence (2003) suggest several useful strategies for accessing a site and information. The researcher needs to understand who the gatekeepers are of that particular site chosen for observation. Gatekeepers are usually those individuals who have formal or informal authority to control access to a site. Once established, the researcher needs to negotiate access with these gatekeepers but without compromising the integrity of the research (Ibid).

During the process of gaining access and understanding who the gatekeepers were in my research, my supervisor, Professor Eddie Webster, took me along to the 16th Annual Labour Law conference in July 2008, where I meet Mr. Phineas Mothiba the Acting Compensation Commissioner at the Department of Labour, who was presenting on the "challenges facing labour inspectors in South Africa". Mr. Mothiba was ready to assist me and he later introduced me to the relevant people at the department's head offices in Pretoria, namely Mr. Zakes Mokgwatlhe who is Head of Inspection services nation-wide. My access to the labour inspectors was organised via the regional office in Johannesburg Central by Mr. Alvin Phillips the Business Unit Manager and Mr. Lucas Mnisi the inspectors' team leader.

3.7. Ethical issues

To all respondents interviewed in this study, I made a commitment to respect confidentiality and anonymity on the issues disclosed to me. The respondents as well as company names were given pseudonyms. Participation in this study was premised on voluntary and informed consent of the respondents. I informed the participants as to what my research is about, what type of information I am looking for and how their input would be used in the thesis. Before each interview I began with a debriefing of the following:

- The rationale of the study including the potential benefits of the study

- An opportunity of what could be expected from the study
- An opportunity to answer any queries regarding the study and its procedures
- The assurance that the information obtained will be kept anonymous and confidential
- The assurance that the respondent retains the right to withdraw from the project at any time without prejudice to him/her.

This study was not dealing with any vulnerable subjects and all participants were the legal age being 18 years and older.

Chapter four

A new labour (industrial) relations regime

4.1 Introduction

Industrial relations can be described as the study of the institutions of job regulation. It deals with a relationship both on an individual and a group basis and the nature of the rules and regulations largely depend on the nature of the relationship itself. If the labour relationship, whether formal or informal, individual or collective, undergoes a radical change, new and different industrial relations processed rules and institutions will evolve. Equally, significant changes within society or within the institutions and law which govern the relationship will impact on labour relations causing the parties to adopt new roles and to interact in different ways (Bendix, 2001).

Therefore, as has been evident in this report, the labour inspectorate does not operate in a vacuum; it forms part of a wider context within the industrial relations system. It is an important unit in the industrial relations system that is governed by policies and practices informed by the state, employers as well as trade unions. Thus, this chapter aims to provide a periodical review of South Africa' industrial relations system so as to highlight the 'specificity of its past' in relation to today's context of the structure of industrial relations. In order to achieve this, this chapter is organised into various sub-sections that will cover the history of South Africa's industrial relations system from the colonial era to the apartheid era through to the democratic era. This chapter will then be proceeded by a discussion on the new labour relations regime with particular reference to the formation of NEDLAC and other key institutions. This chapter will then conclude by showing how the new labour relations regime has influenced or shaped labour inspections.

4.2 “The specificity of South Africa’s past”

“South Africa is unique in the modern world in the extent to which it has been, and still is, marked by historically entrenched racial divisions” (Webster, 1999:30). Webster (1999) identifies four useful phases that have shaped workplace culture in the South African industrial relations system tracing it back to colonial conquest.

4.3 First phase-colonial conquest

The first phase he identifies is that of colonial conquest and forced proletarianization. This author argues that it was this violent process of conquest and ‘un-free’ labour which took the form of slavery, indentured labour and semi-feudal labour of the dispossessed that laid the foundations for a system of cheap, black migrant labour and white domination that was to continue well in to the twentieth century (Leggasick (1974) in Webster (1999)).

Different laws were used in an effort to control the movement of black labour. These included the Glen Grey Act and the “hut tax” that forced men to work for a wage to pay their taxes and the dispossession of the land both through colonial wars and through laws such as the Land Act which restricted the land ownership of people (Webster, 1999).

However, this had the opposite effect. Instead, a migrant labour system emerged which created an awkward situation for the white settlers in South Africa. “It was impossible for the white settlers to ignore the vibrant and large-indigenous population on South Africa” (Webster, 1999: 31). Instead, the settlers were forced to draw on the ‘labour power’ of the indigenous people.

This created interdependency between the white settlers and the indigenous group because, even though they were exploited, the exploiters needed the indigenous people’s labour power. This interdependence created the basis for resistance of the indigenous people (Webster, 1999). Even though there was not yet a formal structure with which to articulate workers interests, this did not mean an absence of worker resistance. One of the informal forms of resistance was refusal of being recruited to work in the mines. Another was ‘target working’, meaning working for short periods of time enough to buy commodities needed by that individual worker. At the core of these forms of informal resistance was the creation of a distinct workplace culture. According to Webster (1999), under this culture, the structure of workplace authority is frequently undermined by the deliberate creation or amplification of social distance between the worker and the employer. Examples include private-linguistic codes, false names and the like.

What was distinct about the migrant labour system in South Africa, as Webster (1999) states, is that it has gone on for such a long time and is so extensive within the economy. Unlike other countries, in South Africa, the movement between rural and urban-industrial areas became so entrenched at the centre of the economic system and a permanent feature of life for millions of workers. Furthermore, 'while the traditional migrants work was rooted in the ethos of paternalism, the new worker often had previous experience in manufacturing, where a new era of militant unionism was in the making' (Webster, 1999: 35).

4.4 Second Phase: "the rise of mining and the origins of dualism"

The second phase identified by Webster (1999) begins with the rise of mining and the origins of racial dualism. The discovery of gold and diamonds in the late 19^{th} century transformed the South African economy from a backward part of the British Empire into a modern industrial economy. At the core of this colonial-despotic system of labour control were the gold mines; colonial because one racial group dominated through political, legal and economic rights and denied other and despotic because coercion- both physical and economic-prevailed over consent (Bur woy, 1985 in Webster, 1999). This colonial despotism, writes Webster (1999), entrenched the division between white and black workers thus creating two labour markets; the primary labour market consisting of white English speaking workers who had access to skills education, and the political power enabling them to establish themselves as privileged 'labour aristocracy'. The secondary labour market consisted of black workers who were denied access to education and to political power through various exclusionary Acts that were passes such as the Industrial Conciliation Act which gave non-African workers the privileges to join trade unions (Ibid).

In this context, the Department of Manpower (today known as the Department of Labour) was mandated to regulate the apartheid labour market. What was distinct about the apartheid labour markets' structure of regulation was how it reflected the schizophrenic nature of the apartheid regime. Under apartheid the Department of Manpower was regulated by five pieces of legislation namely the Labour Relations Act of 1956, The Mines and Works Act 27 of 1956, the Wage Act of 1957, the Manpower Training Act 56 of 1981, and the Basic Conditions of Employment Act of 1983 (Standing, Weeks & Sender, 1996).

The BCEA set minimum standards for hours of work and overtime, restrictions on continuous work, provisions relating to lunch and tea breaks, Sunday work, annual leave, sick leave and maternity leave. But under apartheid, the regulations were very selective, with myriad exclusions and exemptions. Therefore, the BCEA excluded agricultural workers, domestic workers, the public services, welfare organisations and the like. Furthermore, the minimum standards did not apply in the same way to all workers covered by the Act for instance, Section 14 of this Act did not stipulate the number of weeks or days of notice of termination for casual workers, but stipulated two weeks for the monthly paid workers and one week for the weekly paid workers (Standing, Weeks & Sender, 1996). Similarly, the Wage Act was a selective policy of labour market regulation. This Act set minimum wages through the Wage board for all areas except the Bantustans.

The LRA is often seen as the cornerstone of the apartheid labour market regime. This Act stemmed from the Industrial Conciliation Act of 1924 which stimulated the establishment of industrial councils. According to Standing et al (1996), the industrial councils themselves were always mechanisms for regulating the labour market because first, they could either cover a whole sector, part of sector, the whole country or part of it, a specific trade or occupation, or even a specific plant. This was a strategic means of implementing selectivity instead of promoting one homogenous industrial relations council. Second, the registrar of the industrial councils had the power to decide whether a council could be registered or not by deciding whether or not the parties to it were sufficiently representative of the specified industrial interest and geographical area for which an application for registration had been made (Standing, Weeks & Sender, 1996). The implications, therefore, were that the industrial council system perpetuated the racially based form of regulation through its power to decide what was ‘sufficiently representative” which, of course, often excluded black workers who were not allowed to form trade unions until after 1979 (Ibid).

While the industrial relations system worked well for the employers and employees who could participate in it, the implications of excluding African workers from the system was to sharply divide South African workers along racial lines (Webster, 1999). The rise of the manufacturing and service sector between 1925 and 1948 created a large semi-skilled African workforce that was strategically placed within the economy.

4.5 Third phase

The 1940's, which was the beginning of the third phase, marked the beginning of a crisis for the state because of rapid urbanization of African workers which led to industrial unrest culminating in the 1946 mine workers strike and an upsurge of an African trade union activity. By the end of World Was II, the Council of Non-European Trade Unions (CNETU) claimed a membership of 158 000 representing more that 40% of the 390 000 Africans employed in the commerce and industry. The government, in realizing this threat to its legitimacy, blocked any form of encouragement to the growth of African unionism and implemented various other Acts including the Labour Relations Act 28 of 1956 to exclude Africans from this act and to further prohibit 'mixed unions', the Suppression of Communism and a range of other Acts. This led to a period of 'high apartheid' whereby the state used its considerably high oppressive powers to extinguish political resistance. But the challenge from below in the 1970's took the apartheid government by surprise.

4.6 Fourth phase

The fourth phase, which begins in the 1970's, was also a decade in which the economy experienced a structural transformation financed by massive influx of foreign capital, accelerated expansion of industry, a restructuring of capital and the growing concentration and centralization of ownership (Webster, 1999). Accompanied by these changes was a corresponding growth in the black working class which brought black workers firmly to the centre of the industrial stage. The re-emerged unions of this decade focused their organizational efforts on the development of a cadre of shop stewards and some of the biggest industrial strikes took place during this period.

Parallel to this, the apartheid government's position during this period (the 1980's) on the regulation of minimum standards was that "prescriptive legal provisions are rare and employers are free to choose the manner in which they wish to comply with the minimum standards embodied in the legislation". Furthermore, according to this government "there is no such thing as absolute or total absence of risk for any worker. Safety is a relative concept and it is merely possible to strive for a reduction of risk to an acceptable level" (Douwes-Dekker, 1996: 28). Employers took advantage of this flexibility because it meant that companies and firms were allowed to regulate themselves and set their own minimum standards, which were obviously exclusionary of the non-white workers. This position corresponded well with the principle of minimum State interference and helped to reduce the scope and responsibilities of the inspections unit (Douwes-Dekker, 1996).

The conflicts between the needs of industrialization and the character of apartheids' selective regulations sharpened during the 1980's and 1990's. The industrial council system became more fragmented and less effective (Standing, Weeks & Sender, 1996). In a nutshell, these conflicts and eventually the erosion of the apartheid's system of regulation were fueled by the growth and diversification of manufacturing and to a certain extent by the construction and service sectors. Manufacturing needed more skilled workers and needed to incorporate the rapidly growing black urban industrial population

The formation of the trade union federation the Congress of South Africa Trade Unions in 1985, brought together three traditions of within the emerging unions; the shop-floor tradition, the ‘community union’ and the ‘black consciousness movement’ tradition (Webster, 1999). This, according to Von Holdt (1991 in Webster 1999), marked the beginning of a process called ‘ungovernability’. From the 1980’s the struggle began to take on the dimension of a virtual civil war, reaching unprecedented levels of mobilization and resistance in the factories and township strikes, rent boycotts, consumer boycotts and stay-aways. Conflicts between the state and labour escalated to a point where the state was faced with a choice between intensifying repression toward the labour movement and other mobilized formations in civil society and risk alienating capital with no guarantee of eliminating mobilization from below, or turn toward more fundamental political reform. In 1989, F.W De Klerk replaced P.W Botha as state president and signaled his intention to reform apartheid.

4.7 “A new vision of work and industrial relations”

The election of a democratic government in April 1994 began a process of reconstruction and development in South Africa. Arguably, one of the most successful departments has been the Department of labour under the leadership of Minister Tito Mboweni. “A new Department of Labour was created in June 1994 as a national competency, thus absorbing the former self governing territories” and provincial directorates were created to conform to the new nine provinces of the GNU (Douwes-Dekker, 1996:7). Also, a total of 10 regional offices and 70 Labour centers were established under this new government and aimed at ensuring the availability and accessibility of services to all people. Furthermore, the management structures changed to be more inclusive of the previously disadvantaged groups, including women and all other races except for the white population.

However, transformation processes of such fundamental nature brought about resistance and tension between the “old” and “new” thus exacerbating the several challenges faced by the new Department of Labour. These challenges included the administration of the new public service which was characterised by poor and discriminatory service delivery, lack of public accountability and transparency, low productivity and duplication of services, conflicting labour relations, as well as implementation challenges of the new and transformed labour legislation (Douwes-Dekker, 1996). But more importantly, the transformation of the public service was more oriented to achieve a redress for past norms which served the needs of the white population group.

In 1995, the Ministry of Labour published a five-year plan to reflect the reality of the new government in power and its commitment to the objectives of the Reconstruction and Development Program (RDP). This constituted a **first component** towards democratic corporatism and was a potential break with the adversarial workplace culture current in South Africa. This plan was informed by the structure and objectives of the new directorates of the Department of Labour (Douwes-Dekker, 1996). These included the Labour Market Policy Directorate which was responsible for providing a statistical base for labour market issues as well as analyzing and developing labour market policy. The second one was the Equal Opportunities Directorate which was responsible for promoting the interests of the disadvantaged groups as well as to develop and administer policy to achieve that function.

Third, was the Human Resources Development and Career Services Directorate, responsible for the provision of a service for vocational guidance, information and job placement including disabled people as well as the promotion of human resource development including evaluation of training programs. The fourth was the Minimum Standards Directorate which was responsible for the promotion of basic standards of work, the administration of Wage Determinations and the co-ordination of Labour Inspection Services. The fifth directorate was Occupational Health and Safety which was responsible for the promotion of safe use of electrical and mechanical plant and machinery; the provision of protection of persons from dangerous activities at work as well as the promotion of health and hygiene in the workplace. Finally was the Office of the Compensation Commissioner to compensate workers or their dependants in events of occupational injury or death. Also, this office was meant to provide administrative support to the Compensation Commissioner (Douwes-Dekker, 1996).

In this light, even though the new directorates had laid out the objectives of the new labour legislation, the bottom line was and still is the effective implementation, monitoring and enforcement of the new and transformed legislations. This means that in order for the Department of Labour to retain stability and stay legitimate, capital will only respond to incentives if they know that implementation is effective and meaningful and that sanctions will be applied to ensure compliance of the labour laws administered by the directorates.

4.8 NEDLAC

The second component of the vision of work and industrial relations was the launch of National Economic Development Council (NEDLAC). In the early 1990's FEDSAL, the union's federation of primarily white collar and white workers became a party to change the structures for national policy transformation. "The experience gained from the 1990's accord between the black unions federations COSATU and NACTU and the then employers' association SACCOLA were built upon to facilitate the transformation of the Department of Labour after the election of the Government of National Unity (GNU) in 1994" (Dekker, 1996:1). That CNS Accord laid the basis for the legislation of a socio-economic tripartite body named the National Economic Development Council (Ibid).

NEDLAC is a multipartite body comprising representatives of government, business, community and organised labour. The origins of NEDLAC lie in COSATU's struggle to participate in economic and social policy during the apartheid era (CDE, 1999). Two issues were particularly important. The first was the campaign which led to the restructuring of the National Manpower Commission (NMC). The second was the establishment of the National Economic Forum (NEF), a body established to provide business and labour with a voice in the formulation of macro-economic policy in the final years of the apartheid regime.

The objectives of NEDLAC are to strive to promote goals of economic growth, participation in economic decision making and social equity, to reach consensus and conclude agreements pertaining to economic and social policy, to consider all proposed labour legislation relation to labour market policy before it is introduced in parliament, consider all significant changes to social and economic policy before it is implemented or introduced to parliament and encourage and promote the formulation of co-coordinated policy and social economic matters CDE (1999).

4.9 Trade unions as ambassadors of decent work

Fenwick, Kalula, & Landau (2007) talk about the capacity of trade unions to act as ambassadors for monitoring and enforcing compliance. These authors argue that the limited capacity of trade unions affects the extent to which they can perform their role whereby a lack of capacity among trade unions will limit the extent to which they can effectively protect and serve members' interests at the workplace level. There is evidence from Namibia that, despite a labour law framework that depends to a large extent on collective bargaining, parties are often not sufficiently familiar with the requirements of the labour laws to comply with its requirements (Fenwick, 2007 in Fenwick, Kalula & Landau, 2007).

Similarly, a weak trade union movement also impacts upon the enforcement of labour laws. Only trade unions with sufficient capacity are able to play an important role in monitoring compliance with labour-related laws. The capacity of trade unions to perform these various roles depends in many respects on whether or not they are able to achieve a sufficient level of union density to serve as a base from which they might have some influence. Unions, however, frequently experience difficulty in achieving significant levels of union density in Southern African labour markets (Fenwick, Kalula & Landau, 2007).

A key challenge for unions in this respect is posed by the spread of informalization, casualization and externalization which lead to 'non-standard' work relationships in which it can be difficult to organize workers. The declining level of formal employment in most labour markets in Southern Africa poses further challenges, as do retrenchments and other structural factors that cause loss of employment. Where unions do not adopt flexible strategies to respond to these labour market realities, their capacity to attract members and to represent them is significantly diminished (Fenwick, Kalula & Landau, 2007).

4.10 Regulated Flexibility and the role of collective bargaining

The BCEA was amended in 2002 to try and deal with the challenges brought upon by the increased informalization of work. Various subsection have been amended for example the Insertion of section 83A in Act 75 of 1997 20 which has expanded the definition of who is an employee. Nevertheless, 'regulated flexibility is the framework, comprising of limits and mechanisms, through which an appropriate balance is determined between the employers' interest in flexibility and the employees' interest in security'(Ramotloa, 2008). It recognizes that due to the dynamic and diverse nature of the labour market, there is a need for employers and workers to be able to adapt standards to suit the particular needs of a sector, workplace or subsector. The various mechanisms which are employed to achieve a balance include:

- Various forms of dialogue between role players such as collective bargaining (at workplace or sectoral level) and social dialogue (at national or regional level),
- Administrative discretion bounded by clear guidelines,
- Administrative determinations made by the minister in respect of any category of employers or employees,
- Soft law in the form of codes,
- The setting of floors and ceilings for enterprises,
- And the selective application of legislative standards or requirements.

The promotion of a voluntary system of collective bargaining is the principle manner in which the 1995 LRA gave effect to regulated flexibility. Sectoral level collective bargaining was strengthened and the coverage broadened. It was decided, however, that the regulation of collective bargaining at the level of the workplace would be left to the bargaining council. There are a number of problems with the current system that require attention. The fragmentary coverage of bargaining councils ensures that many workplaces are not covered by sectoral bargaining. At the same time, there is a lack of a broad demarcation of sectors. There is, therefore, a need to demarcate sectors, to consolidate existing bargaining councils, and establish bargaining councils in sectors where there are none (Ramotloa, 2008) .

4.11 Conclusion: Link between inspections and industrial relations

It is evident that the apartheid industrial relations regime was characterised by racial dualism whereby the black workers were excluded from core pieces of legislation which regulated employment relationships. Furthermore, the dual structure was very political and this created a firm division between “white” and “black” such that the “whites” were generalized as representing the employers or rather the exploiters and therefore the enemies, and the “blacks” representing the workers and therefore the exploited. The implication therefore was that any form of organization was against a clear and visible enemy, ‘the white government’. This then made it easier to mobilize against and provoke a response from the government.

However, the expansion of global markets has hidden the enemy and has made it difficult for labour to mobilize and elicit a response. More importantly, globalization has changed employment relations and thus requires labour regulating institutions to adapt.

Chapter five

The Department of labour inspections

5.1: "Batho-pele": One-stop-inspection services

For the past decade, DoL has been undergoing transformation aimed at improving service delivery. One of the major changes was the implementation of the integrated one-stop service model. This model compels labour inspectors to enforce all labour legislation including the Basic Conditions of Employment Act (BCEA), the Labour Relations Act (LRA), Employment Equity Act (EEA), the Compensation for Occupational Injuries and Disease Act (COIDA), the Occupational Health and Safety Act (OHSA), the Skills Development Act, and the Unemployment Insurance Fund Act (UIF), during either a blitz or routine inspection.

The aim of a one-stop-inspection service is to try to enforce and monitor all legislation in one-stop inspection visit so as to try and have effective inspections and to combat redundancy. However, this assumes that the internal and external structures of inspections complement each other to achieve the outlined objectives of inspection services; for example that the labour laws have stipulated effective sanctions for non-compliance, or that procedures for prosecutions of non-compliance are efficient. Furthermore, the one-stop-services assume that inspectors have the capacity in terms of adequate skills and training. Second, that inspectors have adequate resources such as computers and maps to carry out efficient and meaningful inspections. Third, that inspectors have the willingness and commitment to enforce all these labour laws.

Therefore the aim of this chapter is to discuss my findings and analysis pertaining to the challenges faced in the conducting of integrated inspections by inspections. This includes challenges faced by labour inspectors with regard to carrying out integrated inspection visits. In order to accomplish this, this chapter will begin with a profile of the inspectors- their average age, gender, race and educational background. It will then proceed with outlining the procedures which inspectors need to follow during inspections- their rights to accessing premises, when to issue compliance orders and so forth. In addition this chapter will discuss an epitome of an inspector as well as some of the challenges faced.

5.2 Functions of an inspector

The role of the Inspection and Enforcement Services (IES) Unit is to promote good labour practices, improve conditions at work and minimum wages, to provide information and advice on labour laws and also to ensure compliance of labour laws by being both reactive and pro-active (Madzhivhe, 2005). Similarly, the role of an inspector, under section 63(1) of the BCEA, is to may promote, monitor and

enforce compliance with an employment law by—

(a) advising employees and employers of their rights and obligations in terms of an employment law;

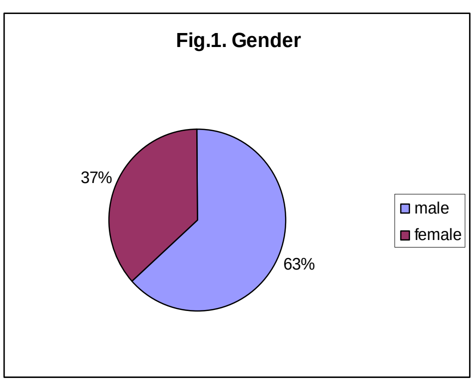
(b) investigating complaints made to a labour inspector;

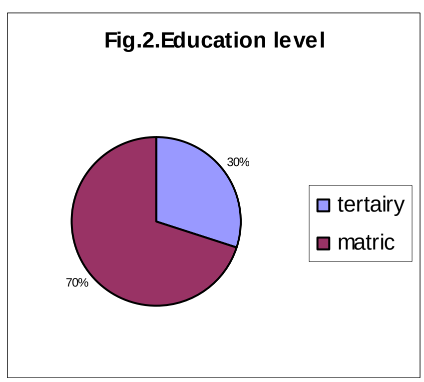
(c) endeavouring to secure compliance with an employment law by securing any undertakings or issuing compliance orders; and

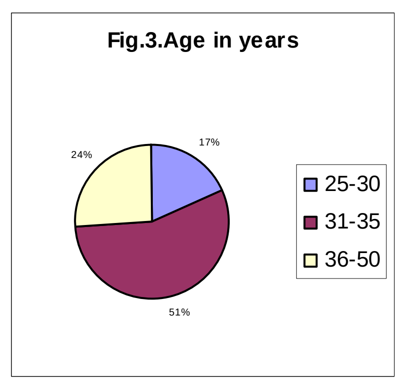
(d) performing any other prescribed function.

In this study, I interacted with a total of 33 inspectors of which five were semi-structured interviews with team leaders. From this number I shadowed 27 inspectors of which 14 were to routine inspection visits and three were mediation meetings which will be discussed in the next chapter, three were OHSA visits, four were blitz inspections and one Employment Equity inspection . In total I went to 29 workplaces including the blitz inspections which happened in the last week of my fieldwork. This section will describe the profile of the labour inspectors that I interacted with during my fieldwork. It will describe their age, gender and level of education as well as the years of experience in the department.

5.2.1. General profile of inspectors







The above findings indicate that 63 % of the respondents were male inspectors while 37% were female between the ages 31 to 35 years. Furthermore, the majority of the inspectors that I interviewed including the team leaders only had matric and at least an average of three years experience in the inspections department. Also, 13 % of these inspectors were OHSA inspectors, 6, 8 % were EEA inspectors and the rest were BCEA inspectors.

5.3. Inspection procedures- from complaint to investigation

An inspection procedure begins with a complaint from the workers about the alleged unfair labour practice which can happen either telephonically or physically. These complaints are received at the administration desk which later groups them according to area and jurisdiction[4]. These complaints are then distributed and given to the team leaders who later distribute these complaints as cases to their team members. This initial process of an inspection usually takes between two weeks and a month for them to be investigated. After the cases land on the inspectors' desk, the investigation process starts. The inspector will call both the employer as well as the complainant, which can be an employee who is still employed or a worker who has been dismissed, to verify details and understand the nature and background of the case. The inspector will then set up an appointment with the employer for an inspection visit.

On arrival section 66 of the BCEA stipulates that the inspector will:

(a) require a person to disclose information, either orally or in writing, and either

[4] Jurisdiction in this study refers to the scope of the Department of labour's inspection in terms of area and mandate

alone or in the presence of witnesses, on any matter to which an employment law relates, and require that the disclosure be made under oath or affirmation;

(b) inspect, and question a person about, any record or document to which an employment law relates;

(c) copy any record or document referred to in paragraph *(b)*, or remove these to make copies or extracts;

(d) require a person to produce or deliver to a place specified by the labour inspector any record or document referred to in paragraph *(b)* for inspection;

(e) inspect, question a person about, and if necessary remove, any article, substance or machinery present at a place referred to in section 65;

(f) inspect or question a person about any work performed

Even though the BCEA does not define in detail what the inspector should do on arrival of a routine inspection, according to the team leaders which were interviewed in this study; inspectors are supposed to introduce themselves and explain the purpose of the visit for that day according to section 66 of the BCEA. Afterwards, the inspector is supposed to explain in detail what an inspection entails and what documents will be required for that day for instance; the SARS registration number, the UI 19[5] to show if the employer is paying UIF contributions, the most recent pay-slips of at least three different workers, a copy of the clocking system, if the company qualifies for complying with the Employment Equity Act (i.e employ 50 and more workers) the inspector will need an EE report as well as plan, for OHSA the inspector will need to see the training

[5] UI 19, is an Unemployment Insurance Document number 19 which shows if an employer is paying UIF contributions

certificates of the health and safety reps and copies of the injuries reported to the Department of labour for Workman's Compensation (now called the Compensation for Occupational Injuries and Disease Act-COIDA) and so forth.

After receiving these documents from the employer (or assistant), the inspector is then required to go around the workplace inspecting basic OHSA for basic safety of the workplace for example looking whether or not the workplace is conducive for working. These indicators would include having a fire extinguisher as well as appropriate signs that indicate where these extinguishers are located, check if there are any uncovered wires that can harm workers, clean and separate toilets for men and women as well as their signages, a safe and clean change room, workers safety uniform as well as licenses for those workers such as crane drivers. By law, the inspector has the right to close down or stop operation of any of the afore mentioned tools of trade if they are non-compliant with the minimum standards set out in the legislation.

Subsequent to this, the labour inspector can then discuss some of the complaints that brought about this inspection visit and during these discussions assist and educate the employer about his/her rights as well as the rights of the workers. The inspector is required to do this by quoting from the legislation exactly what the law says about these rights and what the minimum standards are in the labour law. Depending on the nature of contraventions made by the employer, if a labour inspector has reasonable grounds to believe that an employer has not complied with any provision of this Act they must endeavour to secure a written undertaking by the employer to comply with the provision, to rectify in a particular number of days-between 7 and 21 days. This means that after these numbers of days the inspector will come for a follow-up visit to check if the employer has rectified the contraventions. If after these number of days the employer has still not complied, the inspector is then compelled to issue out a compliance order which needs to be delivered to the employer. If still there is no progress from the employer's side for compliance then the inspectors will issue out a subpoena for the employer to appear in court.

According to section 73, if the employer has not complied with the order and has not lodged an objection against the order in terms of section 71(1), then the case will be referred to the labour court. However, many inspectors complain that by the time the court asks the employers to appear in court, employers have absconded (closed down or changed the company's names). Also, the inspectors' mentioned that they never receive feedback from the labour court after referring a matter to them. Instead there is just a communication breakdown whereby they are allocated new cases and it is business as usual.

5.4. Epitome of an inspector

From all the 29 workplaces I visited with the labour inspectors, only three inspectors fulfilled all the requirements expected during an inspection visit. This means

filling in the checklist correctly without imputation of data, advising the employers where necessary, doing the OHSA physical inspection as well as interviewing the workers at the workplace so as to verify if the information given by the employer corresponds. The following section will describe a day in a life of an inspector who has done his inspection thoroughly from beginning to end:

> After clocking in at work at around 07:30 in the morning Khumo then goes to his office, which he shares with two other inspectors, to prepare for his day ahead. On arrival he checks in his pigeonhole to find that there are three new cases which require a routine visit as well as thorough OHS inspection in three different areas-Langlaagte, Lenasia as well as Braamfontein which are all part of the Johannesburg office jurisdiction. Khumo then starts going through the files to try and understand the content of the cases. He finds that in one case there are seven complaints made by different employees and these range from unpaid wages, unfair deductions to unpaid COIDA. He then calls the relevant employers in order to make appointments with them to do an inspection visit and whoever is available for that day he goes. He finds that only two employers are available and have no problem with the inspection visit. Khumo, then goes to his team leader to discuss his plans for the day and gather some advice on how to tackle these cases effectively. Afterwards, he then goes to book for a car at second floor and on arrival fills in the forms necessary for him to book the car.
>
> Since his first appointment is at 09:30 in Langlaagte, he then leaves atleast an hour early so that he can allocate enough time to find the

area as well as the company. Before leaving he then checks if he has all the relevant documents and equipment necessary to do the inspection these include the Department of Labour stamp, the routine inspections as well as the OHS checklist and if its in order, stapler, pen, map, cell-phone, protective gear such as safety shoes and hat, identity card as well as the booklets that summarize all the Acts that he is trained to do being the BCEA and OHSA.

He arrives at his first appointment at 09:00, at Africa Bus Services meaning that he is 30 minutes early and goes through the reception at this company and asks if the person that he made the appointment with is available so that he is made aware. The receptionist then takes him through to the Human Resource (HR) manager who is the most relevant person for this inspection s as well as any inspection therefore.

With his black lawyer-like briefcase, Khumo enters the HR managers office to find that there is a meeting with the operations managers, the shop steward as well as the HR manager. He then introduces himself and explains why he is here, “Good morning everyone, my name is Khumo Lekgetho, I am a labour inspector from the Department of Labour, appointed under section 63 of the BCEA to conduct an inspection of these premises under Section 66 of the BCEA”. He is then offered a seat on the other table adjacent to where the meeting is held, and takes out all the papers and documents needed for the day and the meeting between the employers is then adjourned. The inspection then begins and the HR manager asks ‘Khumo, how can I help you?’ and Khumo replies “Mr. Verwoed I have a checklist over here which we need to fill in together and from this checklist I will need a couple of things from you, namely the UI 19 (to show latest payment of UIF contributions, latest copies of three workers pay slips as well as contract of employment, copy of the clocking system, if the company qualifies for complying with the Employment Equity Act (i.e employ 50 and more workers) I will need an EE report as well as plan, for the OHSA the inspection, I will need to see the training certificates of the health and safety reps and copies of the injuries reported to the Department of labour for Workman’s Compensation (now called the Compensation for Occupational Injuries and Disease Act-COIDA) as well as proof of license of any equipment used in these premises such as crane drivers.

The HR manager then calls in his secretary for assistance and Khumo manages to find all the relevant documents except the EE report and up to date files stating the injuries incurred in this company in the present year. Khumo then explains to them that ‘as a firm employing nearly 700 employees you need to have an EE report as well as health and safety reps to record all injuries happening in this company. This is because then the workers are able to claim for COIDA at the Department with all the relevant proof'. He then writes out a contravention notice and explains to the employer the reasons as well as quoting section 68 of the BCEA legislation.

After he completes the checklist, Khumo then requests the HR manager to organize two shop stewards, two health and safety representatives, the technical as well as operations manager, and himself as the HR manager to join in on the physical inspection around the company. The purpose for all these stakeholders, according to Khumo, is that the shop stewards need to be present because as inspectors they are often accused of taking bribes from employers and not doing their work properly. Therefore, they need to be there as witnesses. The health and safety reps are also important because their role in the workplace is to be on site incase of a work related injury so that they can assist. Therefore, the aim of the tour is to also educate and strengthen their role even after the inspection has been completed. Finally, as part of management the HR as well as the technical and operations manager are important in this meeting as they can communicate later to the owners of the companies problems encountered during the visits and any recommendations made by the labour inspector.

During the physical inspection, the inspector discovers that there are no change rooms for the women workers in a workforce of atleast 700 people and approximately 100 women, the ladies toilet does not satisfy the minimum standards stipulated in the OHS Act and as a result the inspector needs to close them and issue the employers with a prohibition notice to prohibit any use of the toilets. Moreover, the inspector found that fire extinguishers were not accessible in case of an emergency. For instance some fire extinguishers were hidden or obstructed by huge machinery and thus would be impossible to access in an event of a fire. Also there were quite a few loose wires hanging from the ceiling and as a result could endanger workers. These wires were mainly in the women's toilets as well as in the section of the company where they packed steel equipment such as brake pads and the like.

In addition, the pavement stands where the buses went for internal inspection before being roadworthy approved were loose. In-fact, one of the complaints, which initiated this OHS visit, was an incident whereby a worker in that department fell through the loose pavement while checking the buses and got injured very bad. But even after three months of the accident the pavement was still very loose and thus endangered workers in this department. All these contraventions, the inspector is taking photos and explaining to the all stakeholders what is wrong and how to remedy these problems.

At the beginning of the inspection, the managers were leading the inspection. However, after atleast four hours of the physical inspection it was the shop stewards who were leading the tour. In-fact, the manager decided to leave the inspection because he claimed he had work to do- perhaps this was not true.

After a six hour inspection, Khumo then went back to the manager’s office to ask for atleast two workers to interview before the inspection visit is complete. Two bus drivers were called in and he interviewed them without the presence of the employer. I sensed fear and intimidation from the employees as they were being interviewed but Khumo assured them that if they faced any form of victimization they should call him at this number 082 123 4567, and this seemed to comfort the workers.

Subsequent to the interviews, a final meeting was then called in with the entire stakeholders who were present during the physical inspection to try and discuss the findings and a way forward. The concluding remarks were that the employer will be given 60 days to correct the contravention of the Act stipulated to him, an improvement notice for the toilet that were closed down amongst other things as well as an undertaking[6] to make sure that the employees that were not paid for their injuries are paid.

It is evident from the above case of a good inspector or inspection visit, that it is a lengthy process and requires a thorough understanding of all the legislation that the inspector claims to have been trained in. From the above inspection, I observed that Khumo as an individual inspector is dedicated and has the willingness to enforce labour laws to their maximum. He understood the meaning of the pieces of legislation which he had to enforce hence the quoting of the legislation.

However, Khumo also has a diploma in electric engineering which serves as extensive training in the health and safety issues. Therefore, this is an advantage to him because he has been trained about the requirements of protective equipment, how to store, handle and use hazardous chemicals and the like. Therefore, he already has an advantage over another inspector with just matric and experience.

5.5 Resources

Even though Khumo is an epitome of what symbolizes a good inspector, there were some challenges which he, and some inspectors, faced in general. These included the lack of

[6] An undertaking is a document that requires the employers to promise to carry out a particular task during an inspection.

adequate resources such as maps or GPRS navigators[7], laptops, and computers. As one of the inspectors mentioned ‘it took me about six months to get a map from the department and still I did not get it. I ended up buying it myself’. From all the 33 inspectors that I shadowed, including the team leaders, the department was very slow in providing adequate resources necessary to do inspections. Only two of the labour inspectors that I interviewed had bought themselves GPRS navigators because they mentioned that they were from Mpumalanga and were not familiar with the roads in Johannesburg.

In the office where Khumo works, he shares one computer with three other inspectors. This single computer is used to type the reports of the inspections that they have done and save them for future records. This means that if one inspector wants to use the computer he or she will have to wait in a queue. The implication therefore is that this can give the inspectors enough time to idle around and use the lack of resources as an excuse not to do their work.

5.6 Electronic inspections: the role of technology in inspections

The Department of Labour is committed to using technologies to improve service delivery. This intent is fully reflected in the Department’s policies and strategies which reflect the recognition of the contribution that technology can make to the Department’s internal operations as well as to its services to organised business, organised labour and the public. It is envisaged that the application of technologies will have a major impact on

[7] GPRS navigators is an intelligent transport system that contains updated maps that use wireless connection technology

the way the Department conducts its business. Therefore, the Department entered into a Public Private Partnership (PPP) agreement, with Siemens IT (Information Technology) Solutions and Services (SIS) on 1 December 2002. The PPP supports an integrated approach to service delivery, enhances the utilization of information as a strategic resource, integrates the Department‘s IT systems more effectively and ensures that the relevant information is digitalized. This forms the basis of the Department’s e-government initiatives.

The key purpose of the IT PPP arrangement is to cater for the full spectrum of IT needs and requirements of the Department. Through the partnership, SIS assumes full responsibility and the risk associated with the design, build, operation and maintenance of the Department’s IT systems. SIS also provides strategic direction on new information technologies in relation to labour market trends and systems worldwide. The contractual framework of the PPP provides for the establishment of governance structures necessary for allocating risks appropriately, establishing clearly defined quality of service and value for money mechanisms. The PPP agreement also allows for change management procedures which cater for the incorporation of a changing business environment.

In 2005, the Department of Labour implemented the personal digital assistant (PDA) training program for its employees to improve its inspection and enforcement management system, in a bid to speed up delivery with mobile inspections. Previously, as the department explains, it would receive a complaint about a workplace, which it recorded and assigned to an inspector who would notify the employer that a health and safety inspection would be conducted. The inspection results would be recorded manually, and an evaluation conducted at the department. The process was slow and laborious, and inspectors were struggling to keep up with the workload.

By using a PDA, cases can be assigned and tracked with greater ease, while ensuring increased accountability and productivity. The inspection results are entered into the PDA, and transferred back to the central database via general packet radio service (GPRS), as soon as the inspector has a cell-phone signal and can transmit the data.

Unfortunately, by 2008 the PDA system had been discontinued because according to some of the inspectors interviewed in this study, ‘it was a good initiative but it was not able to conduct a full integrated inspection’. This means that inspection visits such as blitz would not be allowed on this system because it incorporated all the labour legislations.

Furthermore, the decisions made by the inspectors to for instance issue an employer with a subpoena were not allowed because the PDA’s were not flexible and dictated what should be done during inspection visits. Another problem with this system, according to the inspectors, was the fact that one could not issue out a compliance order or undertaking because there was no printing system. Therefore this required the inspectors to go back to the office and fetch a compliance order or an undertaking to issue it back to the employers. Clearly, this was not practical because in a scenario where an inspector finds that an employer has contravened the Act, and wants to issue out a notice to the employer what would they say ‘I am going to issue you with a compliance order but I will send it through to you later today”?

After realizing the impractibility of the PDA system it was discontinued and the inspectors went back to the old system of receiving a complaint about a workplace, which was recorded and assigned to an inspector who would notify the employer. The inspection results would be recorded manually, and an evaluation conducted at the department. The suggestion made by the inspectors was that since the PDA system was a good initiative, the idea should not be totally scrapped instead the amendments can include increasing flexibility of the PDA system to not be too narrowly focused, include a printing system within the PDA to be able to print out the compliance orders, undertaking and subpoena’s and lastly to improve upon its battery life because it operates on a wireless connection service.

5.7 Assault of inspectors an obstruction

> “One of the inspectors was physically attacked by the son of an employer at Ladysmith printing business where he was conducting a follow-up inspection. He had been re-visiting the business after finding in his initial inspection that workers were being allowed a meal interval of only 15 minutes and that there was no valid first aid certificate”. A second incidence was in Pietermaritzburg. “Where an employer verbally abused and physically handled an inspector there to discuss injury-on-duty

> compensation" (newspaper article by IOL workers issue, 09 October 2008)

This issue emerged out of nearly 80% of the interviews that were conducted in this study. According to one of the inspectors interviewed, Sandile,

> "I was threatened with dogs in one company in Turfontein, around March this year. The employer told me if I don't get off his premises then he would release his dogs. I then went to the police station to report the case but they told me that they cannot open a case for me but what they can do is to accompany me to the inspection visits. After an hour, two policemen then accompanied me to this workplace and on arrival one of the police officers climbed out of the van to try and speak to the employer. However, the employer still refused and was busy shouting 'I am compliant with all the laws; now get off my premises'."

In a nutshell, the police also could not get through to the employer but issued a summons to appear in court. Not only is there a problem of inefficient mechanism to pressure difficult employers to cooperate with the labour inspectors, as Sandile mentioned, there is also a problem of lack of communication between the SAPS and the inspectors on the assault cases. Sandile is amongst many labour inspectors who have been physically or verbally assaulted, who do not know the details of how their assault cases were finalized. As another respondent stated 'we are not sure that these policeman follow up the cases that we report because they never communicate any progress made, to us'. This therefore means that perhaps the policeman only take down the inspectors statements and never follow up the cases. Thato and Khumo also stated that if it is the Department of Labour which opens a case against a certain employer, instead of an individual inspector, then the case will carry more weight because ‘SAPS will be obliged to follow-up the case’.

Nevertheless, the department is never willing to file a case to support the inspector. Instead, after a traumatic incident of assault or the like, inspectors are required to open a case, then go for counselling at the department and then hope that SAPS will follow-up the case and make possible sanctions or prosecutions. The inspectors do not know

whether in these assault cases the employers were fined, arrested or what. In one inspector words “these cases just vanish into thin air-poof”.

Similarly, another problem lies when the policeman do not co-operate with the inspectors by refusing to accompany them to inspections or to open a case, how then can they, as inspectors, enforce the law? Thato mentioned another incident, where the employer tore his files after giving them to him to sign. He was told at the police station that he is unable to open a case because the employer did not assault him verbally or physically.

Instead, all he could do was report the matter to his supervisor, who was then to handle the case from there. The implications therefore from the above cases, are that aggressive employers who abuse workers rights are able to bypass the labour law because there are no effective measures in place to pressure and force them to obey the labour law. Therefore, not only are inspectors and their roles undermined, the policemen are also undermined. This can be dangerous because it gives those employers that are cooperative the wrong impression that if you scare the implementers of labour law enough then you do not have to obey the law. As one employer stated during a routine inspection visit ‘I don’t understand you government people. You like to harass those employers that are compliant with the law and always leave those that are none-compliant. I never disobey the law but I know a security company in my area that underpays its workers, doesn’t give any benefits, nothing. But you are here wasting my time’.

It is evident from the above discussion, that the problem is twofold; on the one hand the inspectors are intimidated by difficult employers who will not allow them access to their premises and on the other hand there is no effective mechanisms in place to force and pressure employers to allow the inspectors access to their premises and also ensure that they will cooperate and provide the correct information. The big question then is how to pressure employers to cooperate?

5.8 Support

Support here refers to structures in place to provide assistance, encouragement and support to inspectors whether be it in a form of training, resources or (and) acknowledgement. From the 28 inspectors that I interacted with, atleast 90 % voiced out that they do not receive enough support from their team leaders and from the department in general. As one inspector Cedwell mentioned ‘I have been an inspector for almost eight years now but I have still not been trained properly in OHS and EE. I am not sure how we are selected for training in this department (shaking his head)'. When I asked why, he simply said 'maybe we are trying to enforce affirmative action-I don't know'.

Another inspector added;

> 'I hate it when my team leader bypasses the decisions that I have made. Instead of sitting me down and showing me my faults he would just call the employer and revoke the compliance order that I had issued out during my inspection visit. The problem with these team leaders is that we are not sure how they were elected in the first place. I mean some of them don't have the relevant skills to become team leaders. Just because they have experience does not mean that they are good at what they do. You see what I mean. You know my supervisor is very incompetent she comes to work drunk on Fridays and she is clueless about how to handle mediation cases. Instead I have to show her but I am below her. So how does that work.'

Many of the inspectors that I spoke to, felt that the process of who should go for training, electing of team leaders and that of performance pay was unfair, misleading and ineffective. This is because the intention of integrated inspection services is to ensure that all the inspectors are comfortable with enforcing all the labour laws including OHS and EE. Therefore, the inspectors that are not trained to conduct OHS and EE inspection fell undermined and inadequate. This perception if fueled by the fact that inspectors of EE and

OHS are required to have tertiary qualifications on appointment. The implications being that even though all the inspectors are seen to be on the same level, the qualified ones are valued better than those without tertiary qualifications. As a result, this creates tension for the team leaders because it is obvious that someone with a tertiary qualification has a particular kind of training and that serves as an advantage over those that have do not have. Nevertheless, this does not mean that inspectors with extensive experience are not valued.

However, what is more interesting is that the issue of support unites the inspectors- whether qualified or not, trained or not- because even those inspectors that have tertiary qualifications are supervised by team leaders that have never obtained any tertiary qualifications but have some level of experience. It unites them in a sense that both sides experience a particular level of incompetence, undermining and a lack of acknowledgement from their team leaders. This was a serious concern during my fieldwork. Inspectors expressed concern about the manner in which their team leaders were appointed because this further created tension between them (inspectors and team leaders) because some team leaders were clueless on how to deal with particular cases. As a result, the tension that arose between the team leaders and some of their team members created a kind of hostility between the two parties.

The implications of this were that first team leaders would use the performance-pay[8] system to hammer the team members that seemed to undermine their authority. Second, the team leaders chose those team members who often did not challenge their decision, to participate in training of new acts or Sectorial Determinations. This then created a vicious cycle because parallel to this the concerned team members (inspectors) would resist by misusing resources like using the departments telephone for personal calls, working slower than normal like doing only one or two inspections per week and disrespecting their team leaders. As Lipsky (1980 in winter 2003) explained, these are a form of coping mechanisms for the inspectors because of the pressure exerted upon them from internal demands as well as external.

5.9 Targets?

According to the Department of Labour's annual report of 2008, a total of 200 665 workplaces were inspected against a target of 150 000 and 156 924 (78%) of those inspected complied with labour legislation requirements within 90 days against a target of 112 500 or 70%. A total of 18 562 of the workplaces inspected were in industries with high OHS incidence rates against a target of 4 000. A total of 220 191 labour complaints were received and 173 057 (79%) were investigated and settled within 90 days against a target of 70%. At least 4 106 or 74% of the 5 573 occupational health and safety incidents reported were investigated and finalized against a target of 70%. These statistics are encouraging, however they are in a context of 900 000 workplaces in South Africa and

[8] Performance pay-system in the DoL operates on a merit system from A to E, where A represents high or good performance and E represents poor performance. A is remunerated with R8000 in addition to their inspectors annual bonus and salary.

approximately 1000 inspectors. This means that a workplace is inspected once every three to four years.

According to the code of conduct of the inspectors, they are supposed to conduct 18 pro-active[9] inspections per month and finalize atleast 80 % of these within 90 days. However, there are various obstacles, according to the inspectors, that hinder them from reaching this target. The first obstacle, in my view, is that they (inspectors) are not sure of the number of inspections in which they are required to do. Almost 60 % of the inspectors interviewed gave me the wrong answer when I asked them about the number of targets required from them. Answers included "I think 22 or 24" to "I am not sure, do we have targets?" This indicated that they had a very blurred idea of what was expected of them in terms of the targets of inspections.

Second, according to inspectors the other obstacle is the 'lack of cases coming through to the department' which meant that the inspectors do not have enough cases to inspect in the first place. This might be true because what was puzzling from the 1995 DoL's annual reports was that it showed the number of complaints received in this year to be around 1 034 950 but in 2008 the number of complaints was around 131 979. A possible explanation is that before 2001 the DoL different labour inspectors were conducting separate inspections for different labour legislation. For instance; three labour inspectors could be going to one workplace to inspect the BCEA, OHS and EE. Therefore, meaning that every inspection visit was counted. However, with the introduction of the integrated

[9] Pro-active inspection is another form of a blitz inspection

inspection system, inspections were combined. Nevertheless, this still does not explain how the numbers of complaints have declined, because it only explains the decrease in the number of inspections.

The third obstacle, according to inspectors, in meeting their monthly targets is that some of the inspection visits are very lengthy (if done properly) such as the OHS. As illustrated previously with an epitome of an inspector, the inspection visit took about six hours to conduct which is nearly the whole working day of an inspector. Finally, another obstacle for inspectors was that they are required to perform additional duties such as advocacy campaigns. These campaigns, which can take the whole day, involve targeting events that gather a lot of people (these can be from entertainment, to political). In these events the inspectors will have their own DoL store where they tell people about the services rendered at the DoL. This is a good initiative. However, the inspectors feel that they cannot perform both-all the inspection visit targeted as well as the advocacy campaigns.

5.10 Sanctions: ‘a slap on the wrist’

Schedule Two of the BCEA stipulates the maximum permissible fine for employers who are non-compliant with the labour laws. However, as Table 1 and 2 will show these sanctions are ‘a slap on the wrist’ for employers who are contravening the Act. These sanctions make it very easy for employers to bypass labour laws. As one of the inspectors mentioned ‘one employer laughed in my face when I told him that I am taking him to court because he refuses to pay his employees. He just said to me ‘fine take me to court, what they are going to do?”’. Clearly, this is disempowering for the inspectors because it is as if even after their attempts to pressure employers to comply, they still don't. Nevertheless, below are tables 1 and table 2 which show hoe employers are fined according to the law.

Table 1: Maximum permissible fine not involving an underpayment

No previous failure to comply	R100 per employee in respect of whom the failure to comply occurs
A previous failure to comply in respect of the same provision	R200 per employee in respect of whom the failure to comply occurs
A previous failure to comply within the previous 12 months or two previous failures to comply in respect of the same provision within three years	R300 per employee in respect of whom the failure to comply occurs
Three previous failures to comply in respect of the same provision within three years	R400 per employee in respect of whom the failure to comply occurs
Four previous failures to comply in respect of the same provision within three years	R500 per employee in respect of whom the failure to comply occurs

Table 2: Maximum permissible fine involving an underpayment

No previous failure to comply	25% of the amount due, including any interest owing on the amount at the date of the order
A previous failure to comply in respect of the same provision within three years	50% of the amount due, including any interest owing on the amount at the date of the order
A previous failure to comply in respect of the same provision within a year, or two previous failures to comply in respect of the same provision within three years	75% of the amount due, including any interest owing on the amount at the date of the order
Three previous failures to comply in respect of the same provision within three years	100% of the amount due, including any interest owing on the amount at the date of the order

Four or more previous failures to comply in respect of the same provision within three years	200% of the amount due, including any interest owing on the amount at the date of the order

5.11 Conclusion

In conclusion, this section has shown that effective inspections can be done if the inspectors have the necessary resources, but most importantly the determination, drive and willingness. Indeed, the bottom line for any policy design is effective implementation as well as monitoring and enforcement. Nevertheless, as will be evident in this paper, inspections is not only about the inspectors role it is also about the effectiveness of the system itself- whether it is time consuming or not, redundant or not or even supportive of labour inspectors.

Chapter 6: Mediations

6.1. Introduction

According to the Department of Labour, if an employer wants to settle an unpaid wages dispute, he can make an appointment with the labour inspector in-charge. The inspector will then be obliged to call a mediation meeting involving the complainant(s), the employer(s) or his or her representative as well as the inspector's team leader. However, settling does not mean that the employer will pay all the amount that is claimed by the complainant(s), it simply means that he or she would like to discuss, if applicable, the reasons why he or she has not paid the amount due to the complainants and also argue his or her side of the case.

Mediation meetings usually involve more than one inspector, an inspector as well as his or her team leader. As stated earlier, the purpose of these meetings is to settle labour disputes related to unpaid wages outside of court so as to reduce backlogs for the labour court. However, in order for inspectors to carry out the mediation meetings as effectively as possible, they need to assess and understand the nature of the case, have analytical capacity as well as extensive legal knowledge of labour laws. In addition, inspectors are required to remain objective so as to assess the weight of the case from both sides of the case. This is because they are not only protecting workers rights; they are also protecting employers' rights.

As stated in chapter three, I shadowed four mediation meetings which involved about six inspectors (three team leaders and three inspectors). The findings from my observations are divided into three themes which will be described and analysed with reference to my findings and the literature review discussed in chapter two. However, these themes are interrelated meaning that one theme contains elements of the others. Therefore, the first theme will show how inadequate the inspectors qualifications and on-the-job training are, using an example of one case of a mediation meeting. This section will show how inadequacy may tamper with efficiency and quality of mediation meetings. The second theme will discuss inspectors understanding of the department's jurisdiction. This means the inspectors understanding of the department's scope and when to refer particular cases to other commissions such as the CCMA. This chapter will then end on what a good mediation meeting is with reference to one case.

6.2 Legal experts' vs. inspectors

As indicated earlier, matric plus a driver's license are the minimum requirements for being appointed as a labour inspector with exception to those inspectors who specialize in OHSA and the EEA. These inspectors are required to have a tertiary qualification, on appointment, in engineering as well as in labour law respectively. It was evident from the literature review that inspectors need a wide range of competence including; having technical and legal knowledge, being able to think analytically, have interpersonal skills, being able to communicate with and influence others as well as being decisive and assertive.

Even though mediation meetings are aimed at settling disputes between employers and employees out of court in a simple and efficient manner, this study found that instead of the employers coming in to negotiate their own side of the case, they come in with a representative, which could be a professional lawyer or an advocate, to represent him or her during the case. As a result, this creates tensions between the inspectors and these employer representatives because they are legal experts and thus know and understand the labour legislation thoroughly. More importantly, these legal experts exploit any holes which exist in the legislation in order to suit their needs. For example; one of the cases which I observed was about unpaid wages claimed by the 'trolley pushers' at one of the big grocery stores in Johannesburg central (Africa groceries-pseudonym). The complainants, being the 'trolley pushers' were claiming unpaid basic salaries from January 2008 until August 2008. The mediation meeting included two inspectors', one team leader and the employer's advocate. According to the advocate, 'there is no employer-employee relationship between the complainants and the manager of Africa groceries because there is no evidence of any verbal or written contract or clocking system that may hold the company liable for these 'workers'. As a result, they have no grounds to claim unpaid wages from the company or anything for that matter.'

However according to the BCEA of 1997 definition, an 'employee' means *(a)* any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and *(b)* any other person who in any manner assists in carrying on or conducting the business of an employer. In addition to this definition, the law states that the employee has to work for a minimum of 24 hours per month. In this light even though the law stipulates clearly who is an employee, the inspectors failed to utilize this definition against the advocate to indicate to him that he had contravened the act. Instead, the inspector used emotional language during the mediation meeting such as “You are not being fair to the workers Mr. Advocate, you are exploiting these workers,” and the team leader added “Yes, its true”.

As the negotiations continued, emotions of the inspectors rose and the professional manner which the inspectors needed to follow was not applied at all. The advocate remained calm and insisted that there is no relationship between the employers and the ‘trolley-pushers’. He continued exploiting the loopholes in the legislations by highlighting the contradiction that exists between the different Acts. For instance; charity and voluntary work is unpaid and unremunerated and thus argued that the ‘trolley pushers’ are volunteering and working for donations. This argument completely threw the inspectors case out because their case had no bases or proof for that matter of any connection between the ‘trolley-pushers’ and the employers.

In concluding this case another senior to the inspectors was called in, Mr. Marapo who is a manager to all the inspectors, to help mediate the meeting. On arrival he was given a brief background of the case, by the inspector in charge of the case, and he agreed with the advocate but proposed that the ‘trolley pushers’ need to be regulated because they are indirectly providing a service to the company. Furthermore, Mr. Marapo explained to the other inspectors that they should educate the advocate about how to best remedy or regulate particular workers, for example by having a contract that states clearly that as ‘trolley pushers’ they are working for donations only, and what are the responsibilities from both parties involved.

My conclusions from this case, which were not voiced out, were that the inspectors did not ask a crucial question of who the trolleys belonged to. This is because the direct link between the employer and these ‘trolley pushers’ is the trolleys as they are the tools of trade. But more importantly, these ‘trolley pushers’ are workers according to the legislation. They come in everyday for eight hours to these premises and provide a service which benefits the company as well as the employer.

From the above case, one cannot dispute that labour laws have inherent contradictions. However, the question is how best to deal with loopholes and contradictions in the legislation for effective enforcements of labour law. This clearly requires having technical and legal knowledge and being able to think analytically. This then begs the question- how then can inspectors attain these skills with only matric, in-house training and a few years experience? In summary, low levels of enforcement of labour laws can be exacerbated by the low levels of legal literacy because they impact on the quality of the mediation as well as the outcome of the meeting.

6.3 DoL jurisdiction misunderstood

The term jurisdiction is used by the inspectors to mean the scope of the department geographically as well as in terms of the laws that are associated with DoL. This means that geographically the DoL's labour centers are assigned to different areas for example the Johannesburg South labour centre is responsible for the city centre, Braamfontein, Lenasia, Laanglagte, Hillbrow, Mellville and all other areas that are within its proximity. On the other hand in terms of the law, there are some cases which labour shares with the CCMA or refers them. These cases include unfair dismissals, unfair labour practices such as demotions and suspensions, unfair discrimination as well as freedom of association rights. The problem, however, arises when the inspectors are incapable of assessing which cases belong where, thus referring cases incorrectly and delaying the procedures.

From all the mediation meetings observed in this study, the junior inspectors in particular seemed to use the referral procedure of cases to the CCMA as a way to close the case on their part. This means that once the inspectors realized that they don't understand the nature of the case enough to be able to establish an effective way forward, they say 'I think that this case is a CCMA matter' without any justifications. As a result, inspectors need to understand fully what the legislation says because incorrect referrals exacerbate backlogs and slow down the entire system

6.4 A good mediation meeting

> The employees of an SME insurance company, called SME Insurance, were claiming that the employers have bridged their verbal contract because initially the agreement between the two parties was that the employees would be paid a basic salary of R2500 and if the employees reached their targets, being 40 clients, they would receive an extra R4000 thus totaling R7500.

On the contrary, the employers were arguing that the agreement was never on a basic salary but instead on a commission based pay. This means that for ten clients the employee would receive R1000, for 20- R2000 as so forth. Now the problem then arises on where the proof was of all these agreements because as DoL they cannot solve cases that are based on verbal contracts and unfortunately both parties did not poses any proof. After failure to produce any proof, the inspector then quoted the legislation for employer which read, ‘according to section 29 (1) of the BCEA an employer must supply an employee, when the employee commences employment, with the following particulars in writing—

(a) the full name and address of the employer;

(b) the name and occupation of the employee, or a brief description of the work for which the employee is employed;

(c) the place of work, and, where the employee is required or permitted to work at various places, an indication of this;

(d) the date on which the employment began;

(e) the employee’s ordinary hours of work and days of work;

(f) the employee’s wage or the rate and method of calculating wages;

(g) the rate of pay for overtime work;

(h) any other cash payments that the employee is entitled to;

(i) any payment in kind that the employee is entitled to and the value of the payment in kind;

(j) how frequently remuneration will be paid;

(k) any deductions to be made from the employee's remuneration;

(l) the leave to which the employee is entitled;

(m) the period of notice required to terminate employment, or if employment is for a specified period, the date when employment is to terminate;

(n) a description of any council or sectoral determination which covers the employer's business;

(o) any period of employment with a previous employer that counts towards the employee's period of employment;

(p) a list of any other documents that form part of the contract of employment, indicating a place that is reasonably accessible to the employee where a copy of each may be obtained.

After reading the legislation the inspector then explained to the employer that she had contravened the Act and the consequences meant that she had to pay the workers for what they worked for or else face the labour court. The employer contested this proposal because she argued that the forms which were filed in by the employees were incomplete and as a result equaled no clients. As a result, she as an employer does not owe these employees anything. The negotiations went on for nearly two hours and the conclusion was that since the employers and employees were not agreeing to anything, that the matter be referred to the labour court.

What made this mediation meeting good was the fact the inspector explained very clearly to the parties present what the legislation says and if contravened what the consequences were. Also, the inspector seemed to have a clear understanding of the case and a balanced approach to it. On the contrary, the complainants did not seem happy with the outcome.

Perhaps because they were not educated on what it would entail to refer a matter to the labour court on their part. One of the complainants said to her colleague

> ‘I told you that we were wasting our time. These inspectors are afraid of these people (the employers)’, and he replied ‘Ya vele ba useless (meaning yes, they (inspectors) are useless).

In summary, this section has emphasized that labour inspections are not a simple process of going out to the field and checking if employers are compliant with the labour legislation. Inspections are very complex and comprehensive as they require a wide range of skills that can only be attained with relevant and intensive training which can be possibly gained via tertiary degrees. It has been evident form the above examples that experience may not be enough to equip inspectors with the required capacity for quality and effective inspections. As a result, there is an urgent need for capacity building and this may not necessarily mean only increasing inspectors but instead increasing inspectors whom have undergone intensive training.

Chapter 7

Blitz inspections of the Private Security Sector

7.1. Introduction

Each year the Department of Labour targets specific sectors in the country for inspectors to go out and conduct blitz inspections for one week, nationwide. Blitz inspections are aimed at conducting inspections without prior knowledge of the employers and to conduct a full-routine inspection meaning all the labour legislation. According to one of the team leaders at the Johannesburg central office, each team has to conduct one blitz inspection, for the whole week, of the sector targeted for that period. This study focused on the Private Security Industry (PSI)[10] blitz inspections as these were the only blitz I observed.

This final findings chapter will begin with a brief background of what the PSI is and some of the reasons that motivated the blitz inspection. Following this section will be a section on the achievements and problems encountered during the blitz inspection and these will be divided according to problems with inspectors and problems with the PSI itself.

[10] In his study PSI-Private Security Industry and Private Security Sector will be used interchangeably

7.2 The PSI is globalized…a definite challenge

The Private Security Industry (PSI) embodies an industry operating openly on the global market, organized along permanent corporate lines, and showing signs of growth rather than contraction. The top 10 private security companies include Fidelity Corporate Services; Group 4 Securicor, ADT Security Guarding, Magnum-shield Security Services, Coin Security, and the like (Taljaard, 2008). However, parallel to this growth is an increased use of flexible labour within this sector. There are different reasons for the use of flexibility ranging from the fact employers are better able to control the workplace through flexible contractual arrangements. Moreover, employers feel that flexibility enables them to respond to fluctuations in the market without meeting the costs of employing a large permanent[11] workforce (Nakanyane, 1999).

However, flexibility leads to fragmentation and decentralization of production and thus divides the workforce and in the process undermines the role of trade unions. This then places workers in a very vulnerable position because when hired on flexible labour they are not protected by the labour law, they do not have a trade unions representative and are therefore vulnerable to exploitation by their employers. According to Mtyingizana (2008), a global campaign has been launched against one of the big multinationals-G4 Securicor for its violations of human and labour rights. As the world's largest security company G4 Securicor, has been reported to refuse to comply with the labour laws of various states including Mozambique. As a result, there have been various trade unions across the globe

[11] Permanent workforce refers to those workers who are in a Standard Employment Relationship.

who have been organizing against this multinational to ensure that it respects trade union rights and pays fair wages.

7.3 The PSI in South Africa

In South Africa the private security industry is said to be one of the fastest growing industries reporting revenues of up to R40 billion in 2005. This significant rise is said to be due to the entry of international conglomerates post 1994, the steady entry of ex-security personnel into the industry and the rise of the crime rate and insecurities associated with post-transitional development (Berg, 2006).

In replacement of older legislation enacted in the 1980s there has been a wealth of legislation drafted since 2001.The main piece of legislation is the Private Security Industry Regulation Act (PSIRA) (56 of 2001), which is 'not responsible in determining minimum conditions of employment within the Private Security Industry as this is the responsibility of the Department of Labour' (Seth Mogapi, 2007, Director of PSIRA quoted from the executive summary of the annual report 2007). However, it is responsible for promoting the protection and enforcement of the rights of security officers and other employees in the Private Security Industry.

The security industry is said to be 'a vulnerable sectors with high risk work, low wages and lack of social benefits' (Howard, 2006: 29). It is a highly competitive industry, which operates on tenders cutting wages and increasing non-compliance with the security determinations. Unions in this sector are confronted with the problem of few members joining the union for instance there are approximately 300 000 guards who work in this sector with a mere 16 % union density. However, the 2006 three month strike witnessed the crossing over of both unorganized and organized worker crossing over to Satawu (the South African Transport and Allied Workers Union) which is the dominant union in this sector. According to Howard (2006), the challenges facing this sector included establishing a bargaining council for this sector (a bargaining council exists but cannot extend to unorganized workers) and restructuring the bargaining process to be more effective and reduce the stalemates which exist during security strikes.

On September 1st 2006, the Sectoral Determination 6 was amended in Government Gazette No. 29188, in respect of the minimum wages for a period of three years. A Sectorial Determination control's the terms and conditions of employment for workers in particular sectors where there is no centralized bargaining and which require specific and detailed regulations. Sectorial Determinations may set minimum wages in those sectors, regulates payment in kind, pension and medical aid schemes, it can prohibit or regulate piece work and set minimum standards for housing for workers like farmers who live on employers premises.

Private Security Sector means the sector in which employers and employees are associated for the purpose of guarding or protecting fixed property, premises, goods, persons or employees, including monitoring and responding to alarms at premises which are guarded by persons or by electronic means' (www.labour.gov.za:). This sector is divided into five different grades namely grade A, B, C, D and E. Security officer grade 'A' means an employee who performs any one or more of the following duties:

(a) Advising or reporting on any matter affecting guarding or protection services;

(b) Assisting in the screening of candidates for employment;

(c) Assuming responsibility for staff training;

(d) Drawing money or cheques or taking possession of negotiable documents;

(e) Drawing money at banks or similar institutions;

(f) Guarding or protecting goods;

(g) Supervising subordinate staff; and

(h) Who may drive a motor vehicle in the performance of any or all of the employee's duties;

Security officer grade 'B' means an employee who performs any one or more of the following duties, namely, supervising, controlling, instructing or training security officers, Grade C, D or E or general workers and reporting thereon to an employer or any other specified person and who may;

(a) Drive a motor vehicle in the performance of any or all of the duties;

(b) Be called upon to perform any or all of the duties of a security officer, grade C;

Security officer grade 'C' means an employee who performs any one or more of the following duties;

(a) Supervising or controlling security officers, grade D or E;

(b) Driving a motor vehicle in the course of supervising or controlling security officer's grade D or E;

(c) Driving a motor vehicle for the purpose of transporting security officers; and

(d) Who may be called upon to perform any or all of the duties of a security officer, grade D;

Security officer grade 'D' means an employee who performs any one or more of the following duties;

(a) Controlling or reporting on the movement of persons or vehicles through checkpoints or gates;

(b) Searching persons and if necessary, restraining them;

(c) Supervising or controlling security officers, grade E;

(d) Searching goods or vehicles; and

(e) Who may be required to perform any or all of the duties of a security officer, grade E;

Security officer grade ‘E’ means an employee, other than a security officer, grade D, who performs any one or more of the following duties –

(a) Guarding, protecting or patrolling premises or goods;

(b) handling or controlling dogs in the performance of any or all of the duties referred to in (a);

(Source: www.labour.gov.co.za)

7.4 Procedures followed by inspectors during Blitz

As part of the preparations, at the offices the inspectors are briefed about the meaning and scope of blitz inspections. They are then given updated copies of the Security Sectorial determination to familiarize themselves with and prepare themselves for the week ahead. As mentioned earlier, the intention is to find these companies unprepared and unguarded. Therefore, it is inappropriate to make prior appointments with the employers during blitz inspections. The team leaders then draw up a random sample of the security companies that exist on their database, and distribute them accordingly to the other team members.

On inspection, the labour inspectors are required to have a copy of the latest updated Sectorial Determination of the PSI, the routine inspection checklist, the departments stamp and copies of the compliance orders. However, three out of four inspections did not follow the appropriate procedures of blitz inspections. In fact there were a number of problems encountered during these inspections and the next section will discuss them in further detail.

7.5 Problems during blitz

Instead of providing a descriptive analysis of the problems encountered in this inspection, perhaps it may be better to relay the outcome of a blitz inspection visit so as to provide the reader with a detailed account of the happenings;

> After waiting for nearly 30-45 minutes for one of the inspectors to finish her personal conversation on the phone, I left with three female inspectors, to one company named Goat Security (pseudonym). We arrived at this security company at around 10am which was in Langlaagte. On arrival the inspectors usually go to the human resource manager because he or she has all the relevant documents and has better knowledge of the workers.
>
> The inspector then introduced themselves and some of the staff members of this security company recognized me from the previous inspection which happened a week ago with another inspector called Leo. The employers seemed irritated to see the inspectors and asked ‘why didn’t

you first make an appointment?', and one of the inspectors Grace explained that 'this is a blitz inspection and we are not allowed to make prior appointments with the employers'. Grace then handed the employer with the routine checklist (which she had filled in three weeks ago). After looking at the inspection checklist she then replied 'but why do you people bother us like this, last week you sent one of your inspectors for the same thing and now you want me to give the same information. This is just wasting our time'. After saying this, it seemed as if she would not co-operate with the inspectors but to their surprise she did. She called in her secretary to make copies for her of the UI 19, the most recent pay-slips of atleast one security guards from each grade A to E, the clock in register, SARS details and copies of atleast two filled in contracts of employment.

Immediately after calling in the secretary to make copies and handing the file to her containing all the required information, this was the end of the inspection. The inspectors and the human resource manager had a social gathering and spoke about Venda men being tribalist and how they only marry their own. Magrate, one of the inspectors, asked the HR manager to give her tips on how to keep a Venda a man. After, the advice the discussion then moved to the HR managers experience with her family when her mother and younger brother died. She stated the family from the mother's side mistreated her to a point where she decided to not bury her little brother because the family wanted to be in-charge of all the arrangements and so forth.

Instead of the inspectors to check if the given information is correct, the moved deeper into the informal discussion. To exacerbate the situation, Grace then told the HR manager that she was looking for a job and that she was serious. She explained how the Department of Labour is underpaying them and how de-motivating her job is. Instead of the other inspectors rebuking them, they added by saying ‘we cant even afford to buy cars’ and another added ‘vele this job ya bora’ (meaning yes, this job is boring).

At this point, the HR manager seemed puzzled because the inspectors were acting against their mandate. However, this opened an opportunity for the company because it meant that the inspection was not going to be effective or rather harsh on their part. Instead the HR manager, after a few minutes, asked the inspectors ‘can I offer you something to drink’ and they responded in chorus ‘yes please’ as one added ‘with biscuits please’. After a few seconds, four cans of fizzy drinks were brought in by the same secretary who was assigned to make copies required in the routine inspection checklist.

> The discussion had now deepened to discuss how labour inspectors can benefit the private sector, because they know the labour laws thoroughly and can assist companies in becoming more compliant without forfeiting the profits made in the company. After a few minutes into the discussion, the HR manager receives a call from her CEO asking her to ask the inspector what kind of burgers they would like from McDonalds. This had certainly come as a wonderful surprise for the inspectors and an opportunity to exploit the offer. After the HR manager asked, 'ladies my boss is asking what burgers you would like at McDonalds' and Grace replied 'are those the only available burgers' (she wanted burgers from a different restaurant). But Margrate replied, 'Whoo, I want a Mcfeaste meal- large because I am hungry and I eat a lot.' The HR manager then followed the instructions and ordered 4 of these meals. They then arrived after 15 minutes or and the informal gathering continued.

After four hours, the inspectors asked the HR manager where their security guards were based so that they could interview. She mentioned Witbank, Vaal and other areas around the country, but she also told her about local areas, for instance City Power, the Department of labour itself, but instead Grace then wrote on the file that she could not interview these workers because they were working far and its was not within their jurisdiction.

From the above case, there are number of problems which can be identified that also represents discrepancies during other inspection visits which have been witnessed in other cases. The first problem identified in this case in particular was the lack of professionalism and this is evident in the way the inspection visit moved from being a blitz to a social gathering.

The second problem was inspectors looking for jobs during inspection visits and misusing government resources. This problem was not unique to this case only. Out of the 16 inspection visits, atleast 9 inspectors mentioned that they are looking for other employment. This was evident in the lenient manner in which some inspections took place for instance; one inspector said to me after a routine visit 'you know you must not be very hard on these employers because tomorrow they might be your boss'. The same inspector used a government car to a job interview and atleast three other inspectors used the cars to close in private business deals. According to these inspectors, they want to open a labour law consulting firm and inspection visits are useful for them to gain clients for their future business.

The third problem was the imputation of data particularly where the questionnaires concerned interviewing the workers. The common reason for not interviewing the workers is 'these workers are situated far and those areas are not within our jurisdiction'. The implications therefore resulting in meaningless inspections.

7.6 Preparation (or lack of) for blitz inspections

First, the problems with the structure or rather the preparation of blitz inspection was the lack of preparation. All the inspectors that I interacted with during the blitz inspections stated that there is no training for blitz or atleast they were not included in the training. As a result, this undermines the importance of blitz inspections. This is because, as observed in one blitz inspection case, the Sectorial Determination of the PSI has its own basic conditions of employment that are sector specific. For example; security guards work 12 hours per day for four days and are required to have atleast 24 hours rest period. Also, each grade of security officers rates differently and they each have a minimum wage stipulated in the Sectorial Determination. Therefore, prior training or briefing is required for blitz to arm and prepare the inspectors to ensure quality inspections.

Second, the team leaders did not seem to be aware of the companies that have been inspected in the previous month or so. This is because from the four inspection visits I observed, two were the same companies that I had visited with a different inspector previously. In fact one of the HR managers in one of the blitz inspection visits stated, after seeing the inspectors come in his office, 'Jaslike, jelle mense wee nog, wat soek jelle nou', it seemed he was very familiar with the inspectors. In fact he (the HR manager) new them- the inspectors by name. Therefore, the DoL cannot afford to be redundant when there are 900 000 workplaces which need to b inspected yearly and with the current capacity, can workplaces are inspected once every four years.

The third problem in the PSI is that it is a sub-contracting sector which means that the workers often do not work at the place of their employers. Now the strategy that has been used by security companies to bypass the inspections system is to have a head office in Johannesburg but locate workers in another province like Mpumalanga. This means that the inspectors often cannot verify (conduct interviews with workers) information given to them by employers concerning the conditions of employment of the workers.

Chapter eight

Conclusions and recommendations

8.1 Theoretical conclusions

Labour law enforcement, as has been demonstrated in this report, is complex and requires interrogation on that level. It includes understanding the effects of policy design, administrations and implementations. Furthermore, the changes brought upon by globalization have also fueled this complexity as it has added another dynamic to labour law enforcement. Not only are states regulating labour locally, multinational corporations have challenged the regulating power of the state as well as other institutions such as trade unions whose sole purpose is to protect local citizens.

However, this does not imply that the states role in enforcing labour law is no longer important or possible, what it means though is that individual states need to strengthen labour regulating institutions including the Department of Labour, trade unions and other various stakeholders that are involved. As has been the focus of this paper, labour inspectors as well as the inspections unit is a crucial actor in the regulating process. In fact, as argued in this report, it is the beginning of a regime of enforcing fair labour practices. Nevertheless, the puzzle is that many states have not recognized this fact including South Africa. The inspections unit has been undermined and marginalized. Therefore, this report has argued for the strengthening of the bureaucrats themselves through various mechanisms such as proper and effective training, performance incentives, funding and access to resources.

8.2 Descriptive conclusions

This research report had two aims first to uncover the challenges faced by labour inspectors in the Department of Labour South Africa. This aim being in line with the way in which globalization has changed employment patterns in the workplace and how this has affected the ability to ensure compliance of labour laws. Second, the aim of this report was to assesses the extent to which the policies that inform the definition of ‘fair labour practices’ or decent work, which include the Labour Relations Act of 1995 (LRA), the Basic Conditions of Employment Act of 1997 (BCEA), the Skills Development Act (SDA), the Occupational health and Safety Act (OHSA) a well as the Employment Equity Act (EEA) and the Unemployment Insurance Fund Act (UIF), are implemented and enforced by labour inspections.

From the above aims, this report has shown that first there are a number of challenges faced by labour inspectors but these challenges are linked to the bureaucratic structure within which the inspectors are operating within. Poor goal clarity and poor policy design anticipates poor implementation of labour laws. This has been evident in the lack of goal clarity of the inspections unit whereby there is no written documentation stipulating how inspectors should be trained, the resources needed during inspections as well as the number of targets which inspectors needed to reach per month, to name but a few.

Having direct access to workplaces, they give advice on how to comply with national standards and legislation, taking formal enforcement action if justified. But they are often significantly under-resourced for the wide range of topics within their mandate, which include occupational safety and health, general working conditions, employment contracts, labour relations, forced labour and child labour.

It is utopian to want instantaneous change in all the institutions and organizations discussed in this report. As this report has clearly demonstrated, there are various challenges which are posed to the state in general and to the Department of Labour specifically. However, the scope of this report was the Department of Labour inspections unit and this means that the beginning of change begins small-with the most important part of any policy being implementation. And implementation is carried out by labour inspectors. Therefore, the next section will provide a brief discussion on some of the recommendations proposed in this report. The aim being to learn from other countries and contextualize the lessons learned to suit our socio-economic context.

8.3 Recommendations: Decent work for all

Policy intervention

There is a need in general to improve the quality and efficiency of the implementation of labour policy. Therefore, policy intervention should be on three levels; the shortening of enforcement procedures, reducing backlogs of the labour court as well as improving public service administration. The enforcement procedures which include issuing out compliance orders and undertakings should be shortened. The aim being to encourage the immediacy of penalties and to avoid fuelling a perception from workers and employers that inspectors are “toothless bulldogs”. Second, the DoL needs to address the backlogs of all the courts but more importantly the labour court because this has a trickle down effect on the efficiency of labour inspections.

Furthermore, there is a need to have stricter sanctions against non-compliance. This is because it will contribute in making it harder for employers to choose not to comply with the labour laws. However, these sanctions would also need to be enforced.

Skills development

In an effort to counter the falling interest in working for the public sector, a number of governments such as Canada, Netherlands and Portugal have targeted college campuses to recruit new talent. Furthermore, in realizing the shortcomings, some human resource managers have targeted recruiting and developing human capital as an important part of their job. North Carolina, for example, established a state-wide recruitment network. Recruiters from agencies and universities work in partnership with the Office of State

Personnel to identify the states recruitment needs, to design state-wide recruitment plan, to promote the state of the employer of choice-the state and to maximise existing resources (Selden, 2003). As a result, this report is advocating for a comprehensive program for labour inspectors o be trained in, preferably not in-house training. Learning from Canada, South Africa can also target college campuses doing labour law relations to become inspectors. This may obviously mean setting aside a huge percentage of their budget to attracting students to labour law relations and assisting with finance or the like. Another more context specific alternative may be to target graduates from SETA's[12] so as to avoid exacerbating unemployment of graduates.

Improving communication

As shown in Appendix C, the CCMA, the Labour Court and the DoL are all part of the structure of labour laws. However, the level of communication between these parties is very shallow. By improving communication I mean having a situation where the DoL inspectors know how the cases that that they referred to either CCMA or the Labour Court have been finalized. This will strengthen the relationship between the street-level bureaucrats in these departments and also encourage a spirit of fighting together against non-compliance of labour laws.

Trade unions as ambassadors of decent work

Trade unions can work more closely with labour inspectors in a sense that they can help train their shop-stewards in the workplaces about decent work and more importantly help

[12] SETA's are Sectorial Education Training authorities which are aimed at addressing lack of skills development in South Africa

to communicate with the inspectors about global unions-their challenges and how they can contribute to wider campaigns of decent work. There is a perception amongst labour inspectors that trade unions do not understand their role- trade unions seem to think that labour inspectors are fighting for workers rights solely (like trade unions). Therefore, this instead of creating unity, divides the trade unionist and the inspectors. As a result, it is important that both parties collaborate in the fight against unfair labour practices.

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Appendix A: Interview schedule for workers

Introduction: I am a student from the University of the Witwatersrand. I am doing research on labour inspections and how they have improved (or not) your working conditions. This interview is voluntary and you can stop me at any point during the interview if you wish to do so. The information that you share with me will be kept confidential and anonymous.

Demographics

Respondent's name: ____

Date and place: ____

Ethnicity (by site)_________________________

Gender (by sight): male or female

Age: _____________________________

1. Employment history

1.1) What is your job? (eg. junior inspector or senior inspector etc) ____

1.2) Education level

Primary	
Secondary	

Matric	
Tertiary	
Other	

1.3) How long have you been doing this job?

____

2.3) Do you have a written contract of employment? Yes or No

If yes, what does the contract say

____

2.3.1) If no, do you have any other form of agreement of employment (e.g. a verbal contract) and what does it say? ______________________

____

____

3. Work Security

3.1) Do you feel safe at work? Yes or No

Why? __________________________________

____

3.2) Does the work you do have any negative effect on your health? ___________

____

____

5. Skills Reproduction Security

5.1) Skills development is a key priority in my workplace:

Strongly agree	
Agree	
Strongly disagree	
agree	

5.2) Are there any opportunities to increase your skills development? Yes or no (elaborate) ____

6. Representation Security

6.1) Are there any organisations that represent your work interests? Yes or No

Elaborate____

____

6.2) Any other organisations representing your work interests in the workplace eg. shop-steward? Yes or No (elaborate) _____________________________________

____

7. Income Security

Have you increased your income over the last three years? Yes or No

How? ____

7.1) How much money do you make a week for this job? ___________________

Do you know according to the law how much you are supposed to be getting paid? Yes or no:________

If yes, how much (do they think is stipulated) ___________________

7.2) If yes, how did you find out about this minimum wage? ____

7.3) Do you have any benefits?:

-End of year bonus ______ -Housing subsidy__

-Transport allowance ______ -Funeral benefits___

-Pension fund ______ -Medical aid___

-Other: ________________

7.4) How many hours do you work per day?___________________

7.4.1) Do you work overtime? Elaborate____

7.4.2) Which forms of leave are you granted: sick leave (how long):___________

: annual leave (how long):__________

:maternity leave (how long):_________

7.5) Do you have any dependents, how many?______________________

7.5) How many people living with you have an income? ____________________

7.6) Is there any way you can or do increase your household income? Yes or No

7.7) How? (E.g. Renting out rooms, growing vegetables, taking on other jobs)

____

____

7.8) How much money do you earn from this extra income? _______________

____

7.9) Which social grants do you or the people living with you receive? _________

____

____

Improving work conditions

8.1) Which of your work conditions could you improve and how? _______________

____

____

8.2) Has there ever been an inspector from the Department of Labour coming to your workplace to check on your working conditions? ______________________

Appendix 2: Observation schedule for the labour inspectors (interviewer guide, these question will not be necessarily asked in this order)

Appendix B: Interview schedule for labour inspectors

Demographics

Respondent's name: ________________________________

Date and place: _____________________________________

Ethnicity (by site)______________________

Gender (by sight): male or female

Age: _________________________

1. Employment history

1.2) Education level

Primary	
Secondary	
Matric	
Tertiary	
Other	

1.3) How long have you been an inspector and how long have you been a team leader?

1.4) What are some of the challenges you face in being a team leader? ____

____

2.1) Do you ever go out to do inspections, how often? ____

2.2) In your experience, what are the challenges around enforcing the labour laws:

a) Data collection tools (internal): ____

b) Enforcement procedures (internal): ____

c) Administrative procedure (planning, writing reports etc) (internal) ____

d) Access to employers (external): ____

e) Any other are of importance: ____

2.3 Do you have any monthly or weekly meetings with the other team members?

2.3.1) What are some of the issues which are raised in these meetings and how do you address them eg. have other meetings with your supervisors etc.

2.5) Are there any targets which the inspectors are supposed to reach? How many

2.5.1) What are some of the challenges which arise in reaching these targets (both from what the inspectors express and from your side)?

3.1) Has there been any assaults incidences against your inspectors since you have become a team leader?

3.2) What are the procedures that the inspectors are supposed to follow in such cases?

3.3) What are other support structures given to labour inspectors in such cases?

4.1) I understand that integrated inspection means enforcing all the legislations and being a one-stop service. However, are all the inspectors trained to enforce all these legislations?

4.2) Do you feel that they are well equipped to render the integrated inspection services? Yes or no Elaborate)

5.1) In terms of labour court, which cases are referred to labour court? (Eg. after 3 subpoena's).

5.2) I understand that in 2003 there was an introduction of palm-tops for the inspectors, please explain to me how this program worked and whether or not it was a success or failure?

Follow-up visits (observation schedule for the researcher)

2. Who is conducting the inspection?
3. If it is a different person, does he or she have the same position as the earlier inspector (or this time it is the supervisor or a more experienced inspector).
4. What are the exact procedures that are followed and what is different about them?
5. What happens after the compilation of the report?
6. Who does the report go to?
7. How long does it take for an inspector to compile a report? If any delays what cause those delays
8. How long does it take for a decision (by authority) to be taken after the realization of misconduct?
9. What other parties are involved in the issuing of fines or any other forms of prosecution?

Blitz inspections

1. What are some of the challenges that the labour inspectors face in the spontaneous inspections?
2. How do they deal with them?
3. What happens when a PSI company has changed names?