



**1ST BIENNIAL LABOUR RELATIONS
CONFERENCE FOR THE PUBLIC SERVICE**



**PUBLIC SERVICE CO-ORDINATING BARGAINING
COUNCIL (PSCBC) AND
THE PUBLIC SERVICE COMMISSION (PSC)**

**REPORT ON THE FIRST BIENNIAL LABOUR RELATIONS
CONFERENCE FOR THE PUBLIC SERVICE HELD AT
EMPERORS PALACE ON 26 – 28 MARCH 2007**

Sponsored by:



Alexander Forbes



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**1ST BIENNIAL LABOUR RELATIONS
CONFERENCE FOR THE PUBLIC SERVICE**

Report on the First Biennial Conference held in South Africa on 26 – 28 March 2007



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1. **INTRODUCTION**

The Public Service Co-ordinating Bargaining Council (PSCBC) and Public Service Commission (PSC), co-hosted the first biennial Labour Relations Conference for the Public Service, at Emperor's Palace on 26, 27 and 28 March 2007.

Approximately 400 local and international delegates attended the conference. More than 30 speakers delivered papers over the three days of the conference. The conference was sponsored mainly by Alexander Forbes, and in addition by Juta, LexisNexis Butterworths and Sabinet Online.

Tokiso Dispute Settlement (Pty) Ltd was appointed to manage the content emanating from the conference, to provide a programme manager and produce a conference report. Tokiso appointed its panelist Ebrahim Patelia as the programme manager. Merle Denson, Adrienne Mattiuzzo, Rachel Mosupye and Tebogo Motitswe were appointed from Tokiso as the scribes. Tokiso was well suited to the challenge given its understanding of employment issues and its sterling record of neutrality.

The organisers of the conference set the theme of the conference as "*Knowledge through dialogue: Harmonising Labour Relations in the Public Service*".

The broad aims and objectives of the conference were:

- To harmonise labour relations in the Public Service through dialogue on various pertinent issues.
- To provide an opportunity for stakeholders to debate the latest trends pertaining to labour law and labour relations in the Public Service.
- To encourage interaction between and among labour relations practitioners (both employer and labour representatives) and other stakeholders in the field of labour relations in the Public Service.

- To create a platform for the establishment of partnerships locally, regionally and internationally.

1.1 Methodology of the conference

The conference consisted of five sessions: A morning and afternoon session on day one and day two; and a morning session on day three. Each of the sessions was directed by a sub theme.

- Session One - Sub Theme 1: Institutionalised dialogue systems to promote sound labour relations.
- Session Two – Sub Theme 2: Strategic positioning of human resource management to support the promotion of sound labour relations.
- Session Three – Sub Theme 3: Effective dispute resolution as a requirement for sound labour relations.
- Session Four – Sub Theme 4: Effective Management of discipline as a prerequisite for sound labour relations.
- Session Five – Sub Theme 5: The role of labour relations in halving poverty and unemployment by the end of the decade.

Each of the sessions started with a one and half hour plenary session which included all delegates. At least three topics were covered by three different speakers in this plenary session. Participants could then choose to attend any one of the four, one hour breakaway sessions which dealt with specific topics under the broad sub theme.

1.2 Tokiso Dispute Settlement’s brief

Content management

Tokiso had to document the main points of discussion from the plenary and breakaway sessions on each of the three days.

The programme director provided a 30 minute summary of the first

day's sessions in a power point presentation, to all the conference delegates at the start of day two. Similarly, the content of day two was presented on the morning of day three. As all the sessions of day three were presented in plenary, no summary was provided during the conference.

The Conference Report

This conference report, containing the content captured from the entire conference, is presented by the programme director Ebrahim Patelia.

This report contains firstly, the full content of the opening speeches of the Honourable Minister Geraldine Fraser-Molekete and Ms Odette Ramsingh. Secondly, a summary from the presentations and papers of each of the speakers are provided. These presentations have been edited to ensure that they are able to be read by persons who have not attended the conference. To achieve this some of the presentations are dealt with more in depth, due to the technical nature and complexity of the paper. The main commentary from the question and answer sessions are also included. Thirdly the full content of the closing address of Professor Stan Sangweni is included and finally the closing remarks by the programme director Ebrahim Patelia.

At the onset we must caution that the depth and the breath of the presentations made by the speakers during the plenary and breakaway sessions can only be appreciated if the papers of the speakers are read. The summaries of the presentations, contained in this report, in no way purports to replace or give an exact meaning of the full papers provided by the speakers.

2. OPENING CEREMONY

2.1 KEYNOTE ADDRESS: MINISTER GERALDINE FRASER-MOLEKETI

Vice Chairperson

Colleagues

Esteemed International and Local Guests

Comrades and friends

It is not often that two organisations that one has an intimate knowledge and involvement with, co-hosts a conference. I am therefore honoured to be invited to deliver the keynote address at this special occasion.

I wish to congratulate both the PSCBC and the Office of the Public Service Commission for arranging the conference. Because this once again proves that institutions from different sectors can effectively work together when there is a common goal.

The PSCBC not only serves as an invaluable conduit for the orderly interaction between the Public Service as collective employer and organised labour, but also plays an equally invaluable role in dispute settlement, which is a key component of labour relations in general and in the Public Sector in particular. The insights they gain from their activities stand them in good stead to co-host a Conference of this nature, and I express appreciation for their presence.

The PSC, as constitutional oversight body, according to Chapter 10 of the constitution, is responsible for guarding over compliance with the constitutional principles governing public administration in the Public Service through the processes of monitoring, evaluation and investigation. However, the PSC also has a clear promotional responsibility in respect of these constitutional principles.

Being the initiator and co-organiser of this Conference fit firmly into this responsibility. Like the PSCBC, the PSC is, as a result of its involvement in Public Service employees' grievances and its oversight related monitoring and investigative capacities, excellently equipped to arrange a conference of this nature. So we clearly see why the two sides came together for the conference.

Two years ago I addressed the celebratory conference of the PSCBC. The theme of the conference was "***Celebrating a decade of social dialogue in the Public Service***". The conference allowed us a moment to reflect on the past, to congratulate ourselves on making a successful transition from an era where basic human and labour rights were absent to a democratic order where these rights became constitutionalised, and to celebrate the achievement of the transformation and restructuring of the Public Service. I am therefore pleased to see that the theme of this conference is "***Knowledge through dialogue: Harmonising labour relations in the Public Service***", because I believe it perfectly compliments the earlier conference. Whereas the celebratory conference focused on what had been achieved at that stage, this conference looks at what needs to be done going into the future, be it the introduction of new policies and practices, the enhancement of current policies and practices or positional or attitudinal changes.

It is gratifying to see that the organisation of the Conference has not been done in isolation from academia and experts in the private sector. We need the insights, resourcefulness and creativeness of all our experts to address our uniquely South African challenges. Going through the list of guest speakers one is struck by the diversity of expertise assembled for this Conference. I am also particularly encouraged to see a prominent labour input to this Conference.

Historically, the labour movement in South Africa has played an important role in

bringing about change in the country. They still do. In a sense, they are the people's guardians, guarding jealously over the interests of their members. So one would say the labour movement guards though in a different manner to the Public Service Commission. Although Government must in equal measure guard over the interests of the country and its resources as a whole, labour's input is invaluable to the State as employer. It ensures that attention, effort and resources are steered towards relevant areas of people management in the Public Service. It needs to be said that labour will always be a valued and indispensable partner in people management in the Public Service.

The conference theme is "Knowledge through dialogue". Dialogue is the cornerstone of the labour relations environment, let alone a democratic society. Social dialogue is defined by the ILO to include all types of negotiation, consultation and the exchange of information between representatives of government, employers and workers. Industrial peace and economic progress are dependent on the successful operation of structures and processes of dialogue. Not least amongst them are the collective bargaining structures where labour and employer consult and negotiate. In this regard the South African Public Service must surely rate amongst the top exponents of successful collective bargaining through its national, sectoral and departmental structures. To date parties have been able to successfully deal with difficult and contentious issues such as transformation and restructuring, pension and medical aid restructuring and multi-term salary agreements.

Our colleagues who are here today who are currently intensely involved in the salary negotiations for the Public Service will no doubt attest to the importance of dialogue in the negotiation process. And we are at a point in negotiations where dialogue is indeed critical. Understanding the position of the other party is impossible if it is not conveyed through a process of clear and unambiguous dialogue. In the setting of a bargaining council where tension sometimes rises and emotions become frayed, effective dialogue can suffer. I am

therefore encouraged to see the maturity in parties to the negotiations by stepping back from time to time to engage in bilateral talks where the atmosphere is hopefully more relaxed and where parties on a one on one basis are able to explain and clarify their positions to one another.

Programme director and deputy chairperson, I do not know whether the timing of this conference was meticulously planned to coincide with the salary negotiations or whether the date was randomly selected. I do believe, however, that it has come as a welcome respite to the negotiators of labour and the employer who have been involved in a number of salary negotiation sessions this year. As a matter of fact I have been reminded that there have been five rounds already. This conference gives them an opportunity, together with other labour relations and human resource practitioners, to focus on other, equally important, aspects of Public Service labour relations.

Harmonisation of labour relations in the Public Service is crucial. Our quest to advance and improve service delivery to our people through a unified system of public administration and management will be seriously compromised if harmonization of labour relations practices and policies cannot even be achieved in the Public Service as currently defined. Bringing other organs of State into the fold of an enhanced Public Service will bring with it dynamics that would need to be moulded and governed into a harmonised future approach. Chairperson, allow me to pause here for a moment to focus on the concept of the Single Public Service that seems to be eliciting much emotion.

Building an effective developmental state that is pro-poor is a central objective of the government. The concept of a developmental state is not new. It is enshrined in the Constitution and established and affirmed by the social contract.

The overarching goal of a single system of public administration and management

that covers the three spheres of government is to give effect to developmental goals by establishing seamless, integrated service delivery through integration of service delivery institutions of government. It intends facilitating this goal by ensuring that the Single Public Service is and functions as one by determining national norms and standards through appropriate legislative and regulatory environment.

A number of imperatives dictate the need for a Single Public Service. Research has shown that many people have difficulty accessing government services, often because of prohibitive transport costs. Initiatives aimed at bringing government services closer to the people are already underway. These include the Community Development worker (CDW) Programme, Multi-Purpose Community Centres or Thusong Centres and the Batho Pele Gateway Project. These initiatives go a long way in addressing the need for cooperative institutional arrangements but they need to function well. The Thusoong centres need to be appropriately staffed (by multi-disciplinary teams) in order to ensure that it is indeed a one-stop service centre.

One of the strongest arguments for a SPS is the facilitation of mobility between institutions and spheres of government. Numerous complications have arisen in the transfer of personnel especially as regards conditions of service and related matters. The harmonisation of conditions of service requires some form of rationalisation. The challenge is to create a more cohesive workforce consisting of all spheres of government and most importantly, a multi-skilled and mobile cadre of public servants to deliver integrated services where the need exists.

Integrated service delivery is difficult due to the difference in the service delivery models adopted by departments. In most instances, these are not aligned to local government service boundaries nor are they aligned within or between sectors. The introduction of an overarching legislative framework will ensure that Public Service reform, the budgetary framework and planning is aligned across the

entire sector which will in turn ensure good governance and accountability.

Supply and demand in the labour market increasingly presents a challenge to the Public Service not only job creation, but also in the filling of vacancies. As regards the skill deficiency and the mismatch between skills and vacancy requirements, those with the critical skills needed by government do not necessarily enter the Public Service. As Government we are finding it difficult to compete with the private sector to attract requisite skills and more particularly, to stem the flight of skills to developed countries. And I do want to state the skills challenge is one confronting the labour market at large, furthermore, it is not restricted to the South African labour market.

One of the purposes of JIPSA is to align education and training with the actual needs identified for the developmental state. A Single Public Service will allow scarce skills to be utilised where they are most needed.

Management and leadership are key in making service delivery happen. What is of great concern is the fact that the majority of senior managers are concentrated in head offices, thus removed from the 'service delivery coal face'. In order for provinces to achieve their service delivery targets, the redeployment of staff to these areas must be considered.

The Public Service has established the Senior Management Services (SMS) to recognize and enhance the role of managers and professionals in the execution of public functions at national and provincial levels. Against this background, it is therefore of critical importance that a distinct management dispensation for all managers, including professionals, be developed for clear career-pathing.

The overall objective of the establishment of a distinct management cadre for the Single Public Service is to promote a notion whereby members will not simply be attached to fixed posts within a specific institution of government but rather recognized as members of an overarching body of competent senior

managers available to the State for optimal utilisation.

Chairperson, with these few comments I will leave the issue of the Single Public Service, but to note that time is running out for us to put our own house in order.

In his State of the Nation Address on 9 February President Mbeki said "Compliance levels within departments... have been somewhat mixed. Obviously this cannot be allowed to continue..." I think we all support the President's sentiments. Non-compliance with national policies and collective agreements is not an option. To enforce compliance through dispute resolution mechanisms or even designated agents appointed by bargaining councils is an indictment on the Public Service.

I am not intimating that all non-compliance cases lodged are legitimate cases. Many awards on these matters have gone in favour of the employer. As part of harmonising labour relations in the Public Service both employer and trade unions have a responsibility. Submitting frivolous and vexatious cases does not assist matters. On the other hand, the lack of proper implementation of modalities can lead to poor understanding of employees' rights, which in turn can lead to unnecessary disputes.

As part of the amendments to the Public Service Act a provision similar to the one of financial misconduct found in the Public Finance Management Act is being proposed. This will undoubtedly strengthen compliance in the Public Service. The provision calls for compulsory disciplinary action to be taken against an employee who fails to comply with the Act or a regulation, determination or directive made in terms of the Act. All collective agreements will in future be deemed to be determinations made under the Act.

Programme director, many interesting and important labour relations and human resource matters will be addressed during the course of this conference. Without pre-empting discussions, any further than I may have, allow me to make a few cursory remarks regarding some of the areas.

In a workplace of over 1 (one) million employees, where discipline is dealt with on a decentralized basis, one can expect consistency to suffer to some extent. It, however appears as if there is still sometimes uncertainty as to what constitutes serious and dismissible offences. The Labour Relations Policy for the Public Service is unambiguous in stating, as a policy directive, that the Public Service has a zero tolerance approach towards transgressions such as fraud, corruption and sexual harassment. The Labour Relations Act in Schedule 8 "Code of Good Practice: Dismissals" also gives guidance on areas that constitutes serious misconduct. These include gross dishonesty, wilful damage to property of the employer, wilful endangering of the safety of others, physical assault and gross insubordination. Yes, I am aware that the mere allegation of a serious transgression does not constitute automatic dismissal, but once such a transgression has been proved, one would expect consistency in sanctions unless of course mitigating circumstances are of such a nature that it outweighs the aggravating circumstances and the seriousness of the transgression.

More and improved targeted training of chairpersons of disciplinary hearings appear to be needed. Departments must invest in the training of employees who are identified as chairpersons of disciplinary hearings. If not, service delivery will suffer.

I expect SAMDI to play a leading role in equipping chairpersons of disciplinary hearings to perform their functions effectively and fearlessly.

I note that the conference will be addressing the area of grievances as well. The grievance rules for the Public Service were simplified and streamlined in 2002 through the adoption of PSCBC Resolution 14/2002 and the gazetting of the rules by the Public Service Commission. The rules removed the former highly bureaucratic procedure that started with a step 1 "submit your grievance to your immediate supervisor" and ended with step 5 or 10 (whatever it was). The procedure is now much more flexible yet the disputes about the interpretation and application of the Resolution abound. And what are the disputes about? – the failure to adhere to the prescribed timeframes. Ladies and Gentlemen, this is unacceptable. How can we hope to achieve an effective labour relations environment in the Public Service when this basic condition is not complied with?

Let me dwell on the area of dispute resolution for a moment. I am astounded, even baffled, at the diverse awards coming out of bargaining councils on the same topic. One arbitrator orders the promotion of an employee and the next one, on the same set of facts, rules that he or she cannot second guess the employer. One arbitrator finds that he/she cannot interfere with the sanction imposed by the employer. Another arbitrator boldly declares that a sanction is too harsh. I note that panelists of the councils have been invited to the conference and I hope some of them are here. I am sure that you will agree that through dialogue between panelists and between panelists and dispute resolution sections of the councils these divergent approaches to cases can be addressed, narrowed and eventually harmonized.

Programme director, the LRA and the constitutions of the various bargaining councils determines the rules within which parties have to conduct themselves in the field of labour relations. Playing outside the rules destabilizes the labour relations environment and leads to adversarial relations. Unprotected strike action, especially in the essential services, should therefore not occur in the Public Service. Through effective dialogue this type of action can be avoided.

I am encouraged by the fact that the conference is to focus on the positioning of human resources to support the promotion of sound labour relations. Harmonizing the work of these two areas is key to the success of the implementation of policies and agreements. Especially with regard to collective agreements it is imperative that the details of such agreements be clearly conveyed and explained to human resource practitioners who are ultimately responsible for the implementation of the agreements. I believe that more effort should be put into this area. Human resource practitioners on the other hand should be extremely meticulous when implementing collective agreements, so as to limit any disputes. Correct implementation is, however, not the only requirement. Equally important is the pace with which agreements are implemented. Agreements must be implemented as soon as possible after signing of an agreement. Waiting for months or even years to implement agreements, destabilizes the labour relations environment and normally leads to financial and budgetary problems. Close co-operation between the human resource and labour relations sections of a department is absolutely essential. Monitoring the implementation of collective agreements should also be one of the key duties of the labour relations officer.

On the topic of the labour relations officers, I find it strange that the role of these functionaries in the Public Service has lately been the subject of so much debate. I see that it will again be addressed in this conference. I am aware of the Public Service Commission's report on this matter. My view is that persons in this field of activity are employed by the employer and paid by the employer to assist and advise the employer. Employees are assisted in labour relations matters by shop stewards and the employer has in most, if not all sectors, agreed to allow full-time shop stewards – paid for by the employer – to assist employees. For labour relations officers to attempt to play both sides of the fence can only lead to difficulties. To advise an employee against the employer just to be told by the employer to act on its behalf against the very employee, clearly leaves the officer

in no-mans land. There will be distrust in such an officer from both sides. Obviously this does not mean that a labour relations officer cannot advise an employee on procedural issues. If the title "labour relations officer" in the labour relations environment equates to "neutral" and "independent" the title is obviously not appropriate for Public Service circumstances. I believe that this matter should be settled as soon as possible so that there is no uncertainty amongst these functionaries as to what their role should be.

Programme director, it is laudable that labour relations also sees itself playing a role in halving poverty and unemployment by 2014. I believe that this conference should take note of the President's State of the Nation Address as well as the Minister of Finance's budget speech. Both placed emphasis on sectors identified for growth, *inter alia* the South African Police Service, Education and the Health Services.

Let me conclude with the words of the President "... the message that our collective experience communicates to all of us is that, working together, we can and shall succeed in meeting the common objective we have set ourselves as a nation – to build a better life for all ..."

Colleagues let us not loose focus and let us not waiver in giving effect to our Batho Pele principle "We belong, we care, we serve".

Ladies and gentlemen, use this opportunity to learn through participation and debate. This conference should be a legacy to the future let's make it an annual event!

2.2 CONFERENCE OBJECTIVES: MS ODETTE RAMSINGH

OBJECTIVES OF THE FIRST BIENNIAL PUBLIC SERVICE LABOUR RELATIONS CONFERENCE CO-HOSTED BY THE PUBLIC SERVICE COMMISSION AND THE PSCBC

Minister Fraser-Moleketi, Prof Sangweni, Chairperson of the Public Service Commission, Mr Edwin Molahlehi, Chairperson of the Public Service Co-ordinating Bargaining Chamber, distinguished guests and colleagues.

As the Director-General of the Office of the Public Service Commission it is not with a small measure of pride that I welcome you to this first Public Service Labour Relations Conference jointly hosted by the PSC and the Public Service Co-ordinating Bargaining Council. The Conference is an important vehicle through which sound labour relations in the Public Service will be promoted through the sharing of knowledge and ideas. It is our intention to make this Conference a biennial event.

We have all the key role-players in labour relations in the Public Service assembled here and as you would note from the programme, a very diverse list of speakers. I trust that you will use this opportunity to network with one another and actively participate in debating on the topics that will be presented. We may not in all instances be in agreement on issues but through this partnership and the dialogue generated we will take labour relations to a higher level.

In pursuance of the theme of the Conference, ***Knowledge through Dialogue: Harmonising Labour Relations in the Public Service***, we would like to achieve the following objectives:

- To harmonise labour relations in the Public Service through dialogue on various pertinent issues.
- To provide an opportunity for stakeholders to debate the latest trends pertaining to labour law and labour relations in the Public Service.

- To encourage interaction between and among labour relations practitioners (both employer and labour representatives) and other stakeholders in the field of labour relations in the Public Service.
- To create a platform for the establishment of partnerships locally, regionally and internationally.

In addressing the Conference objectives the PSC and PSCBC has attempted to be as holistic as possible in identifying sub-themes. Through the sub-theme, ***institutionalised dialogue systems to promote sound labour relations***, the Conference will reflect critically on the journey that collective bargaining has taken in the Public Service and on the structures and conditions that impact on collective bargaining.

Labour relations is not practiced in a vacuum and the impact of human resource management practices on the promotion of sound labour relations cannot be ignored. Through the experience of the PSC and PSCBC in dispute resolution it has become quite apparent that certain human resource practices, if not appropriately applied, are major contributors to public servants being aggrieved.

The sub-theme dealing with the ***strategic positioning of human resource management to support the promotion of sound labour relations***, will therefore unpack the role and impact of human resource management on labour relations.

It is unavoidable in an institution as labour intensive as the Public Service that individual and collective disputes arise from time to time. It is for this reason that dispute resolution mechanisms have been purposefully designed and implemented by the PSC and PSCBC emanating from their respective mandates. Through the sub-theme on ***dispute resolution as a requirement for sound labour relations***, we will reflect on the challenges involved in resolving disputes in the Public Service.

By its very nature the management of discipline is an area that is highly contentious and that impacts significantly on the employer and employee relationship. Procedures designed for the management of discipline must therefore be applied with circumspect and with due consideration of fair labour practice. The imperatives of managing discipline will be dealt with through the sub-theme dealing with the ***effective management of discipline as a prerequisite for sound labour relations.***

As this country moves to consolidate and build on the major achievements that it has made since the advent of democracy the impact of issues that affect labour peace and therefore impact on growth and development cannot be ignored. The PSC and PSCBC found it relevant for this conference to reflect on the ***role of labour relations in halving poverty and unemployment by 2014.*** In addressing this very important topic, the Conference will attempt to provide a view that focuses on what the state as employer and organized labour can do separately and jointly to contribute to growth and development.

The five sub-themes, as mentioned, form the five sessions of the conference. During each session there will be three plenary presentations followed by four commissions for which the delegates had to register this morning. After each plenary presentation there will be a short period allowed for engagement on the topic. During the Commissions more time is allocated for in-depth engagement. Please note that the presentations are not provided in hard copy. Instead a CD with all presentations that have been received will be provided to you on Tuesday. A journal with some of the key papers delivered at this Conference will also be compiled after the Conference.

I trust that all participants will emerge from this conference with a broader but also more in depth understanding of the challenges facing labour relations in the Public Service and that you will be in a position to share and use this valuable information to the benefit of your respective organizations.

3. SUMMARY OF PRESENTATIONS

3.1 MONDAY SUB-THEME 1: INSTITUTIONALISED DIALOGUE SYSTEMS TO PROMOTE SOUND LABOUR RELATIONS.

3.1.1 Plenary Topic: Evolution of collective bargaining and social dialogue

The journey to partnership: Assessing collective bargaining in the South African Public Service over the last 10 years **(Mr Ebrahim Khalil Hassen).**

In 1996 the key bargaining event was that parties entered into a multi year agreement including an agreement on the grading system and pay progression. In 1999 conflict arose which led to a strike. The Government unilaterally implemented a wage increase. The following key bargaining events took place from 2000 onwards: a single year agreement followed by a multi year wage agreement, including restructuring processes, linking wages to inflation and a commitment to increase jobs.

The key restructuring processes had successes, e.g. GEMS, as well as failures e.g. performance and pay progression, while some processes are ongoing e.g. agreement with PSJS.

The key outcomes were defined by salaries, employment and personnel expenditure. Salaries showed good increases across the board in nominal terms, the wage gap has decreased from 1996 to 2006 and Public Service wage negotiations set a benchmark for other sectors. There was a 15% decline in employment from 1996 to 2006 and the total budget expenditure is growing faster than the personnel expenditure.

For this bargaining round the underlying causes and responses were macroeconomic dimensions, delivery challenges, black economic

empowerment and globalisation. This would require the parties establishing a long term strategy for the Public Service and form a partnership. The challenges to achieving this would be the very absence of a long term strategy and too much going into salary negotiations (the agenda needs to be streamlined). The conflict in the current bargaining round could be an opportunity to look at these points.

**Collective Bargaining and Social Dialogue in the Public Sector:
Benchmarking South Africa
(Mr Evance Kalula).**

The common features of the public sector include:

- a structured central and local government, which might include parastatals;
- separately regulated from the private sector;
- security services are excluded from collective bargaining;
- remain the biggest employer; and
- women are under represented.

The contextual and regulatory framework include:

- Constitutional protection of freedom of association which is usually refined by lesser legislation;
- Not all Public Service workers enjoy full organisational rights;
- Glaring differences between countries with full collective bargaining and social dialogue rights and those with varying restrictions (cf RSA, Nigeria and Senegal Vs Lesotho, Mozambique and Zimbabwe);
- Collective bargaining and social dialogue follow unionisation/freedom of association patterns; and

- Collective bargaining outcomes related to dispute resolution patterns e.g. essential services restrictions

South Africa is widely recognised as a positive benchmark in collective bargaining and social dialogue. This is due to the following factors:

- developed rapidly from democratisation in the 1990s;
- dedicated bargaining structures within the Public Service (about 1 million workers covered with comprehensive reach in terms of collective bargaining issues and about 12 collective bargaining agreements per annum and average of 180 days devoted to negotiations over wages and condition of employment);
- success in synchronising collective bargaining with government budgetary outlay;
- joint mechanisms on transformation, employment practices and socio-economical development;
- widely recognised as striving to follow ILO ideals but inexplicably only ratified Convention 144, not 151.

The ILO has emphasised Collective Bargaining and Freedom of Association as a central feature by issuing a number of conventions such as #87, #98, #151, #159, #154, #91 and #144.

There are three approaches to dialogue in the public sector, and these are:

- legislative determination;
- executive determination with ad hoc formal consultation (which is preferred by ex-British colonies colonial countries; and
- full fledged collective bargaining, which is on the increase (information sharing is an important part of this approach).

New challenges for trade unions in collective bargaining and social dialogue.

(Mr Elium Biyela).

The challenges facing collective bargaining and social dialogue are:

- use of legislation at an operational level;
- allocation of funds by the Minister before negotiations begin;
- active participation by trade unions at NEDLAC;
- inefficiency of disputes handled in the public sector bargaining council;
- late or non-implementation of settlement agreements;
- bottle neck in reviews;
- collective bargaining v collective begging;
- restructuring of the workforce, increasing casualisation and expanded informal sector;
- increase in unemployment, privatisation of the Public Service and poverty;
- restructuring, unemployment, and poverty lead to a decrease in union membership which weakens trade unions;
- underemployment in the Public Service due to lower salaries;
- individualisation of labour relations, senior management in the Public Service fall outside the bargaining council;
- brain drain, the Public Service is losing too many skilled workers;
- trade unions cannot adapt to changes in the market which leads to weak representation; and
- loss of leadership of the trade union to the private sector.

The way forward for trade unions would be to:

- become truly independent from political parties, governments and employers;
- deepen internal democracy;
- formulate sound alternative responses and proposals;
- develop leaders amongst members;
- increase resources within the trade unions;

- concerted efforts to unify the voice of workers on crucial issues; and
- minimise hostilities between trade unions.

Comments raised by delegates

- Minimum wage has increased over 100% from 1996 to 2006.
- National budgetary process – Parliament does not have the power to amend the budget process.
- Public Service need to increase job creation year on year by 3%.
- Trade unions are perceived to be collective begging rather than collective bargaining.
- Budgeting and collective bargaining process needs to be streamlined.
- Food inflation must be considered when dealing with wage increases.

Is there a duty to bargain in the public sector? The implications of the SANDU cases for the Public Service.
(Prof Halton Cheadle).

The objective of this presentation is to review the legal framework for collective bargaining in the public sector in the light of the latest decisions of the SCA. This will be looked at in the context of International law, Constitutional law and the Labour Relations Act.

International Law

- ILO Convention 98 –
*“Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for **voluntary** negotiation between employers or employers’ organisations and workers’ organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements”.*

This Convention has been ratified by South Africa and was relied upon by the Constitutional Court and the SCA in the SANDU matters.

- ILO Convention 154 –
“*Measures adapted to national conditions shall be taken to promote collective bargaining’ the aims of which include-
making collective bargaining ‘possible for all employees’ and establishing ‘bodies and procedures for the settlement of labour disputes...to contribute to the promotion of collective bargaining’ ”.*

This Convention has not been ratified by South Africa, but was used by the SCA in the SANDU matter.

- The emphasis is on a *voluntary* approach to collective bargaining. This means:
 - Employers and employees can choose their bargaining representatives;
 - Employers and unions can choose their bargaining partners;
 - Employers and unions can choose what is to be bargained and at what level.
- Applying the above to the State as an employer means that:
 - The State cannot impose a union on the public sector;
 - The State can establish a collective bargaining framework for the public sector;
 - How can the State comply with its duty to take measures to promote collective bargaining and refuse to bargain?

Constitutional Law

- Section 23 of the Constitution:
Every trade union, employer organisation and employer has the *right to engage in collective bargaining*. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).
- Section 23 does not impose a duty to bargain
 - (*SANDU v Minister of Defence (1) (SCA)*)

- Unjustified restriction on bargaining matters contravenes section 23
 - (*SANDU v Minister of Defence (2) (SCA)*)
- The Constitutional Court held that soldiers may belong to a trade union, and disputes arose over the employer's and employees' conduct giving rise to three high court applications, all involving the question of whether there is a constitutional duty to bargain. One judgement held that there is no such duty, two held that there is. These judgements all went on appeal to the SCA.
 - In SANDU (1) the Court held that there is no constitutional duty to bargain. In arriving at this decision it looked at international law, our constitutional history and legislative history.
 - In SANDU (2) the Court held that there was an unjustifiable limitation on the right to engage in collective bargaining i.e. the State failed to justify the limitation.

Labour Relations Act

- Labour Relations Act establishes a voluntarist framework for collective bargaining.
- Section 35 of the LRA establishes the PSCBC, and its Constitution states:
 - Clause 3 objectives - to negotiate and bargain collectively to reach agreement on matters of mutual interest
 - Clause 4 powers - to negotiate and conclude collective agreements
 - Clause 16 - negotiation procedure
- Permitted bargaining matters under the LRA are socio-economic interest of workers and matters of mutual interest.
- Section 37 gives the PSCBC power to establish bargaining councils in any sector, and to determine its jurisdiction.
- Refusal to bargain disputes typically include the refusal to recognise or establish a bargaining council, withdrawal or recognition or resignation from a bargaining council and disputes over the appropriateness of bargaining units, bargaining levels or bargaining subjects.
- Section 64(2) provides for advisory arbitration of refusal to

bargain disputes.

Conclusion

- The public sector bargaining regime in the LRA is constant with both South Africa's international law and constitutional law obligations.
- The State's obligation to bargain arises not from any constitutional right but from the establishment of the PSCBC in section 37 of the LRA and the PSCBC's Constitution.
- The obligation to bargain does not give rise to a judicial remedy to compel bargaining.
- The obligation is enforced through the exercise of the right to strike or lockout on the substantive dispute and compulsory arbitration of the substantive dispute in essential services.

Comments raised by delegates

- This whole issue is currently before the Constitutional Court.
- There are procedures in the LRA governing what happens when one party refuses to bargain.

Finding the ideal approach to wage negotiations: Multi-term agreements v annual wage negotiations, what are the benefits and disadvantages?

(Prof Manie Spoelstra)

There are frequent negotiation problems between management and unions. These include:

- Framing – this determines how you act and what you do during negotiations. A problem solving frame is preferred to an adversarial frame. Typical frames are to minimize losses, seek joint gains, to win this time, to promote myself, to convince them we're right and they're wrong and to explain things they do not understand.

- Communication – the effectiveness of communication is influenced by selective Listening, semantic problems, perceived status, culture and prejudice, value differences, time and timing and new negotiators.
- Opposing stances – different expectations;
- Power plays;
- Distrust; and
- Attribution.

The benefits of annual wage negotiation are:

- Only one crises per year weaknesses stay hidden;
- time for mandates;
- strategy;
- organization;
- easier budgeting and administration;
- joint 'national' approach; and
- legal simplicity.

The weaknesses of annual wage negotiations are:

- only one huge event per year;
- what do we disclose v what not to disclose;
- continuous caucusing;
- uncertainty about members' and management's expectations v strategy;
- distrust/oppositional stances; and
- communication problems.

The multi-term negotiations benefits are:

- Other issues;
- Partnership;
- Understanding;
- Time;

- Continuity;
- Involvement; and
- Negotiations

The multi-term negotiations weaknesses are:

- Time/productivity;
- Internal politics;
- Procedural debates;
- Insignificant issues;
- Fabricated issues; and
- Administrative and communication demands.

Negotiations are influenced by:

- Bargaining principles;
- Confidence presentation techniques;
- Verbal and non-verbal communication;
- Handling conflict;
- Creativity/financial/legal knowledge;
- Persuasion: changing attitudes and opinions;
- Information collection/dissemination;
- Personality strength/weaknesses;
- Deployment of power;
- Closing deals;
- Dealing with the media;
- Multi party/groups/meetings ; and
- Preparation/strategy.

Commentary and questions raised by the delegates:

- Why does it take so long for parties to reach an agreement?
- The presentation has not touched on the difference between multi term and ordinary wage negotiations.

- What advice can you give in addressing collective bargaining and collective bargaining.
- Which is the best method of wage negotiations, annual v multi-term?
- Government must have an incentive for Labour in order for them to go the multi term route.
- Do multi term negotiations provide an increase or adjustment, and how does CPIX impact on this increase or adjustment?
- What are the international trends in terms of either annual or multi term negotiations?
- How do we engage with one another and harmonise before positioning?
- How do we address issues of inflation in the next 4 years?
- One can't say that multi term negotiations are better than annual negotiations. In multi term agreements, there should be an element of flexibility to allow for the cost of living as the CPIX as determined does not correspond with the cost of living. A single term agreement addresses growth, more time is spent on negotiations and you can come back next year and try again.

Evaluating conditions for successful dialogue and constructive negotiation.

(Prof Tayo Fashoyin)

Social dialogue facilitates peaceful process of policy change, particularly in transition economies and countries undergoing economic reform. Experience across countries worldwide had shown that tripartite cooperation between government, employers and labour has brought about orderly and peaceful resolution of major labour market challenges that have the potential of undermining national development effort.

For most of African countries, the machinery for consultation on labour, social and economic development issues are in place. In several countries,

institutionalized social dialogue, set up either by administrative directives or, as in most countries of Southern Africa, through the legal framework, are in place to facilitate consultation, negotiation and information sharing on key issues of economic and social policy that affect the labour market. Such consultation includes bipartite relations between workers and employers, or between either of the two and government. At national level, tripartite social dialogue has been established to address labour market issues and broader issues of the economy that impact on the labour market. Across Africa, bipartite and tripartite arrangements have greatly facilitated periodic consultation among the key players over major labour and socio-economic development issues.

The following challenges facing effective and sustainable social dialogue, particularly at national level in most African countries are:-

- Government's unwillingness to engage the social partners, namely employers and workers, in meaningful dialogue. The lack of the will to consult and negotiate, and to do so faithfully breed distrust, and denies cooperation among the tripartite partners on how to deal with some of the pressing social and economic challenges in the country.
- A narrowly defined mandate of social dialogue institutions which confines them to "labour issues", thus excluding key stakeholders.
- The absence of clearly defined procedural route for approving decisions and their implementation.
- The lack of technical and organizational support services to carry forward the work of the social dialogue institution.

The legal framework for institutionalized social dialogue prescribes the institutional arrangement for social dialogue. This legal foundation is a common trend that characterize tripartite consultation throughout the region. The South African National Economic Development and Labour Council Act of 1994, which created the NEDLAC, is uniquely a departure from the common approach of the legal framework across the countries. Apart from serving to introduce a

legal framework to govern the labour market, NEDLAC has served as a forum for addressing broader issues of macroeconomic nature that impact on the functioning of the labour market, such as issues of economic growth, trade, public finance and international competitiveness.

The critical role of an institutional framework is for meaningful and constructive engagement of the tripartite partners in social dialogue on social and economic development issues. The merits of institutionalised social dialogue derive from the fact that it provides incentives for the social partners to channel their demands and concerns in an organised, orderly and peaceful approach to problem-solving. Social dialogue is useful for achieving peaceful process of policy change through tripartite cooperation. Social dialogue promotes trust, cooperation and consensus building around key social and economic issues. Mechanisms for tripartite consultation on labour, social and economic development are in place in most countries.

Institutionalised social dialogue allows stable mechanisms for resolving differences that might otherwise lead to disruptive industrial conflict and social upheaval, and in turn adversely affect productivity, competitiveness and overall national development.

In conclusion:

- Social dialogue, when it is faithfully pursued, brings about social partnership.
- It is a means for achieving labour market governance and its contribution to governance at the national level.
- It defuses the resistance of vested interests towards the national economic policy.
- Social dialogue helps channel the energies of stakeholders towards national development goals.
- Social dialogue ensures that public policy is responsive to the needs of the economy and its stakeholders by enabling the stakeholders to

debate or contribute to policy, or otherwise ensure that their voice is heard.

- Social dialogue institutions, involving the major actors in the community, have provided an important forum for discussion of economic and social issues by facilitating stable labour relations which are essential to investment and an environment for promotion of productivity and overall growth and development.
- Social dialogue contributes to good governance and strengthens democracy, promotes accountability and transparency, increases trust between government and stakeholders and gives credibility to public policy.

Bargaining arrangements at departmental level: What is the impact and effect of collective agreements?

(Mr Frikkie De Bruin)

Formal Collective Bargaining in the Public Service is a relatively new phenomenon - The PSCBC was established in 1995. An analysis was done of the Pre-2002 and Post-2002 Collective Bargaining arrangements within the Public Service. GPSSBC used as a case study of the chambers and the impact and effect of collective agreements.

Challenges facing Chambers:

- Acknowledgement of the Constitutional Right to Collective Bargaining:
 - Allowing for a conducive environment
- Role clarification:
 - Co- Management vs. "watch dog" principle
 - Shop Steward vs. Management
- Capacity building:
 - Negotiating is a skill
- Identifying matters of mutual interest versus policy matters:

- Confusion created by PSCBC Res. 3/1999
- Understanding the basis of other legislation:
 - Employment Equity Act
 - Basic Conditions of Employment Act
 - Skills Development Act
- Uniformed interpretation/ application of agreements reached on Central and Sectoral level
- Impact of “One Public Service” concept:
 - Assessing of centralised versus decentralised bargaining
 - Amendments to Public Service Act
- Revision of Resolutions establishing and governing Chambers:
 - Jurisdiction of Chambers- Executing Authority

Chambers is a new phenomenon in the Collective Bargaining arena and due to the challenges faced, it is often regarded as “talk shops” without any real impact, subsequently no substantial collective agreements is reached on “bread and butter” issues within the competency or jurisdiction of the Chamber.

3.2 MONDAY SUB-THEME 2: STRATEGIC POSITIONING OF HUMAN RESOURCE MANAGEMENT TO SUPPORT THE PROMOTION OF SOUND LABOUR RELATIONS.

3.2.1 Plenary Topic: Promotion of labour relations through effective human resource management.

Managing diversity and employment equity: Challenges and best practice.

(Mr Jimmy Manyi).

Managing diversity is more than just looking at race and gender. It includes the perception of these factors e.g. the notion held by white people that nothing will happen if a black person is not involved.

The purpose of the Employment Equity Act is to achieve equity in the workplace by:

- Promoting equal opportunity and fair treatment in employment through elimination of unfair discrimination; and
- Implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups to ensure their equitable representation in the workplace.

This presentation focussed on trends involving the three trends involving the first three upper occupational levels, namely Top, Senior and Middle Management.

- Reason for this is that this is where designated groups are most under-represented.

Effective Human Resource Management: Occupational Health and Safety within the Public Service.

(Ms Fazeela Fayers)

Occupational Health and Safety in the Public Service is governed by the following legal and policy frameworks:

- Occupational Health & Safety Act No 85 of 1993 (OHS)
- COID Act No 130 of 1993
- DPSA – HRD Strategy 2002-2006
- PSCBC – Resolution 8 of 2001

Some of the criticisms of the above legal and policy framework are:

- OHS Act does not deal with the role of trade union representatives in OHS processes;
- Does not deal with the role of trade union representatives in OHS processes;
- OHS Act, pins monitoring and enforcement with DOL only, and negates the use of dispute mechanisms associated with the LRA;
- Labour is only represented at the Compensation Commission and nowhere else, under COID;
- The role of Bargaining Councils is limited;
- The DPSA-HRD Strategy of 2002 – 2006 failed to consider OHS, COID and OHS management;
- Proposed DPSA–HRD Strategy of 2007 – 2010 addresses OHS under Employee Wellness, but it would be imperative that this be allocated capacity and resources in line with its requirements;
- PSCBC constitution needs to create structures and mechanisms that deal with matters affecting working conditions which are not governed by collective bargaining processes. Rights issues strengthen working conditions and should be the business of Bargaining Councils as well.

Employers and employees have certain duties in terms of OH&S:

- Employers
 - Heads of Departments in the Public Service have OHS liability
 - Provide and maintain safe and healthy workplaces
 - Enforce necessary health & safety measures
 - Provide Information & training to employees and safety reps.
 - Deal appropriately with mandatories, contractors liabilities etc.
 - Issues of volunteers, learners and those outside the definition of an employee are crucial.
 - Criminal liability – fine or imprisonment.

- Employees
 - Employees must take precaution to work safely
 - Cooperate with employer on OH&S
 - Obey Health & Safety Rules
 - Report unsafe and unhealthy situations
 - Must not misuse anything provided by employer

The case studies below highlight the challenges faced in managing occupational health and safety:

- 2005 – Pretoria Academic Orthopaedic Department;
- Challenges faced by workers in the health sector – 2007;
- Challenges facing Social workers in the social sector;
- Caregivers ,volunteers and learners are compromised.

Proposed Solutions to the conference

- Set up a collaborative task team to address the following issues;
- An audit of current Public Sector Compliance with all elements of OHS; Standard protocols and policies that guide the Public Service on OHS;
- A strategy for OHS For the Public Service;
- Sector specific protocols and guidelines dealing with OHS;

- PSCBC to create mechanisms to deal appropriately with matters affecting working conditions which are not governed by bargaining e.g. OHS;
- Accelerating training of Management and Safety Committees as an urgency;
- Partnership approaches to OHS, consider support to programs that unions run that have benefit for the employer agenda;
- Strengthened risk reduction programmes for the Public Service;
- Mechanisms that accelerate Compensation and relief to employees who have suffered injury and loss;
- Engineering and other mechanisms that reduce Occupational Hazards & risks; and
- National & Provincial Monitoring for OHS

The management of performance in the Public Service: Addressing Challenges relating to performance assessments and award systems. (Ms Odette Ramsingh)

- *"Despite the elaborate and effective systems to manage performance that has been put in place in the Public Service performance management is the major cause of grievances in the Public Service. This primarily is because key aspects of performance management are neglected".*
- Performance assessment is regarded as a painful task and employees approach it with suspicion.
- The overall objectives of performance management can be defined as follows:
 - To align organisational and individual goals;
 - To foster organisation wide commitment to a performance-oriented culture;
 - To develop and manage the human resources needed to achieve organisational results;

- To identify and address performance inefficiencies;
- To create a culture of accountability and a focus on customer service;
and
- To link rewards to performance.

Prior to the implementation of the new performance management system, very little attention was given to the actual performance outcomes. The intended objective of the current performance management system should facilitate the assessment of both individual performance and organisational effectiveness. However, in practice the reward side of performance management is over emphasised and results in dissatisfaction and the lodging of disputes. These disputes arise as implementation of the system does not necessarily follow from having a framework in place, unless there is a conscious effort to ensure the implementation is effective.

Based on an analysis of a random selection of grievances submitted to the PSC, the aggrieved parties' grievances are mostly concerned with the final outcome of the assessment process.

The findings of the PSC study on performance management indicated a number of concerns across all levels of employment.

The core elements of the system of performance management in the Public Service are the same for senior management services and employees below senior management services. However, there are procedural differences in the application of the system. If the performance assessments of senior managers are not dealt with effectively they will have a rippling effect on the manner that performance is managed at lower level throughout a department.

It would not be an exaggeration to assert that employees' performance is currently managed in an inequitable, unfair and unprofessional manner, and many employees are not altogether sure of what is expected of them,

either in terms of objectives or in terms of standards, or both. Most of the blame must rest with Senior Management; however Public servants must take responsibility for their performance and careers.

Top managers should set the example by instilling a culture of performance management and reaping the rewards thereof

Individual public servants also have responsibilities to ensure the effective implementation of performance management and the avoidance of disputes.

The staff support components of a department, in particular Human Resource Management and Labour Relations must support and facilitate the application of the performance management system.

Addressing current challenges relating to the filling of posts and retention in Public Service.

(Prof Richard Levin).

The general feeling is that there is strong competition between private sector and Public Services for skills. It has been asked whether the State has the capacity and resources to deliver on socio-economic issues, and given the emphasis on the State role in growth and development, does the State have the necessary skills to achieve the objectives. A number of key challenges have been identified:

- DPSA Personnel Expenditure review 2006 showed all occupations in the Public Service are remunerated in a single wage structure;
- The pursuit of internal equities wages is not competitive;
- Different remuneration levels to compensate, for example, scarce skills;
- High levels of vacancies in some departments;
- High turnover rate in certain sectors;
- Private sector perceived to remunerate better, even though the

Public Service remuneration compares favourably, especially at levels below middle management;

- Mismatches between supply and demand of skills;
- Strong demand impacts on the ability of the Public Service to actually recruit staff;
- Public service has a shortage of skills in certain sectors;
- Employment Equity and Affirmative Action, while essential, have exacerbated the problem, competency must be considered first;
- The process of recruitment and retention of staff is lengthy and often by the time the applicant is offered the position, they have accepted another one elsewhere;
- Delays in filling posts results in inter-departmental transfers;
- Various studies and practices at departmental level are not properly integrated or aligned with service levels;
- The interview process is flawed;
- The requirements of the post are not properly defined;
- At a departmental level there is no system to monitor and measure effectiveness of recruitments;
- The ability to retain staff should not be hinged on remuneration only, other factors such as heavy workloads, management relationship within the organisation, enthusiasm for the job and advancement within the organisation must be considered;
- The physical environment, particularly in the outlying areas, must be looked at;
- There is little or no motivation for employees to provide a better service and to remain in the Public Service;
- Powers for individuals in the department need to improve;
- Staff must be allowed to articulate ideas around working conditions;
- Regarding the skills shortages and high vacancies in the Public Service, look at national internal recruitment before external recruitment.

- There is an open employment system in place, introduced by the Human Resources management framework in 1999. This means all vacancies should be advertised before they are filled, open competition means stability in the Public Service;
- The departments have complained to the DPSA that management is promoted too soon.
- About 35% of employees leaving a certain department have been promoted to other government services;
- The job evaluation system is inconsistent and there are different salaries for the same jobs;
- Department agencies take employees.

In order to address these challenges, a number of solutions have been identified to position the Public Service as an employer of choice and to improve the stability of the Public Service. These include:

- An occupation specific dispensation to attract and retain skilled employees;
- Unique salary structures per occupation must be implemented;
- A uniform grading system to eliminate previous problems;
- Aligning remuneration with the market;
- Career path specialists can earn salaries above those of managers, but not managers themselves;
- Possible introduction of a retention bonus;
- Funds could be made available to improve the situation of health workers and educators;
- Ways to empower competition need to be considered, for example, an employee may be required to complete a year's probation before being promoted to the next position;
- Recruit centrally for transverse occupations;
- Deploy experts;
- The use of non-monetary incentives for management to stay in a

particular position;

- Ensure adequate resources;
- Create a culture of ownership;
- Challenging work;
- Rewarding good work;
- Providing sufficient opportunity for growth and development;
- Strengthen the role of HR managers – reposition the HR function in government;
- Talent search and management;
- Competency frameworks must be developed for management;
- Cabinet has agreed that competency assessments will become compulsory by 2008;
- Training centre to attract and retain staff;
- Learnership and internship programmes;
- The interview system must be regulated;
- Look at the reasons given for leaving departments;
- Decentralisation of HR management is needed in the Public Service, but this was implemented into a vacuum;
- Departments are unprepared to assume policy making powers;
- Lack of capacity;
- Lack of department structures;
- Departments are spending about 97% their personnel budget but vacancies are around 20%.

In order to achieve stability in the Public Service, government agencies need to pay on the same scale, competency levels need to be instituted i.e. exams should need to be passed before promotion, HR must be strengthened, centralised database on sms competencies should be implemented, employees need to know how they are making a difference in the department and they need to feel appreciated, remuneration needs to be competitive and existing challenges need to be taken into account.

In conclusion, currently we do not have the necessary skills in the country, and we do need to face these massive challenges head on to develop the required skills.

Commentary raised by the delegates and questions and answers.

- There is no coordinated approach to ascertain high number of vacancies, each department is responsible for ascertaining this themselves.
- Public Services need to look at why such high staff turnover, need to also look at factors other than remuneration.
- Why are teaching colleges closing all over the country, but we still need nurses and teachers? The issue of overcrowding in the existing facilities was also raised. Currently the issue of reopening training colleges is before Cabinet.
- Particular occupations such as engineers are moving out of the Public Service into the private sector. There is a big commitment to implement a Single Public Service but the big problem of remuneration needs to be addressed and stabilised.
- A lot of SETAs have been set up using a lot of money. How do the Public Servants or departments benefit from these SETAs? The performance of SETAs have been disappointing, there has been much more success around quality assurance standards, etc. There are not many learnerships, so the benefit is not as tangible as one would like it to be.
- There has been no approval for centralised job grading as yet, so there is no need to move towards it yet. It will assist in stabilising the Public Service in terms of a more creative and lucrative remuneration framework.
- Regarding the whole issue of attracting foreign, skilled workers, are there mechanisms in immigration allowing quotas and we don't know the impact. The whole issue of skills transfer of JIPSA, using retired professionals and the like are part of the high level strategy. There has been no real concerted implementation beyond the local government sector.

- There is no excuse for having approximately 53000 temporary teachers employed.
- The speed at which change is taking place is too slow. We have to see what is affordable in the timeframe, a more comprehensive approach must be found.

The role of Employee Assistance Programmes in addressing employee wellness, including managing the effect of HIV and AIDS in the workplace.

(Dr Norman Maharaj)

An EAP is a confidential short-term counselling service for employees with personal problems that affect their work performance. EAPs are largely employer driven and preceded the advent of the HIV/AIDS epidemic. The onset of this epidemic created a greater sense of urgency as well as the need for a coordinated, well structured response.

In 2000 the MPSA launched the Public Service Workplace HIV and AIDS programme, and Resolution 8 of 2001 of the PSCBC supported HIV and AIDS and STD workplace programmes and as part of a broader wellness management programme. These programmes are aimed at addressing:

- prevention
- counselling, care and support
- education;
- resources and leadership
- creating a non-discriminating environment
- protection of confidentiality; and
- monitoring and evaluation.

The Public Service regulations were amended so that it is mandatory for all HODs to implement, assign or delegate responsibility to sms member and to

allocate adequate resources and apply minimum standards. The GEPF was improved to allow for orphans, pension, funeral benefits and re-defined spouse.

The critical success factors of the policy are:

- absolute guarantee of confidentiality;
- compassionate guidance; and
- adequate information in all language.

Other standards include:

- senior management commitment and leadership;
- adequate budgets and resources and where possible, to establish partnerships;
- sufficient efforts to destigmatise and remove all fears of discrimination;
- decisive action against breaches;
- regular awareness, education and counselling programmes;
- active promotion of VCT;
- peer education, training and counselling;
- integrated, comprehensive services with a focus on health and wellness;
- and
- good M&E with follow up.

The value of monitoring and evaluation provides an understanding of utilisation rates, demographic profiles, service utilisation and flagging high risk situations and problem trends such as relationship issues, depression and stress, addictive behaviour, organisational issues, suicide, child and family care and money management.

EAP's have come a long way in the Public Service and has been well accepted by the recipients. The evolution into comprehensive integrated health and wellness centres bodes well.

Commentary raised by the delegates

- There is concern around the allocation of funds and resources.
- Education and involvement of senior management with regard to EAP programs.
- Alignment of EAP benefits in the Public Services.
- The drivers of EAP are not passionate about the programme.
- The “buy in” of line managers to EAP recommendations.
- Lack of VCT programs.
- EAP models must be customised to ensure that they are workable in the Public Service.

The effects of temporary employment through contracts, learnerships and internships: casualising of the workplace or increasing the skills base?

(Prof Stella Vettori)

Under the common law, a fixed term contract automatically comes to an end on the expiry date unless the parties have expressly or tacitly agreed to renew it. See *FAGWU & Others v Lanko Co-operative Ltd* (no citation given).

The Doctrine of Quasi Mutual Assent says that where no intention can be imputed to a party, it may still be possible to successfully argue that the other party, by his/her conduct, created a reasonable expectation that he/she intended to be bound by the term or even entire contract sought to be implied. Reasonable expectation is a subjective belief but must be objectively determined. See *Coop & Others v SABC & Others (HC)* (no citation given).

The difference between estoppel and quasi mutual assent is that the essentials of estoppel are that the person relying on estoppel was misled, the person authorised to act on behalf, such belief was reasonable and the representee acted on this belief to his/her detriment or prejudice; while the essential

factors of quasi mutual assent are that the person was misled and the belief was reasonable.

In *Erasmus & others v Senwes Ltd & others* (no citation given) the court held that:

"...the concept of reasonableness is so settled in our law, that it can readily be used, and is used as an objective standard that is justiciable by a court..."

The surrounding circumstances, implied term of mutual trust and confidence – *naturalia contractus* and the constitutional imperative on the courts to promote the spirit, purport and objects of the Bill of Rights when developing the common law. (*see NK v Min of Safety and Security and Grobler v Naspers Bpk en ander* (no citation given)) influence what is reasonable.

Under the common law the remedy is that the aggrieved party must be put in the same position he/she would have occupied had there been no breach. This means that the aggrieved party can claim specific performance and/or damages depending on the circumstances i.e. judge makes value judgement.

In terms of the LRA s 186(1)(b) states that an employer's failure to renew a fixed term contract on the same or similar terms in circumstances where the employee has a reasonable expectation that the contract should be so renewed, constitutes a dismissal. Factors indicative of reasonable expectation include:

- Significance of contractual stipulations, agreements and undertakings by employer;
- Practice or custom in regard to renewal;
- Availability of the post;
- Purpose or reason for concluding fixed term contract;
- Nature of employer's business; and
- Length of service.

There are two viewpoints expressed by the Courts of whether s186(1)(b) would apply in respect of permanent employment. In this regard see *Dierks v UNISA* and *Auf der Heyde v University of Cape Town* and *McInnes v Technikon Natal*. Remedies in terms of LRA are re-instatement, re-employment or compensation.

The Constitutional right to fair labour practices is not defined, consequently the decisions of the old Industrial Court and Labour Court are informative. In terms of remedies, like the common law, and unlike LRA, there is no cap on damages.

Irrespective of basis of claim, the determinant of existence of reasonable expectation is application of principles of fairness or reasonableness, and the remedy determined by application of same principles. Therefore the law protects fixed term employees, however, employers will continue to take advantage of fixed term employees not because the law does not provide them with protection but because of the general ignorance of such employees with regard to their rights.

Are contract workers, learnerships and internships a new form of Casualisation?

(Mr Rudi Dicks).

There are definite trends showing a growth in casualisation, but not necessarily through internships and learnerships, Data shows that modest training is taking place but the levels of absorption of trainees into formal employment is low. Rather those exiting the formal labour market normally re-enter as an informal worker. There is no significant progress in improving skills of unemployed.

The challenges faced are:

- Learnerships – there is a trend for employers to rather take in unemployed or lower-skilled persons on a learnership because of the payment they receive from the relevant SETA;

- Institutions are experiencing difficulties in finding industries willing to take trained students for work placement without a financial incentive;
- Students cannot complete their experiential learning component (which is essential to meet all the requirements of the particular qualification) they cannot graduate;
- Laws and institutions are primarily geared towards formal employment;
- Insufficient penalties against non adherence;
- Decreasing numbers, quality and support systems of inspectorate at DoL; and
- Growing employment through labour brokers

However, there is some protection in the LRA and BCEA to protect atypical workers. There is also ongoing engagement at Nedlac on atypical work on setting minimum standards, the regulation of labour brokers, improved enforcement and inspectorate, "One stop shop", legislative scan and audit of existing legislation and whether they are sufficient and ongoing Jobs and Poverty Campaign.

Commentary raised by delegates

- Role of SETA's – Trade union and employer commitment
- Plight of growing class of voluntary workers
- British rail example of outsource and then insource

Role clarification and mutual respect: Understanding the role of the labour relations practitioner, human resource practitioner and the shop steward.

(Mr Squire Mahlangu).

Sound human resource management practices lead to an effective workforce; the need for strong shop stewards in departments to ensure that problems/grievances of employees and other labour related matters are dealt with as speedily as possible and the basic values and principles which



govern the Public Service should underpin the work of the human resource management practitioner and the labour relations practitioner. Some of the issues raised in the paper can be found. Further detail can be found in the Public Service Commission reports namely :

- Report on assessing the role of Labour Relations Officers;
- Dispute authority report (2004);
- Report on the abilities of Depts. to deal with Devolved Authority (2004);
- Survey on the handling of appeals (2002);
- Report on the management of suspension in the Public Service; and
- Career management in the Public Service (2000).

A department employing high achievers with a commitment to better Public Services would reinforce the Batho Pele principles of a courteous, accessible, informative, responsive and effective service with a culture of strong pursuit of excellence. One of the greatest managerial challenges of our age is the motivation of people to be creative and thus more productive in servicing people. World-wide, significant changes have been occurring in the value systems and attitudes towards work. As a result workers today are less docile and therefore less likely to passively accept the unilateral edicts of management and more likely want to have a say in decisions that may affect them. It is imperative that there should be a comprehensive guide to good employment practice in every department.

The public must have trust in the integrity and effectiveness of our Public Service. Peter Drucker in the (The Practice of Management, 1955) states that "an effective management must direct the vision and effort of all managers towards a common goal". This is an idea that is fundamental to human resource management. If the Public Service is to achieve integrity then the collective efforts of all departments must be harnessed so that one rotten potato should not be able to spoil the whole bag.

"The White Paper on Human Resource Management addresses itself to

human resource management, namely personnel provisioning, utilization and termination of services, certain aspects of human resource development and human resource management culture”.

The mission of Human Resource Management in the White Paper is stated as:

"Human resource management in the Public Service should become a model of excellence, in which service to society stems from individual commitment instead of compulsion. The management of people should be regarded as a significant task for those who have been charged with that responsibility and should be conducted in a professional manner".

This is said to be underpinned by the following basic values and principles from the Constitution:

- A high standard of professional ethics must be promoted and maintained.
- Efficient, economic and effective use of resources must be promoted.
- Public administration must be development-oriented.
- Services must be provided impartially, fairly, equitably and without bias.
- People’s needs must be responded to, and the public must be encouraged to participate in policy-making.
- Public administration must be accountable.
- Transparency must be fostered by providing the public with timely, accessible and accurate information.
- Good human-resource management and career-development practices, to maximize human potential, must be cultivated.
- Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.

These values and principles are further expounded upon through:

- The White Paper on the transformation of the, Public Service which sets out a comprehensive framework for change, in line with these constitutional principles;
- White Paper on Education and Training in the Public Service;
- The White Paper on Service Delivery (Batho – Pele); and
- The White Paper on Affirmative Action.

It is extremely important to note that the White paper on HRM places the responsibility for Human resource management in the hands of the line managers. All others are expected to advice line managers.

Armstrong in, (Personnel Management Practices, 1987) states that human resource management (HRM) is an approach to the management of people, based on four fundamental principles. They are:

- *"Human resources are the most important assets an organization has and their effective management is the key to its success.*
- *Organizational success is most likely to be achieved if the personnel policies and procedures of the enterprise are closely linked with, and make a major contribution to, the achievement of corporate objectives and strategic plans.*
- *The corporate culture and the values, organizational climate and managerial behaviour that emanate from that culture will exert a major influence on the achievement of excellence. This culture must be managed, which means that continuous effort, starting from top, will be required to get the values accepted and acted upon.*
- *Continuous effort is required to achieve integration- getting all the members of the organization involved and working together with a sense of common purpose."*

The role of the Human Resource Practitioner:

- To provide line managers with professional advice and guidance;
- To ensure that human resource management practices are linked to the strategic objectives of the organization;
- To evaluate and monitor adherence to sound human resource management practices;
- To administer the day-to-day personnel functions e.g. advertising, entry and termination of services etc;
- To monitor the implementation of a representative workforce especially the employment of people living with disabilities; and
- To assist managers with human resource management practices such as recruitment, performance management, career management, training and development, conduct and grievances and terminations.

The role of the shop steward:

According to General Public Service Sector Bargaining Council (Resolution 03 of 2001) the duties of the full time shop steward (FTSS) are as follows:

- Assist and represent employees in grievance and disciplinary proceedings;
- Monitor the employer's compliance with any law regulating terms and conditions of employment and any collective agreement binding on the employer;
- Report any alleged contravention of any law regarding terms and conditions of employment and any collective agreement binding on the employer to the employer and the representative trade union; and
- Co-operate with the employer to ensure that the process of service delivery is uninterrupted, high productivity levels are maintained, services are rendered to the general public efficiently and effectively and there is order in the Public Service.

Departments with effective shop stewards must function in ways different from those that have no shop stewards at all. The presence or absence of a labour union (and shop stewards) affects recruitment and selection, training,

career planning and management, organization development, job redesign, employee assistance programs and compensation/benefit programs.

The role of the Labour relations practitioner:

- Advise line managers on labour relations policy;
- Liaison and negotiations with unions;
- Monitor the performance of line managers and other staff departments to ensure that they conform to agreed labour relations policies, procedures and practices.;
- Interpreting the collectively negotiated agreements;
- Advice on grievances;
- Promote the resolution of problems/grievances at the lowest possible level; and
- Ensure harmonious relationships with unions.

In the PSC, the role of the labour relations officers in the Public Service:

- LRO's are seen as disciplinarians or catalysts for management.
- LRO's represent the employer during conciliation and arbitration proceedings at the CCMA and bargaining councils.
- LRO's are actively involved in the disciplinary processes and not just in a consultative capacity.

A sound Human Resource Management environment includes effective communication. Effective communication between human resource management practitioners, labour relation practitioners, shop stewards and line managers helps to avoid distortions and misunderstanding through clear, precise and accurate interpretations of human resource management procedures and practices. The presence of Shop Stewards in the work place is important. It enables managers to manage even in chaotic unprotected strike situations. Effective shop stewards are pivotal to the quick resolution of employee grievances and ensuring that agreements reached in bargaining councils are adhered to.

Human Resource Development and training helps to curb people from becoming overconfident, through opening new insights to problem solving. The various reports by the PSC indicate that much needs to be done on career planning, on devolved authority, on the management of grievances and dispute resolution.

Human resource management practitioners must ensure that they promote contextual clarity on human resource management matters by line managers, foster cultural diversity, ensure accountability through clear lines of responsibility and provide employees with training. Effective human resource management practices will avoid layoffs at all costs while allowing natural attrition. Employees should never be disciplined if their activities are consistent with departmental goals i.e. mistakes may occur in the interpretation and implementation of policies so we must encourage managers and employees to raise concerns and indicate any errors they may have made in carrying out government policies.

3.3 TUESDAY SUB-THEME 1: EFFECTIVE DISPUTE RESOLUTION AS A REQUIREMENT FOR SOUND LABOUR RELATIONS.

3.3.1 Plenary Topic: A critique of dispute resolution mechanisms in the Public Service.

Managing grievances in the Public Service: The role of the Public Service Commission.

(Mr Admill Simpson)

- Within the employer / employee interface there are many occurrences that lead to differences and ultimately to grievances.
- Such grievances must be managed in such a way that it does not impact negatively on the operational functioning of a department but also takes into consideration the principle of fair labour practice.
- From a fair labour practice perspective there must be consistency in which all grievances are handled, therefore the need for a structured framework for the management of grievances.
- The PSC has been tasked to provide a structured framework to deal with these grievances impartially and without fear, favour or prejudice.
- The PSC's key constitution responsibility is to promote sound labour relations.
- The mandate of the PSC is derived from s195 and s196 of the Constitution, and defined by s11 of the Public Service Commission Act 1997, and s35(1) of the Public Service Act 1994.

The Grievance Rules were gazetted in 2003 and key principles are that the grievance must be resolved by the employer where possible; a Department must have finalised its investigation of the grievance before it may be referred to the PSC; and the referral must be done under the hand of the applicable executing authority only.

- PSC has identified labour relations improvement as one of its six key result areas.

- The Process of the grievance
 - All relevant documentation must be submitted with the grievance.
 - The grievance is captured and assessed.
 - The PSC then considers the merits of the grievance and makes a recommendation to the executing authority.
 - The executing authority has a discretion to implement the recommendations.

- Challenges in managing grievances:
 - Non-compliance to the Grievance rules;
 - Incomplete documentation;
 - Issuing summonses in terms of s10 of the Public Service Commissions Act 1997 to summons Heads of Department to obtain departments' cooperation in providing outstanding documentation or additional information.
 - The PSC will continue to improve its own systems for the consideration of grievances. It is currently conducting a review of the Grievance Rules and will also be issuing a Report on Grievance Trends in the Public Service.

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Managing grievances in the Public Service: The role of the PSCBC and its Sectoral Councils.

(Ms Shamira Huluman)

Section 35 of the Labour Relations Act 66 of 1995 (LRA) requires that collective bargaining structures for the public sector be established. A central bargaining council was created, the Public Service Co-ordinating Bargaining Council



(PSCBC), as most issues are determined centrally. In an endeavour to create a more structured collective bargaining environment, the PSCBC (in terms of section 138 of the LRA) designated four sectors for the establishment of sectoral bargaining councils. The following Sectoral Bargaining Councils were subsequently established:

- Safety and Security Sectoral Bargaining Council (**SSSBC**)
- Education Labour Relations Council (**ELRC**)
- General Public Service Sectoral Bargaining Council (**GPSSBC**)
- Public Health and Social Development Sectoral Bargaining Council (**PHSDSBC**)

One of the main objectives of all Public Service bargaining councils are to:

- prevent and resolve labour disputes within the Public Service;
- perform dispute resolution functions as outlined in section 51 of the LRA;

The definition of a grievance in the PSCBC Resolution 14 of 2002:

"means a dissatisfaction regarding an official act or omission by the employer which adversely affects an employee in the employment relationship, excluding an alleged unfair dismissal."

The LRA does not define grievance at all and defines "dispute" in section 213(e). Like the LRA, the PSCBC constitution and the PSCBC Dispute Resolution Procedures do not mention the word grievance, but only refer to disputes.

Therefore if grievances are perceived to be limited to the internal departmental processes prior to the referral of the dispute to a bargaining council, do the PSCBC and Sectoral Councils have any role to play in the managing of grievances in the Public Service?

The scope of the Resolution applies to employees who are employed by the State and who fall within the registered scope of the PSCBC. In terms of the Resolution disputes about the interpretation an application of this Resolution may

be referred to the Council's dispute resolution procedure. Furthermore the Council will monitor the implementation of the Resolution.

The Role of the PSCBC regarding grievances in the Public Service deals with disputes regarding the implementation an interpretation of the Resolution.

An analysis of these types of disputes referred to the PSCBC in the period 1 April 2006 to 31 December 2006 highlights the following:

- all of these disputes pertain to the departments not adhering to the time frames set out in the Resolution;
- in most cases the employer did not provide a response to the employee's grievance;
- in the cases where the employer provided an answer to the employee once the case had been referred to the PSCBC, the employee withdrew the dispute.

Another role the PSCBC has to play in the management of grievances is to provide mechanisms for the prevention of disputes. Para 12 of the PSCBC rules allows the PSCBC secretariat to become more actively involved in the process of dispute resolution in an attempt to resolve disputes at the earliest stage possible, saving cost and time for all involved.

The PSCBC has identified various projects and initiatives that may assist parties with a number of issues ranging from conflict management to the proper preparation for cases and presentation of evidence.

Notwithstanding the above grievances will arise and it is therefore imperative to ensure that properly structured procedures guide the processes to be followed, these can be found in Schedule 1 of Resolution 14 of 2002.

The requirement that the grievance must constitute an unfair labour practice as defined in the LRA limits the type of grievances that may be referred for

resolution in terms of the dispute resolution procedures of the Public Service bargaining councils. The result of this is that disputes that do adhere to the definition (e.g. disputes about promotions, demotions, benefits etc.) are referred to the relevant Sectoral Bargaining Council as an unfair labour practice dispute, while disputes that do not fall within the definition of an unfair labour practice are referred to the PSCBC as an interpretation / application of Resolution 14 of 2002 dispute on the basis that the employer did not respond to the grievance.

The Role of Sectoral Bargaining Councils

An interesting question is whether an employee may refer a dispute (grievance) to a bargaining council if the internal (Departmental) procedures as per Resolution 14 of 2002 have not been exhausted. This specific question came before the court in the case of *Minister of Safety and Security v Safety and Security Sectoral Bargaining Council and Others* (2001) 10 LC 1.11.17.

- The court held that there is no general principle, in terms of the LRA, or otherwise, providing that, before an employee may refer a dismissal dispute, all internal proceedings such as appeals, (if provided for) are to be exhausted first, even though it may be disadvantageous and undesirable to do so in some circumstances.
- The court confirmed further that where provision is made for an appeal procedure in a collective agreement, the same considerations should apply, unless the agreement **expressly** precludes the invocation of the dispute mechanisms provided for in the LRA or Regulations.

With regard to grievances in the Public Service each bargaining council has a different requirement. At the PSCBC and SSSBC the internal procedures must be exhausted before referring a case, at the ELRC a dispute may not be referred before the grievance procedure has been invoked and allowing at least 30 days – 45 days for the resolution thereof, and the PHSDBC and GPSSBC does not have a specific requirement that the internal procedures have to be exhausted before referring a case.

A critique of dispute resolution mechanisms in Public Service bargaining councils, with an emphasis on the role of the employer.

(Adv Dawie Bosch)

- How does Public Service compare to other forums?
 - Conclusion – relatively few disputes are referred in the Public Service.
- In Public Service: ULP much more prevalent than in CCMA, but less common than in other Bargaining Councils.
- Improvements over past years:
 - Councils have developed administrative capacity
 - High standards of service (with some concerns)
 - Professional panels of dispute resolvers.
- Councils generally are coping with workloads
- Fine-tuned dispute procedure, and adopted dispute resolution rules in most of the councils.
- The dispute procedures of Parties generally seem to have confidence in referring cases.
- Role of the State as employer
 - State reps have contributed to the successes of dispute resolution in the Councils.
 - Focus here is on issues that need improvement.
 - Role of the State in conciliation
- Linked to a bureaucratic approach to representation?
- Non-compliance by the State as employer with awards
- Over-zealous in taking awards on review?
- Sometimes representatives are not properly prepared for conciliation
- Wider scope for role of Public Sector Councils?
- Conclusions
 - Significant work has been done on dispute resolution in the Public Service
 - Relatively effective in addressing disputes referred to councils
 - That benefits parties significantly

- State needs seriously to review its approach to dispute resolution
- Processing of reviews needs urgent attention
- Address specific issues raised above

Dispute prevention strategies – what are the options?

(Ms Tanya Venter)

“Resolving may be more apparent, like erecting the house itself, but preventing, though less visible, is more fundamental, like pouring the foundation on which both the house and roof rest” – William Ury, The Third Side

South African Workplaces, including the public sector, are still caught up in an endless mode of adversarialism and mistrust. There is a need to understand the nature of disputes to prevent and/or reduce these disputes in the future.

The Public Sector disputes

- “If you can’t measure it, you can’t manage it” applies as much to dispute resolution as it does to other fields.
- PSCBC provides comprehensive and accurate statistics about the dispute resolution function.
- Settlement rate is disturbingly low at 10%.

The role of Conciliation

- The process is effectively used to reduce the impact of the dispute
- The LRA promotes settlement above adjudication
- The approach and importance of conciliation needs to be revisited.

The objective of dispute prevention is to prevent disputes from developing, resolve any disputes as early as possible and to focus on relationships and needs, rather than issues.

Suggestions for dispute prevention are

- Build a culture of relationship and tolerance
- Manage conflict before it manifests into dispute
- Identify the issues that are leading to the conflict
- Deal with the conflict immediately
- Keep the process informal
- Deal with the conflict at the source
- Open up communication
- Problem solve a Team
- Follow up on issues.

Suggestions that can be explored to reduce conflict:

- Establish procedures - To establish & agree coherent procedures before conflict arises as soon as possible; preferably not during a dispute.
- Joint workplace planning - To jointly survey the year ahead, to agree on actions plans to strengthen relationships, before or after the bargaining round.
- Relationship building - To identify and agree on solutions to problems in the working relationship before or after the bargaining round
- Pre-bargaining orientation workshop - To share relevant information before the start of negotiations e.g. economic data, state of the industry, trends etc, to modify expectations, to agree on the process for the negotiations before bargaining starts
- Rapid resolution procedures - To provide quick access to dispute resolvers (mediators & arbitrators) if an emergency arises that threatens to disrupt the negotiations e.g. a dispute about the interpretation of a collective agreement, at any time an incident happens that gives rise to a dispute
- Chairing negotiations - To ensure that the bargaining process proceeds in an orderly fashion in terms of the agreed procedures, during the bargaining process
- Mediating deadlocked negotiations - To help parties to reach agreement

when they've deadlocked on substantive issues during the bargaining process – before or after the dispute has been referred to a PSCBC

- Dispute scorecard- To quantify the conflict and dispute experience in terms of issues and costs for each department & do a comparison to identify "hotspots", periodically e.g. annually, quarterly etc

Commentary from delegates

- Time frames not adhered to for conducting disciplinary and grievance hearings
- Use of independent chairperson, especially in sensitive cases
- Need for buy-in to procedure of the hearing and confidence in the outcome
- Employer representative must be given mandates to settle cases if appropriate
- Need for conflict management training
- Need for service delivery in the environment of discipline

Analysing the effect of recent judgements on promotion in the Public Service.

(Mr Sean Molony)

The Promotion of Administrative Justice Act, 2003 (PAJA) was promulgated:

"To give effect to the right to administrative action that is lawful, reasonable and procedurally fair and to the right to written reasons for administrative action as contemplated in section 33 of the Constitution of the Republic of South Africa, 1996; and to provide for matters incidental thereto."

In *Bato Star v Minister of Environmental Affairs and Tourism*, the Chief Director Marine and Coastal Management Department of Environmental Affairs and Tourism and Tourism Certain Rights Holders (Unreported case

CCT27/03), the Constitutional Court held that:

"Courts' power to review administrative action no longer flows directly from the common law but from PAJA and the Constitution itself."

PAJA provides for the review of substantively unfair administrative action, though administrative action which materially and adversely affects the rights or legitimate expectations of any person must also be procedurally fair written reasons for the action. Administrative action affecting the 'public' (as defined in s1 of PAJA) is also provided for in s4.

Section 6 provides for judicial review on a number of grounds including bias, the reason for the action was motivated by an ulterior purpose, or the action itself was not rational. Section 8 lists the remedies available under the Act, and it is noted that these must be just and equitable.

The main thrust of this presentation is when does PAJA apply to labour disputes? There is apparently confused jurisprudence from the Labour Court, Supreme Court of Appeal and High Court on this issue. It has been held that issues where PAJA will apply include the review of arbitration awards in the CCMA (but not to awards delivered subsequent to bargaining council arbitrations, or rulings made in CCMA proceedings), suspension from duty without emoluments and transfer of an employee. It is interesting to note however, that the transfer of an employee has also been held to not fall within PAJA. The demotion of an employee is also not covered by PAJA.

It is important to note there is a distinction between appointment and promotion. Promotion is the *process of selection of the most suitably qualified employee from a pool of candidates* and the appointment of that *employee* to a position of *greater status, responsibility, authority and remuneration* than previously enjoyed by the employee in the organisation. In this regard see the following cases:

- *Department of Justice v CCMA & Others;*

- *Jele v Premier of the Province of Kwazulu-Natal & Others*
- *Department of Justice v Commission For Conciliation, Mediation & Arbitration & Others.*

There are four causes of action:

- Unfair Labour Practice
 - The 'elements' of an unfair labour practice are the employment relationship, an act or omission the employer committed such as promotion, this act or omission must be unfair, causation and there must be a remedy.
- Employment Equity Act
 - The reason the applicant was not promoted was because he or she was unfairly discriminated against.
- The review of a promotion dispute brought in terms of section 6 of PAJA
 - *Grey's Marine Hout Bay (Pty) Ltd and others v Minister of Public Works and others* highlights that at the core of the definition of administrative action is the idea of action "of an administrative nature" taken by a public body or functionary.
- The application for reasons for failure or refusal to promote an employee in terms of section 5 of PAJA.
 - There are two elements to this cause of action – there must have been administrative action and the applicant has not been given the reasons for the administrative action.
 - *Kiva v Minister of Correctional Services & another [2007] 1 BLLR 86 (E)*
 - Had the applicant exhausted the internal remedies before launching these proceedings?
 - Should the applicant have joined as respondents the other applicants for the post for which he had unsuccessfully applied?
 - Does the applicant have a right to reasons in the circumstances, and, if so, whether the two documents provided by the respondent contained these reasons?

For administrative action to be substantively unfair, four elements must be present. These are:

- There must have been administrative action.
 - Is the decision to promote a public servant administrative action?
 - *Dunn v Minister of Defence & Others (2005) 26 ILJ 2115 (T)*
 - *Kiva v Minister of Correctional Services & another [2007] 1 BLLR 86 (E)*
 - But see *Transnet Ltd & others v Chirwa [2007] 1 BLLR 10 (SCA)*
- It must be a decision made under an empowering provision. An empowering provision is defined in s1(vi) of PAJA to mean “a law, a rule of common law, customary law, or an agreement, instrument or other document in terms of which an administrative action was purportedly taken”.
- The decision must have been taken by an organ of State when exercising public power
- The decision must adversely affect the rights of any person and must have a direct, external legal effect.
 - *Grey’s Marine Hout Bay (Pty) Ltd and others v Minister of Public Works and others*
 - *Kiva v Minister of Correctional Services & another [2007] 1 BLLR 86 (E)*

Procedurally fair administrative action

- “Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair” – s3(1).
- Each case will be judged on its merits.
- PAJA contains extensive procedural rights.

Conclusion

- Promotion disputes are not administrative action in terms of

PAJA because the LRA provides a cause of action in terms of section 186(2) in the form of an unfair labour practice

- However PAJA does apply to the reasons for the failure or refusal to promote as the LRA does not provide a cause of action for such a claim.

Analysing the effect of recent judgements relating to PAJA on the Public Service.

(Prof Marius Olivier and Mr Thembeke Ngukaitobi)

- PAJA – Promotions of Administrative Justice Act – Regulates the exercise of public power - The dispute has an external legal effect.
- The Common Law
 - A contract of employment is no different from a commercial contract
 - A contract is terminable on notice for breach. No right to a hearing. No requirement of a fair reason or fair procedure before termination.
 - Common law was altered by the LRA, 1956. The LRA created the right to fair labour practices. A dismissal had to be substantively and procedurally fair.
 - The LRA did not apply to public servants.
- AD ALTERS COMMON LAW: *Zenzile v Administrator Transvaal in 1991*
 - Three temporary hospital employees were dismissed summarily, and without a hearing, after participating in a work stoppage.
 - The Supreme Court set aside the decision to dismiss them.
 - The government argued on appeal that the contractual relationship between the administration and the employees was simply one of master and servant, governed exclusively by the common law of contract, and the employees' participation in the work stoppage had amounted to unlawful repudiation of their contractual obligation to work, which entitled their employer to dismiss them summarily.
- Decision of Appellate Division
 - The decision by the Administrator, a public functionary, was

- reviewable for breach of the audi rule
- *'One is here concerned not with mere employment under a contract of service between two private individuals, but with a form of employment which vests the employee with a particular status which the law will protect. Here the employer and decision maker is a public authority whose decision to dismiss involved the exercise of a public power.'*
 - A supreme Constitution takes hold and subsumes all law
 - The IC came into effect in April 1994. It introduced a new Bill of Rights. Common law derives its power from Constitution. The Constitution became the supreme law of the land. All law or conduct inconsistent therewith is invalid.
 - Shopping list of fundamental rights which included:
 - The right of *everyone* to fair labour practices
 - The right of *everyone* to fair administrative action
 - The LRA, 1995 fills the labour vacuum
 - Objectives:
 - Effective resolution of labour disputes
 - Orderly collective bargaining
 - Public servants fall within the scope of LRA
 - The *substantive right* not to be unfairly dismissed
 - s185 provides for the right not to be unfairly dismissed
 - s188 provides that a dismissal is unfair if there is no *fair reason* related to capacity, misconduct or operational reasons. There must also be a *fair procedure*
 - The *procedural right* to challenge an unfair dismissal
 - s191 requires an unfair dismissal dispute to be referred to a *bargaining council* or CCMA
 - An award of the BC is final and binding. No right of appeal
 - Limited right of review on circumscribed grounds (gross irregularity, misconduct of the commissioner and acting in excess of powers)

- LC has concurrent jurisdiction with HC in violations of the Bill of Rights
 - Two stages to resolve public sector dismissal disputes: conciliation and arbitration. LC was *the* forum for employment.
- Enter PAJA
 - To give effect to the constitutional right to fair administrative action
 - To provide for procedure to challenge administrative decisions
 - “Codified” common law grounds for review
 - Defines admin action: exercise of public power
- CC lays down jurisdictional ground rules: *Fredericks v MEC for Education, EC*
 - In 1994, DOE (EC) inherits a bloated civil service. It wishes to “restructure” the service to improve efficiencies. Enters into a collective agreement with trade unions. The agreement provides for the right of employees to apply for VSP. Teachers apply *en masse*.
 - Midway, the department realises that it cannot afford the cost of retrenchment. Decides to refuse further applications for VSP and “closes the door” on VSP’s.
 - Teachers apply to HC to review and set aside the decision to refuse the VSP’s. They allege breach of equality, administrative action and fair labour practices.
 - HC rejects the claim. No jurisdiction. LC has exclusive jurisdiction.
 - *The CC*
 - Nature of complaint is violation of a constitutional right
 - LRA does not exclude the jurisdiction of HC in disputes involving BOR violations even if they have a labour element such as a dispute about collective agreements
 - HC has jurisdiction
- Areas in which PAJA might apply in the public sector
 - Internal changes to operations / duties, e.g. shift system
 - Dismissals
 - Suspensions

- Promotions
- Benefits
- Transfers across the Public Service
- Internal operational changes
 - *SA Police Union v National Commissioner of the SAPS*
 - The National Commissioner decided to change the shift system of the SAPS from a 12-hour shift to an 8-hour shift.
 - The police unions argued that this was a unilateral amendment to terms and conditions of employment.
 - The Commissioner contended that it was an alteration of a work practice, permitted in terms of the prevailing collective agreement.
 - It was common cause that the Commissioner did not consult with the employees.
 - The union challenged the decision, relying on s 6 of PAJA.
 - Murphy J held that, although the SAPS is an organ of state, the Commissioner was not exercising a public power when he made the decision.
 - The court emphasized that there was nothing inherently “public” about the setting of work hours for the SAPS. Rather, this was an employment law matter, flowing from the commercial or private domain of labour relations.
 - Therefore, PAJA did not apply.
- Dismissals
 - *Popcru v Minister of Correctional Services*
 - Department dismissed more than 70 prison warders for participating in an unlawful strike
 - When confronted about their absence, all pleaded that they were sick
 - Given *audi* in writing. No dc hearing as required by collective agreement on discipline
 - Challenged dismissal in HC for breach of PAJA. HC held:
 - Decision to dismiss public official is admin action
 - Organs of state derive power from statute

- Power should be exercised in the public interest and not at whim of administration
- Decision is exercise of public power
- *Transnet v Chirwa*
- Employee dismissed for poor work performance
- HC reinstated her on the grounds that decision amounts to administrative action by an organ of state
- SCA split decision, bench of five judges
 - Two judges: Dismissal of a public servant is not administrative action: Per Mthiyane and Jafta JJA
 - Two judges: Dismissal of a public servant is administrative action: Per Cameron and Mpati JJA
 - One judge: perhaps it is admin action, but the scheme of the LRA and PAJA does not permit dual systems. Such claims can only be enforced at the LC. Per Conradie JA.
- Suspensions
 - Suspensions are probably not administrative action because they lack “direct, external legal effect”.
 - They are not final in effect.
 - Therefore, even if public sector dismissals may constitute administrative action, suspensions will not.
- Promotions
 - Unfair conduct relating to promotion constitutes an unfair labour practice in terms of the LRA.
 - The administrative law doctrine of “legitimate expectation” has been applied to public sector employees who are *not* promoted, in *PSA v Dept of Correctional Services*
 - The arbitrator held that by allowing employees to act for a long period in certain posts, it had given them a legitimate expectation that they would be promoted to those posts.
 - In *United National Public Servants of SA v Digomo*, the SCA held that it had jurisdiction to consider a challenge based on section

- 33 of the Constitution to a decision by the employer to set aside the promotions of 84 employees.
- This suggests that PAJA, too, will apply to non-promotions. See *Vika v Department of Correctional Services*
 - Do non-promotions affect rights? Do they have direct, external legal effect?
 - Benefits
 - Decisions by employers relating to benefits also fall within the terrain of unfair labour practices under the LRA.
 - For example, a decision regarding a medical aid scheme, retirement benefits and so on.
 - These decisions should be treated in the same way as alterations to work practices (e.g. the shift system in *Popcru*), i.e. should not be administrative action.
 - They have no “public” dimension, but are private, contractual, labour matters. But see *City of Johannesburg v Municipal Pension Funds*
 - Transfers across the Public Service
 - Transfers across the Public Service are regulated by the Public Service Act.
 - They therefore involve the exercise of public power.
 - It is more likely that these decisions will constitute administrative action. See *Nxele v Commissioner of Correctional Services*
 - Lessons learnt, opportunities missed and way forward for public sector dismissals
 - Dismissals, non-promotions and transfers across the Public Service may constitute administrative action. Suspensions, decisions relating to internal work practices and benefits probably do not constitute administrative action.
 - It is possible for a HC to set aside a dismissal for breach of the PAJA. The opposite is equally true
 - Where there is a collective agreement, it must be followed
 - Where there is no collective agreement, there must be a fair

process and a fair reason as required by the LRA's Code of Good Practice Dismissals

- Where it is not possible to comply with the collective agreement as it happened in *Popcru* comply with PAJA.

Analysing the effect of recent judgements relating to deemed dismissals in terms of section 17 of the Public Service Act (as amended) and sector employment legislation as well as the proposed changes in the Public Service Amendment Bill.

(Adv Empie van Schoor)

The termination of employment contract in private and Public Services is regulated by the application of LRA, the Public Services Act. And the employment contract. Section 186 of the LRA defines dismissal.

When an employee absconds from the workplace with no intention of returning, this constitutes a breach/repudiation of the contract by the employee. The employer has the choice of accepting the repudiation or enforcing the contract, therefore the termination is as a result of the employer's conduct. This was confirmed in *SABC v CCMA & Others (2001) 22 ILJ 487 (LC)*. On appeal, the Labour Appeal Court held that:

- desertion necessarily entails employee's intention no longer to return to work;
- *in casu* employee's failure to return to work did not amount to desertion; and
- consequently that disciplinary hearing was obligatory in terms of disciplinary code & that there was no reason why hearing could not be convened.

In *SACWU v Dyasi* [2001] 7 BLLR 731 (LAC), the Court held that

"In the case of desertion by an employee, the choice is not always

in fact real: For instance, when the employee deserts and cannot be traced, the employer has no practical choice other than to accept the repudiation. Where is no real choice, it can probably be argued that the employer did not terminate the contract."

Section 17(5)(a)(i) of Public Service Act states:

"An officer ... who absents himself or herself from his or her official duties without permission ... for a period exceeding one calendar month, shall be deemed to have been discharged from the Public Service on account of misconduct with effect from the date immediately succeeding his or her last day of attendance at his or her place of duty."

The distinction between dismissal and termination by operation of law must be made. In case of desertion, it is the act of employer that terminates contract and therefore this would constitute dismissal. If the requirements of s17(5)(a)(i) of Public Service Act, 1994 (PSA) objectively determined are satisfied, the employee services are terminated by operation of law, termination is not based on an employer's decision.

In *MEC, Public Works, Northern Province v CCMA [2003] 10 BLLR 1027* (LC) the court held that the employer's decision not to reinstate in terms of s17(5)(b) of PSA not dismissal as contract remains terminated by law as opposed to being terminated by act of the employer.

In *HOSPERSA & another v MEC for Health (2003) 13 BLLR 1242*, the Labour Court confirmed what the jurisdictional prerequisites for invoking s17(5)(a) of PSA are.

In *Motsamai V Department of Public Safety, Security And Liaison [2004] 8 BALR 977 (GPSSBC)*, the arbitrator held that employer's failure to invoke s17(5) until employee returned to work after five months and the fact that disciplinary enquiry was held and the right to appeal extended to employee,

indicated that disciplinary code had been used by employer rather than s17(5).

In *Phenithi v Minister of Education & Others (2006) 9 BLLR 821 (SCA)*, the SCA held that Court unanimously held that provision did not offend Constitution or LRA, and that section creates reasonable mechanism to infer that the employee had deserted when requirements of the provision are fulfilled and that there was no violation of employee's right to fair administrative action as there was no decision required by employer to bring provision into operation.

In applying s17(5) of the Public Service Act:

- Departments must comply with section 17(5)(a)(i) of PSA when employee has been absent without authority for period exceeding 30 days;
- Departments should make reasonable efforts to contact employee during 30 day period to ascertain reasons for absence & to inform employee that if he/she fails to obtain authorisation for leave during period of absence, his/her services will terminate in terms of section 17(5)(a)(i) on expiry of 30 day period;
- head of department may not authorise leave retrospectively after period ;
- Employee must be informed of discharge and of remedy in section 17(5)(b);
- When the employee returns to work at any time after 30 day period, bear in mind that he/she is in actual fact discharged from Public Service;
- However, he/she must be afforded opportunity to approach executing authority for reinstatement in terms of s17(5)(b) PSA; and
- Reinstatement decision is administrative decision and therefore subject to judicial review.

The proposed revision of abscondment provision in the amendment bill includes:

- Period of absence reduced from one calendar month to 10 working days [educators: 14 days]
 - Considerations- service delivery and associated costs

- Deemed resignation to exclude applicability of disciplinary procedures
- However, re-instatement procedure retained
- Proposed amendment accords with Supreme Court of Appeal judgment in ***Phenithi***-case
 - Dismissal by operation of law
 - Not in conflict with LRA and Constitution because hearing not totally excluded, i.e. re-instatement procedure
 - Objectives of provision are reasonable & justifiable

Commentary and questions by the delegates:

- Section 17 can be invoked on the expiry of 30 consecutive calendar days including weekends and holidays.
- Disputes arising out of s17 should not go to the bargaining council.
- By investigating the absence of the employee, the intention of the employee as to whether he or she intended to abscond can be determined by the employer.
- The motivation for the amendment from 30 days to 10 days is to bring the policy in line with the private sector.
- There is no prohibition on re-employing an employee who gave 24 hours notice.

3.4 TUESDAY SUB-THEME 2: EFFECTIVE MANAGEMENT OF DISCIPLINE AS A PRE-REQUISITE FOR SOUND LABOUR RELATIONS.

Plenary Topic: Managing discipline effectively in the Public Service.

The imperatives for effective management of discipline – a holistic perspective.

(Ms Urmilla Patel)

Research referred to in the paper shows there is a negative view of discipline on both the sides of the employee and the employer. There are several reasons for this:

- Human issues must be balanced with the economic imperatives of the organisation.
- Discipline has to operate within the legal framework
- The psychological dimension to the issue of discipline cannot be ignored.
- The requirement of fairness.
- If all of the above were considered, it would make for a healthy workplace environment and a holistic approach to managing discipline.

However, the changed and still changing nature of the workplace of today must be considered. This includes:

- internet abuse
- casualisation of labour
- outsourcing
- globalisation
- fixed-term contracts
- virtual office – employees telecommute or electronically commute
- Democratic workplaces or participatory management

To adopt a positive progressive and participatory approach to discipline with the aim of correcting behaviour the following approach is proposed:

- Effective discipline entails successfully controlling, managing and motivating the behaviour and actions of the employee.
- The objectives of effective discipline are to promote the health and safety of employees, protect company property, and to ensure steady production and adherence to legal requirements, thereby creating a pleasant working environment.
- To achieve this objective:
 - The reference check, orientation and induction must be sound to ensure that the employee understands the culture, values, expectations, structure and functioning of the organisation. This lays the foundation for discipline.
 - Contracts, policies and procedures are essential for effective management of discipline. These documents must be written in plain language and communicated to all employees. Some level of buy in by employee and union party participation in drawing up these documents is encouraged. This entrenches the principle of democratisation of the workplace.
 - Discipline should be fair but firm and the rules of natural justice must apply.

There is distinct and clear encouragement to employ informal, uncomplicated methods and procedures to discipline. The test for substantive fairness as defined must be taken into consideration. Avoid over proceduralising discipline. Some recent Labour Court cases illustrate this point. These are:

- *Semenya and Others v CCMA*
- *Highveld District Council v CCMA and Others*
- *Avril Elizabeth Home For the Mentally Handicapped v CCMA and Three Others*
- *Mwasa obo Nqaqula v Vodacom*

Some important points in conducting discipline are:

- Adopt progressive discipline;

- Securing documentation and keeping written records of disciplinary issues;
- Discipline should be finalised expeditiously;
- Supervisors and managers must be suitably trained;

Conclusion

Disciplining employees may not be a pleasant task; it does not have to be a painful, laborious process. Instead, the discipline process can be a valuable tool to help the employees and the organization achieve success.

Analysing the causes and remedies for delays in disciplinary processes.

(Ms Gina Barbieri)

When, where's and how's of Discipline

- LRA makes no reference to discipline taking place within a particular time period.

Onerous Procedures in Collective Agreements

- Resolution 1 of 2003, a collective agreement negotiated in the PSCBC, echoes principles endorsed by the International Labour Organisation – discipline should be “prompt, fair, consistent and progressive”.
- Fundamentally based on the criminal justice system
- The requirement of promptness as a requirement for fairness is reiterated in *Mhlangu v CIM Deltak (1986) 7 ILJ 346*. Subsequent cases have confirmed this and stated that the circumstances of each case needs to be considered in determining the reasonableness of any delay.
- The provisions of Resolution 1 of 2003 appear to have resulted in the antithesis of what was intended in terms of the Labour Relations Act, and indeed what is contained in item 4 of the Code of Good Practice, Schedule 8.

- Professor Halton Cheadle in his paper on over-proceduralisation presented to SASLAW in 2006 says that there is “merit in the argument that employers, consultants, lawyers, arbitrators and judges in over-emphasising the dismissal procedures, have all contributed to imposing an unnecessary burden on employers without advancing the protection of workers.”
- A very complex and detailed disciplinary process certainly contributes to the length of time it takes to initiate and finalise disciplinary action. The parties to the collective agreement should consider this when renegotiating the terms of the collective agreement.
- The Public Service disciplinary code and procedures does not allow for mediation prior to taking disciplinary action.
- The Gibbons Review published in March 2007 critically analyses the current dispute resolution procedures in Great Britain. This Review concluded that disputes are better resolved informally.

Rigid Application of Collective Agreements

- The content and rigid application of Resolution 1 of 2003 may contribute to the delays in discipline.
- Section 2.8 of Resolution 1 of 2003 suggests that the disciplinary code must be applied rigidly. And that a deviation from that would be considered procedurally unfair.
- In *Mafokosi and Mafube Municipality (2003) 12 CCMA 8.18.5*, the Court held that in considering whether a deviation from the procedure would amount to a procedural defect, was whether the employee was prejudiced by it.

Chairpersons’ Lack of Capacity

Where a chairperson lacks the ability to correctly and consistently apply the provisions of Resolution 1 of 2003, any argument which may be raised by the employee concerning procedural fairness may be skirted by the chairperson.

Chairpersons must be adequately trained to deal with procedural challenges.

While the Resolution requires discipline to be a line function, and that the chairperson be of a rank higher than the departmental representative, it does not prevent centralising the disciplinary function or using a chairperson from a different directorate. This would ensure a pool of highly skilled chairpersons equipped to deal with the procedure currently required in terms of Resolution 1 of 2003

Lengthy Disciplinary Hearings are due to the following:

- Obviously no time limit to the disciplinary hearing itself.
- Tendency to present too much evidence, indicating misunderstanding of the onus of proof required
- Use of sworn affidavits and eye witness testimony
- No time spent narrowing the issues prior to the disciplinary hearing

Investigation and Drafting Charges

- Procedures prior to charging employee and commencing disciplinary hearing contribute to the delay. These include:
 - Detailed investigations with misguided notion of investigating officer having to be convinced of misconduct
 - Poorly drafted charges requiring postponement of disciplinary hearing.

A critique of punishment v progressive discipline.

(Ms Gill Loveday)

Theories of punishment

- Absolute – punishment is used to restore balance. Retribution, while a manifestation for revenge, permits the offender to atone and restores balance in the legal order. However, the punishment must fit the crime.
- Relative – Punishment is a means to an end. There are more

than one purpose:

- Preventative – justifies capital punishment by preventing the perpetrator from committing more crime.
- Deterrence - Punishment used to teach the person a lesson so as to deter him from further offences. The community is generally deterred from committing offence by threat of possible punishment. There are criticisms of deterrence theory, for example, if the chances of being found out are small, the criminals more willing to take a risk so there must be a general and reasonable certainty that offender will be caught and punished.
- Reformative - Punishment used to reform offender to become law-abiding citizen. It is an idealistic theory, high recidivism – it is better to begin rehabilitation before individual commits offence.
- No Relative Theory can be used in isolation as it will lead to absurd results.
- Unitary – a combination of the above theories. Retribution still has important role to play but not in an absolute sense, the degree of punishment linked directly to the degree of harm caused by offence – if applied properly automatically combines deterrence and prevention.
- There are three considerations when imposing penalty, which are the offence, the offender and the interests of the community.
- There should be a healthy balance of the theories, one should not be over-emphasised at expense of the others. Each case must be judged on its own merits, but the punishment must remain consistent.
- The LRA Code of Good Practice utilises the Unitary Theory.
- Employer must punish offences fairly:
 - To satisfy workforce's natural need to see offences punished (retribution)
 - Penalty reasonably predictable (Code sets out offences and probable penalties (but never rigid)
 - to help prevent further offences (prevention)
 - to provide individual offender and workforce with reason to

- avoid breaking rules (deterrent)
- By punishing progressively in graduated steps – correction of behaviour not pure revenge - the penalty will fit the offence (reformative)
- Personal circumstances of offender taken into account (individualism of punishment (more progressive relative basis for punishment
- Avoidance of pure revenge by senior on junior – unlikely if clear guidelines in Code for managers exercising disciplinary powers, appeal or review procedures, grievance procedures

Are the codes and legislation for fair administrative procedure and ethical conduct by employees appropriate?

(Mr Peter Goss)

Various laws aside from the constitutional provisions make up fair administrative procedures:-

The purpose of the Administrative Justice Act, Act 3 of 2000 is to give effect to the right to “Just” Administrative Action that is lawful, reasonable and procedurally fair; the right to written reasons for administrative action; to promote an efficient administration and good governance and to create a culture of accountability, openness and transparency in public administration, in the exercise of a public power and in the performance of a public function.

Fair administrative procedures in terms of PAJA depend on the circumstances of each case which includes:

- Adequate notice of the nature and purpose of the proposed administrative action
- A reasonable opportunity to make representations
- A clear statement of the administrative action

- Adequate notice of any right of review or internal appeal, where applicable
- Adequate notice of the right to request reasons

The purpose of the Labour Relations Act, 66 of 1995 (as amended) is to advance economic development, social justice, labour peace, democratisation of the workplace through collective bargaining, employee participation and effective resolution of labour disputes.

The purpose of the Basic Conditions of Employment Act, 75 of 1997 (BCEA) is to advance economic development, social justice, to give effect to the right to fair labour practices and by establishing and making provision for the regulation of basic conditions of employment.

The purpose of the Promotion of Access to Information Act, 2 of 2000 (PAIA) is to give effect to the constitutional right of access to any information held by the State, any information that is held by another person and required for the exercise or protection of any rights.

The purpose of the Protected Disclosures Act, 26 of 2000 (PDA) is to provide for procedures for employees to disclose information regarding unlawful or irregular conduct by their employers or other employees and the protection of employees who make a disclosure.

The purpose of the Public Service Act, 103 of 1994 (PSA) is to provide for the administration and organisation of the Public Service, the regulation of conditions of employment through terms of office, discipline, retirement and discharge.

The definition of Ethical Conduct is the "... Standards of conduct which indicate how a person should behave, based on moral duties and virtues arising from principles or right and wrong".

In the PSCBC, the objective of the Disciplinary Code and Procedures for the Public Service (Resolution 20g 1999 & Resolution 1 of 2003) is as follows:

- Support constructive labour relations
- Mutual respect between employees and employer
- Ensure common understanding of misconduct and discipline
- Promote acceptable conduct
- Serve as quick and easy reference for application of discipline
- Avert and correct unacceptable conduct
- Prevent arbitrary and discriminatory actions by managers

The objective of the Code of Good Practice in Schedule 8 of the LRA is as follows:

- Protect employees from unfair arbitrary action
- Protect employer's right to expect satisfactory conduct and performance
- Employers must develop and communicate rules, policies and conduct standards and penalties and sanctions for breaches
- Encourage corrective and progressive discipline

The Code of Conduct for the Public Service states:

"The Code should act as a guideline to employees as to what is expected of them from an ethical point of view, both in their individual conduct and in their relationship with others. Compliance with the Code can be expected to enhance professionalism and help to ensure confidence in the Public Service."

"The primary purpose of the Code is a positive one, viz. to promote exemplary conduct. Notwithstanding this, an employee shall be guilty of misconduct, and may be dealt with in accordance with the relevant collective agreement if she or he contravenes any provision of the Code of Conduct or fails to comply with any provision thereof."

The common threads in legislation and codes are:

- Economic advancement
- Good governance/ethical conduct
- Transparency
- Progressive and corrective v punitive
- Employer rights to satisfactory conduct and performance
- Communication of rules and policies
- "Fair" administrative action
- Action in case of breaches

The threats include:

- Unethical conduct/serious misconduct e.g. corruption and fraud by managers, employees and other trading partners/stakeholders
- Risk of "prescribing" a limited form of ethical conduct
- Failure to act promptly/consistently fairly
- Lack of knowledge, training, education, general awareness
- Lack of accountability
- "Forum shopping"

The appropriateness of legislation and codes clearly covers the critical basis and it is necessary for improvements around:

- Training, education and general awareness which include the rights and obligations of the organisation, employees and managers.
- Prevention, by promoting ethical conduct
- Early detection, by encouraging whistle blowing
- Comprehensive investigation of breaches
- Early, speedy and consistent resolution
- Comprehensive remediation

Applying the appeals process effectively.

(Mr Randall van Voore)

The appeal procedure defined as “The best of both worlds”. It is however not a rerun of the disciplinary enquiry.

The difficulties are that Appeal officers are afraid to make a decision and there is a lack of compliance with the prescribed time periods.

In terms of the resolutions – Appeal are there to promote accountable conduct and prevent arbitrary/discriminatory action.

In dealing with appeals it is important to keep a paper trail as it is everything at the appeal stage, implement the appeal decisions immediately and reasons for the appeal outcome must be provided in all instances.

The employer must assess seriousness of the misconduct before disciplining and employee as it could be the subject of an appeal

Resolution 2 of 1999 as amended–

- Appeal must be transparent, the time periods must be complied with, clarity and certainty must be provided.
- The paper deliberated on the provisions in the resolution pertaining to appeals.
- Issue of whether appeal chairpersons must be senior to the disciplinary chairpersons – if not can it be challenged procedurally?
- Powers of appeal authority needs to be understood and implemented.
- 30 days to finalise the process
- Immediate implementation of the decision

There needs to be an effective management of the appeal process, in the following respects:

- Compliance with the process

- Consider having a Case Management Officer.
- Keep an accurate record!
- An appeal hearing 'if required' must be given by an appeal authority.
- Appeal officers must know how to deal with new/additional evidence.
- Procedural fairness must be emphasised.
- Important to give reasons- silence is not good enough!
- Appeal authority bound to make a decision – effect of political pressure and personal positioning.

Commentary raised by the delegates:

- Advice of labour relations to superiors must be supported
- In Education MEC makes the decision and no time periods
- If a decision by the MEC is pronounced upon the appeal in public – it affects fairness
- Labour relations should be brave to make a decision – do not compromise your self!
- Effect of senior making disciplinary decisions vs. Management prerogative to discipline
- Disciplinary processes are not to replicate the court process
- Fairness is generally the ultimate test
- If reasons not provided has an impact on fairness.
- 30 day time periods not complied – precautionary suspension falls away; issue of Condonation
- Self promotion should not be condoned – no need to obey an unreasonable instructions. Be professional.
- If DG is exercising an administrative function regarding the appeal not grounds to argue for bias – person must have taken a view on the matter.
- Laws of evidence applies
- Necessity for training of appeal authority
- Overhaul of the internal disciplinary processes needed to create efficiencies – de-bureaucratise

**The monitoring and interception of electronic communications:
Managing abuse v rights to privacy.**

(Mr Dave Loxton)

The employee's right to privacy is defined by s14 of the Constitution (as limited by s36) and the common law.

In *Bernstein v Bester NO 1996 2 SA 751 CC* the Constitutional Court held that:

"privacy is acknowledged in the truly personal realm, but as a person moves into communal relations and activities such as business and social interaction the scope of personal space shrinks accordingly".

This right extends only as far as those aspects of a person's life in which a legitimate expectation of privacy can be assumed.

Regulation of Interception of Communications and Provision of Communication Information Act, 70 of 2002 ("the Interception Act") – came into operation on 30 September 2005. As a rule of thumb, no person may intentionally intercept or attempt to intercept any communication in the course of its occurrence or transmission, except as provided for in the Act.

Communication is defined widely and includes direct communications such as actual speech, persons, in each other's presence, or indirect communications such as telephone calls, music, visual images, data or text which includes email.

Intercept refers to the acquisition of the contents of any communication by any means in order to make the contents available to a person other than sender or recipient and includes viewing, examining or inspection of the contents of any indirect communication.

There are various exceptions:

- Any person who is a party to a communication may intercept the communication;

- Unless the purpose is to commit a criminal offence;
- One of the parties to the communication has given prior written consent to such interception;
- Any person may, in the course of carrying on any business, intercept any indirect communication which relates to that business.

In terms of s47(2), any information obtained may only be used to institute criminal or civil proceedings or to conduct an investigation with a view to instituting criminal or civil proceedings. Does this mean that any information obtained cannot be used in a disciplinary hearing? Can an employer use evidence obtained by means of entrapment against an employee in a disciplinary hearing?

In *Cape Town City Council v SA Municipal Workers Union (2000) 21 ILJ 2409 (LC)*, the Labour Court adopted the approach provided for in section 252A of the Criminal Procedure Act and stated that the guidelines and parameters set out in section 252A should be applied in the context of an employment relationship. Section 252A distinguishes between conduct that goes beyond providing an opportunity to commit an offence, for example, the exploitation of human characteristics such as emotions, sympathy and friendship, and conduct which does not.

The courts and the CCMA have applied a two-pronged legitimate expectation test when considering whether the evidence obtained infringed the employee's rights to privacy in the workplace and is therefore admissible or inadmissible. This means that not only must the employee have had a subjective expectation to privacy regarding their communications but this expectation must have been reasonable when assessed objectively. In *Moonsamy v The Mailhouse (1999) 20 ILJ 464 (CCMA)* the Commissioner applied Section 36 of the Constitution in determining whether the evidence obtained was admissible. Admission of evidence obtained in alleged violation of employee's right to privacy as contained in Section 14(b) of Bill of Rights to prove misconduct – arbitrator having discretion to admit such evidence to resolve dismissal dispute: *Toker*

Bros (PTY) LTD and Keyser (2005) 26 ILJ 1366 (CCMA).

Our courts, the CCMA as well as foreign jurisdictions appear to be developing a more tolerant approach in respect of e-mail and internet monitoring. Courts tend to be more accommodating of employer monitoring of internet and e-mail activity. There appears to be less tolerance of the employee's right to privacy insofar as the use of e-mail and the internet is concerned. This may possibly be due to the enhanced ability to cause harm by means of electronic communications and the greater financial risk for the employer, without his knowledge.

Section 34 of the Prevention and Combating of Corrupt Activities Act 12 of 2004 read with Section 29 of the Financial Intelligence Centre Act 38 of 2001 places an obligation on an employer to report theft, fraud, extortion, forgery or uttering a forged document, involving an amount of R100 000 or more and/or money laundering to the police. Suspicion also to be reported to any police official. Any person who fails to comply with Section 34 is guilty of an offence.

Issues to be considered with naming and shaming:

- the company's potential exposure to defamation claims;
- the extent to which the company's conduct will impact on the employee's right to exercise their trade or profession without unlawful interference from others;
- the Protection of Personal Information Bill;
- Arguable, that publishing of list does not, on the face of it, go to the core of the private sphere of the individual's privacy. One's employment history is often disclosed and investigated when one moves from one job to the next;
- Where an employee consents to his name being put on the list and the manner in which the information will be used is clearly explained, then he may not bring an action against the previous employer for a breach of privacy;

- If the list is only accessible to companies within the Group, this circumscribes its scope and arguably limits the chances of there being an unjustifiable infringement of the right to privacy;
- There is a need to ensure that the common law and constitutional rights of employees are impacted upon as little as possible and that the impact is proportionate to the intended "public benefit" purpose;
- The list of the names of the "Name and Shame" ex-employees should only be accessible by the companies within the Group, to limit the extent of the "publication";
- Only the employees names and the facts of the termination of the contract and no comments should appear on the list distributed within the Group;
- Employees should be informed of the details of the "name and shame" policy and they should give written consent to their names appearing on the list in these circumstances, prior to distribution, preferably when they are appointed or when the policy is first introduced. The manner in which the list will be used and by whom, must also be made clear to the employee for this to constitute informed consent;
- To lessen the extent of any possible infringement of the individual's rights there should perhaps be a set period of time that an individual's name remains on the list;
- The previous employer or manager who may be contacted as a consequence of the list should ensure that the information s/he discloses is factually accurate, "true", relevant and in the "public benefit" at the time of disclosure.
- It is arguable that information regarding a dismissal which may still be taken on review or appeal or a criminal conviction of a lower court, which is subject to a review or appeal, should not be disclosed until it is a final, non-appealable judgment. The reason for this is that publishing such information may not be in the public benefit if it is later proved to be incorrect during review proceedings or on appeal.

- If the employee was dismissed due to a finding of misconduct for fraudulent conduct in a disciplinary hearing;
- Right to appeal the decision;
- information limited to fact that the employee was dismissed for misconduct, after a disciplinary hearing, which is not final and may be appealed;
- Employee dismissed for misconduct or convicted in criminal proceedings in a court or any other tribunal, which is not appealable;
- Factual information - employee dismissed; or found guilty of a specific charge at a specified date by a specified tribunal;
- If the employee still faces such a hearing, then only that fact should be conveyed.
- If the employee resigned merely under suspicion of misconduct, without a hearing or final judgment of misconduct by a court or any other tribunal, then the information should be limited to the fact that the employee resigned only.

The objective of the Protection of Personal Information Bill is to give effect to the constitutional right to privacy, it aims to promote the protection of personal information processed by public and private bodies. The Bill states that, "personal information must be processed –

- in accordance with the law; and
- in a proper and careful manner in order not to intrude upon the privacy of the data subject to an unreasonable extent."
- The new obligations may seem onerous for employers, but the principles embodied in the bill largely reflect a common sense approach in line with existing good practice

However, more stringent conditions apply in regard to information concerning an individual's religious or philosophical beliefs, race, political persuasion, health or sex life, trade union membership, or criminal record. Employers may wish to review their application forms and contracts of employment to ensure compliance with this bill.

It is evident that our legislation allows for the monitoring and interception of electronic communication in the workplace. The Court's approach to an employee's right to privacy in the workplace may in certain circumstances be influenced by an employer's ability to control the employee's conduct and the potential financial risk for the employer. South African case law on the issue of privacy in the workplace is lacking and is yet to be fully developed.

Commentary raised by the delegates

- Employer can discipline an employee for keeping and distributing pornographic material
- Employer has the right to retrieve information from employees PC
- Employees running a business in the workplace
- Employer has the ability to look into any illegal deductions from an employee's salary – loan agreements.

Managing poor performance in the workplace.

(Ms Yoza Bothma)

- The test
 - Poor work performance is the failure by the employee to reach and/or maintain the employer's performance standards. To successfully rely on poor performance the following needs to be established:
 - was there a set performance standard;
 - was the employee aware or could he reasonably have been aware of the standard;
 - was the employee given a fair opportunity to meet the required standards;
 - was dismissal the appropriate sanction?
 - One should clearly ascertain if the poor performance relates to an act of misconduct or incapacity as the two are closely related.

- The employee must also be advised of his right to refer the matter to the CCMA.
- Poor Performance of employees after expiry of the Probation.
 - The requirements for dismissing employees who are no longer on probation are a bit more complicated and requires that the employer, in addition to the steps suggested for probationary employees above, also do an investigation into the reasons for and behind the poor performance.
 - Factors that could contribute to poor performance are, amongst others, misconduct and reasons that are beyond the control of the employee such as illness; personal problems; financial difficulties; technological advancement; unsuitability and incompatibility.
 - Unsuitability refers to the disposition of character or personality type.
- Factors to be taken into account when deciding on the appropriateness of a dismissal are:
 - the circumstances of each case;
 - the length of service;
 - position occupied;
 - the employee's past record;
 - level of seniority;
 - possible transfer of the employee to another position.
- Dismissal demanded by fellow employees.
 - In the matter of *Lebowa Platinum Mines Ltd v Hill (1998) 19 ILJ 1112 (LAC)* the court implemented the following test to determine if an employee can be dismissed due to alleged incompatibility and threatening behaviour:
 - good and sufficient foundation for the demand;
 - demand backed by a serious threat;
 - dismissal must be only fair option available to all;
 - employer must have taken reasonable steps to dissuade parties;
 - employer investigated all alternatives;
 - failure to accept an alternative could lead to dismissal.

- Poor Performance by managerial employees.
 - The rules of procedural fairness must still apply to managerial employees, even though more swift and drastic action could be taken.
 - Higher standards of competency and performance are expected of senior and managerial employees. Poor performance, even one incident of negligence can warrant dismissal if the employer suffered as a result of the poor performance.

3.5 WEDNESDAY SUB-THEME: THE ROLE OF LABOUR RELATIONS IN HALVING POVERTY AND UNEMPLOYMENT BY THE END OF THE DECADE.

Plenary Topic: Reflecting on Job Creation and Unemployment

Towards accelerated and shared growth for South Africa: The role of Human Capital Development.

(Prof Charlotte du Toit)

Note: Due to the technical and complicated nature of this paper it could not be edited and achieve the objective of the essence of the paper being understood without any reference to the original paper. Hence the full paper is included below.

“INTRODUCTION

The purpose of this paper is to present a framework and strategy for the role and contribution of human capital development as part of broader social development in support of growth, employment and poverty reduction.

South Africa has embarked on an initiative to accelerate economic growth in support of shared income (ASGI-SA), which succeeds the RDP and GEAR strategies. The latter policies, which focussed on macroeconomic stabilisation and trade liberalisation, have contributed significantly in improving the economic growth performance in South Africa over the past decade. The recent momentum in GDP growth has however been predominantly propelled by demand-side stimuli, like lower interest rates, reduced tax rates and enhanced accessibility to credit and financial markets.

However, despite the increases in GDP growth rates, economic growth has proven to be unsuccessful in making significant progress towards eradicating poverty by addressing the unemployment, redistribution and associated socio-economic problems in the economy.

Policy making in South Africa has to find a new paradigm – one where employment creation and resultant poverty alleviation is not merely accepted as a by-product of economic growth, but where employment creation is viewed as a key accelerator of such growth. Government intervention and service delivery targeted at mobilising and empowering the untapped and poverty stricken workforce needs to constitute the backbone of any growth, employment and redistribution policy. This calls for an integrated strategy amongst all social partners supported by clear guidelines and incentives from government to facilitate the contribution of business, labour and civil society. Such an approach will ensure that any future accelerated income creation is truly “shared” by all levels of society towards spurring higher levels of future economic growth.

The paper is structured by building a case for a new approach in social development policies, based on the lessons from South Africa’s past growth performance in section 2. Section 3 deliberates on the contribution of social development towards ASGI-SA. It starts with a contextualisation of the initiative, followed by a presentation of an integrated national strategy on social development: a conceptual framework. The framework is supported by empirical evidence, which leads to the design of a programme on building human capital targeted at the unemployed and extreme poor, which will require a microeconomic reform of Social Security. Section 3 also touches on issues pertaining to the funding of expansion of social grants and the extent to which the proposed programme for Social development is aligned with the ASGI-SA initiatives. The conclusions are presented in section 4.

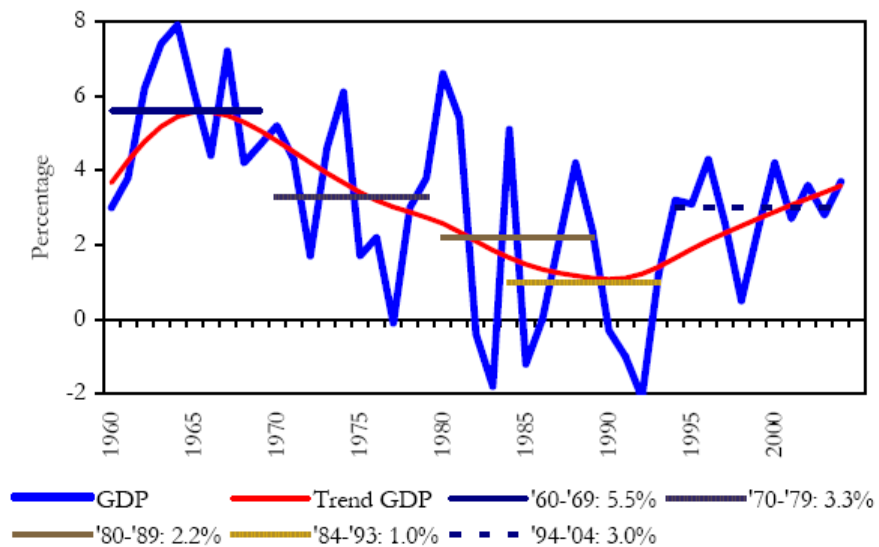
LESSONS FROM SOUTH AFRICA’S PAST GROWTH PERFORMANCE

1. Growth towards employment: a dismal performance

By analysing South Africa’s past growth performances, a number of inferences can be drawn in guiding a strategy on sustainable high levels of growth, employment and poverty alleviation.

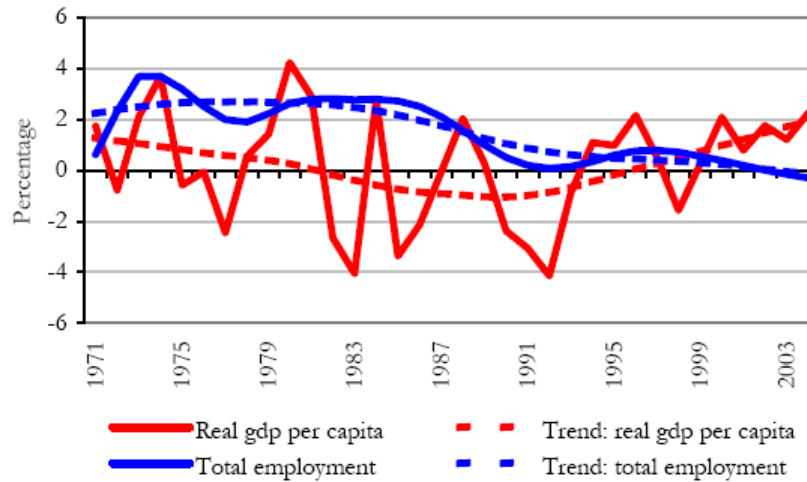
Over the past decade the policies of macroeconomic stabilisation and trade liberalisation have contributed significantly to improved economic growth performance in South Africa. The growth strategies in the past, with reference to the RDP programme and the GEAR strategy, have been successful in supporting accelerated economic growth on the back of a stable economic environment. The GDP growth has notably been driven by demand-side stimuli, fuelled by lower interest rates, tax rates and accessibility to credit and financial markets.

Figure 1: Output growth



However, despite the increases in economic growth rates, economic growth has been unsuccessful in significantly eradicating poverty through resolving the unemployment, redistribution and associated socio-economic problems in the economy.

Figure 2: Jobless growth



Much of the research conducted on household survey data collected by Statistics South Africa has shown increasing poverty and inequality during the second half of the 1990s (see for instance Hoogeveen & Özler 2004; Leibbrandt, Levinsohn & McCrary 2005; UNDP 2003).

Table 1: Poverty alleviation

	Population below \$2 a day (%)		Population below \$1 a day (%)	
	1995	2002	1995	2002
National	24.2	25.3	9.4	10.5
African	30.4	28.7	12.0	12.8
Coloured	10.1	11.2	2.8	3.6
White	0.3	1.4	0.2	0.4
Indian	1.2	6.1	0.7	3.1

Source: UNDP (2003)

An analysis by Van der Bergh *et al.* (2005) indicates that since 2002 poverty has been on a declining trend. However, the reduction in poverty levels has been primarily through external intervention, courteous of an expanded social grant system. During the past four years, government has increased grant payments by R22 billion in 2000 Rand values: an increase of more than 70 per cent in real terms. While this is commendable, social assistance is nearing the boundaries of its ability to alleviate poverty. Unimpressive job creation, as an alternative

poverty reduction device, still remains the major impediment to poverty alleviation.

An analysis from Du Toit *et al.* (2005a) demonstrates that the labour market has been unresponsive to the increasing unemployment trends, thereby hampering the labour absorption capacity of the economy. This phenomenon further emphasises the predominance of structural rather than cyclical impediments to employment and consequently output growth.

Cyclical factors or the lack of GDP growth are contributing very little to the current high and irresponsive rates of unemployment. According to Du Toit *et al.* (2005b), structural unemployment in South Africa has been upward trending since the 1970s and has reached levels of 25 per cent. A number of reasons can be offered to substantiate this increasing trend, which, to a large extent is the inheritance of the apartheid regime and relates to a lack of human capital investment:

- Rigid labour market conditions, inhibiting the access of certain population groups to the market;
- Mismatches between skills supplied and demanded;
- Insufficient access to effective education and skills development opportunities;
- Prolonged periods of unemployment may lead to a deterioration of skills and motivation of individual job seekers;
- No opportunities for the unemployed to learn-by-doing or on-the-job-training;
- Lack of labour mobility, exacerbated by high and increasing transport costs on the back of the rising fuel prices and the lack of infrastructure maintenance and development;
- High dependency rates, again exacerbated by health and socio economic conditions, impacting on the demand for social security grants;
- Unproductive and unmotivated labour force on the back of low living and health conditions; and

- The influx of illegal immigrants, distorting the wage bargaining and national income processes, to mention but a few.

Supporting evidence for the above analysis is that the relationship between economic growth and employment creation does not hold. The past decade (1994 – 2004) since the first democratic election has seen an average GDP growth of 3 per cent. Given the assumption of a 0.6 elasticity of employment creation relative to GDP growth², employment growth had to average 1.8 per cent since 1994. However, formal employment has only been created at an average rate of about 0.7 per cent for the decade. Almost 1.1 per cent of potential employment growth has not realised, supporting the notion of “jobless growth” and structural rigidities within the labour market.

The lack of output growth to significantly translate into employment creation and poverty reduction has created a dualistic economy with opposing and unstable fundamentals. The stable and healthy first economy lays the foundation for an “era of hope” by exhibiting high levels of output growth, low inflation and fiscal debt, buoyant financial markets and strong consumption spending. However, the crumbling foundation, or second economy, with high and sticky unemployment, unacceptable levels of extreme poverty associated with poor socio-economic conditions for the larger part of the population, have all contributed to a poverty trap, which demands innovative and targeted external interventionist programmes. A GDP growth of 6 per cent will not significantly translate into poverty reduction unless growth is supply-side fuelled by mobilising and empowering the potential productive population. This call for an integrated strategy on social development to address the imbalances and structural impediments of the past, however, designed and implemented to empower and mobilize the untapped society rather than awarding handouts. Only then will external programmes of intervention be successful in achieving their objectives and become sustainable by contributing to GDP growth through employment creation.

The other side of the coin: unemployment constraining growth

In addition to higher growth rates not translating into lowering unemployment and poverty, the high and sticky levels of unemployment furthermore hamper South Africa's ability to grow sustainable at levels of 6 per cent.

An analysis of South Africa's growth potential by Du Toit (2005) indicates that South Africa's growth potential is limited to 4.1 per cent. The implication is that if actual GDP growth rates exceed 4.1 per cent, that is, if actual output exceeds the potential of the economy, the economy is "overheated" and production prices and wages will start rising. Given the subsequent impact on consumer prices, monetary policy will ultimately have to intervene by deflating the economy with increased interest rates.

It is important to note that a growth potential of 4.1 per cent does not imply that the economy can indeed grow at levels exceeding this rate, but actual growth rates in excess of 4.1 per cent will be unsustainable in the medium and longer run. If growth in "supply" through employment, productivity and investment growth, does not meet growth in "demand" fuelled by low tax and interest rates, it will erode the balance of payments, the exchange rate and ultimately give rise to increased domestic inflation.

The analysis has demonstrated that the impediments to higher and sustainable output growth in support of poverty alleviation are predominantly supply side in nature. These have critical implications for policy makers in their objective of increasing the productive capacity and future growth of the South African economy, which will effectively translate into employment creation and poverty alleviation.

Notably the most important challenge for government is a redesign and redirection of expenditures away from operational expenses towards the investment in human capital, which will improve productivity levels, increase the labour absorption capacity of the economy and generate sustainable,

productive output growth. Such an environment, with an abundance of skilled and productive labour force will attract foreign investment; thereby generate additional growth and employment opportunities.

Policy making in South Africa has to enter a new paradigm, where employment creation and resultant poverty alleviation is not considered as a by-product of growth, but employment creation through addressing the socio-economic impediments is targeted as the key accelerator of growth.

THE CONTRIBUTION OF SOCIAL DEVELOPMENT TOWARDS ASGI-SA

1. ASGI-SA: a contextualization

In his latest State of the Nation's address, President Thabo Mbeki focussed on government's new growth initiative with the core objective of halving poverty and unemployment by 2014.

The objective is targeted in two phases; the first phase (2005 – 2009) aims at an average GDP growth of 4.5 per cent per annum and the second phase (2009 – 2014) aims at a minimum of 6 per cent GDP growth per annum.

In principle, ASGI-SA portrays the same set of objectives as its predecessors, the Redistribution and Development Plan (RDP) as well as the Growth, Employment and Redistribution Strategy (GEAR). However, government aims at utilising the existing buoyant economic environment as a spring board to achieve its social objectives.

The challenges government therefore face is to improve the impact of its programmes through an innovative redesign of implementation modalities and frameworks; to extend its capacity through incentive guidelines for business and civil society collaboration; and to improve its service delivery by amongst other things, dealing with fraud, etc.

The key challenge is to ensure that the impact and implementation of

policies and programmes are indeed supply-side in nature, which is the only way to ensure that higher growth levels are sustainable and effective in alleviating unemployment and poverty.

Admittedly, government have identified a number of key constraints that are downside risks for the attainment of said goals, i.e. halving poverty and unemployment by 2014:

- Level and volatility of the rand exchange rate with the primary risks for exports;
- Role of public infrastructure in lowering costs of economic activity;
- Regulatory environment and the burden on small, medium and micro enterprises;
- Deficiencies in state organisation, capacity and leadership;
- Shortage of suitably skilled labour, amplified by the cost effects on labour of apartheid spatial patterns – i.e. the lack of appropriate, efficiently administered labour market institutions and empowerment policies; and
- Barriers to entry, limited competition and hence limited new investment opportunities.

In an attempt to address the potential risks, ASGI-SA has identified six sets of initiatives:

- Macroeconomic issues;
- Infrastructure programmes;
- Sector investment strategies (or industrial strategies);
- Skills and education initiatives;
- Second economy interventions; and
- Public administration issues.

Against this background and in an attempt to share the responsibility of attaining the ASGI-SA objectives, the Department of Social Development, in collaboration with all social partners, proposes a programme on the development of human

capital, targeted at mobilising and empowering the unemployed and extreme poor through an integrated national strategy on social development and innovative redesign and redeployment of social grants.

2. An integrated national strategy on social development: a conceptual framework

As government embarks on the Accelerated and Shared Growth Initiative, the expectations are that jobs will be created. However, based on the preceding analysis, little evidence exists that these employment opportunities will be sufficient. Furthermore, no guarantees exist whether the most destitute will share in the growth benefits nor that the most vulnerable will gain opportunity. Social development must build human capital with the aim to ensure inclusivity for all.

Several departments and some state institutions will spend in excess of R372 billion over the next three years on capital infrastructure and engage in a number of initiatives to grow the economy, there remain limited guarantees that all South Africans will benefit. The most glaring observation made in an analysis of growth over the last three decades is that human capital has played little or a limited role in growth of the gross domestic product (Du Toit *et al.*, 2005b). An integrated social development strategy proposes expansion of the social safety net, within a sustainable environment, while deliberated efforts are made by all stakeholders to move beneficiaries to enjoy the dignity of work and not become dependent on the state.

The objective of this document primarily to propose measures to ensure that through expansion of the social safety net, within the limited resources, growth is accelerated and shared.

A great proportion of vulnerable referred to here include people who face particular barriers to entering, remaining in and progressing in employment, including educated youth, the disabled, people with certain health conditions, single parents and persons over 50 years of age. Lack of skills and poor

proximity to work remains serious challenges.

The poorest of the poor and those who have given up hope of employment need support to become gainfully employed. For the poor, the dignity, self confidence and respect that comes with work are important. The objective of the new framework is to redesign the role, responsibilities and contribution of social grants in alleviating poverty but predominantly in providing better opportunities for the poorest of the poor, to generate their own income through self-employment or at least pursue job opportunities. The poor needs to be given the necessary support to achieve either self-employment or to secure skills and/or employment.

Making a broad distinction between 3 groups of people traditionally eligible for social protection, being (1) children, (2) the unemployed and low income or poverty stricken working force population, as well as (3) pensioners and the incapacitated population, government need to design its growth strategies to mobilise and empower the potentially employable, thereby enabling them to move from poverty and welfare support to employment. The redesign features must provide for significant expansion of coverage of the vulnerable and link benefits to economic activity. Policies and programmes need to be designed with the acknowledgement of the untapped potential of the unemployed or low income groups as a productive engine of the economy. Social development targeted at mobilising and empowering the unemployed component of the economically active population need to be considered as the backbone of growth, employment and redistribution.

The design of the strategy (figure 3) need to encompass the following elements:

- Mobilising and empowering individuals require an approach that targets not only the individual, but the household and community, in an attempt to lower the dependency and subsequent impediment or constraint that children and pensioners pose on the economically active poor.
- Based on the specific needs and characteristics of the

community, which will directly be linked to their geographical location, attempts need to be made to identify socio-economic packages, consisting of nominal wages, social wages, *in kind* compensation, infrastructure and services needs. The effectiveness of the programme will therefore encompass geographic, community and household targeting.

- This will require an integrated national strategy amongst all social partners such as
 - Health;
 - Education (skills development programmes are predominantly targeted at the employed);
 - Infrastructure development: housing, schools, clinics, day-care centres, old-age homes, parks, roads;
 - Transport;
 - Sanitation, water and electricity; and
 - The effective utilisation of expanded public work programmes.
- While the Department of Social Development provides grants to those in need, it will have to support the beneficiary in exiting the system by working with collaborating departments to secure an off-ramp from the system. The success of the approach would be measured by setting performance indicators for all departments.
- A “shared” initiative between government (policy), business, labour and civil society, with government providing clear guidelines and incentives in support of the clearly defined social development objectives. This should be done, however, while also allowing for industry and society specific interventions.
- Need to redefine the role of fiscal and monetary policy with respect to social development, e.g. in stead of tax reductions across the board, generate tax incentives for business to support the “family” or “community” context through medical schemes, pension fund contributions, school fees, travel allowances, etc.

Successful implementation of the strategy will reap the following

benefits and/or deal with the following impediments:

- Policies and programmes will be targeted at the extreme poor;
- Programmes can be geographical and community specific;
- Job creation is not dependent on GDP growth or skill-specific job openings – individuals can become self-employed;
- Expanded public work programmes (EPWPs) will facilitate “on-the-job training” opportunities;
- If utilised for the provision of expanded and improved service delivery in rural and less developed areas, EPWPs will make a useful contribution to service delivery and infrastructure development;

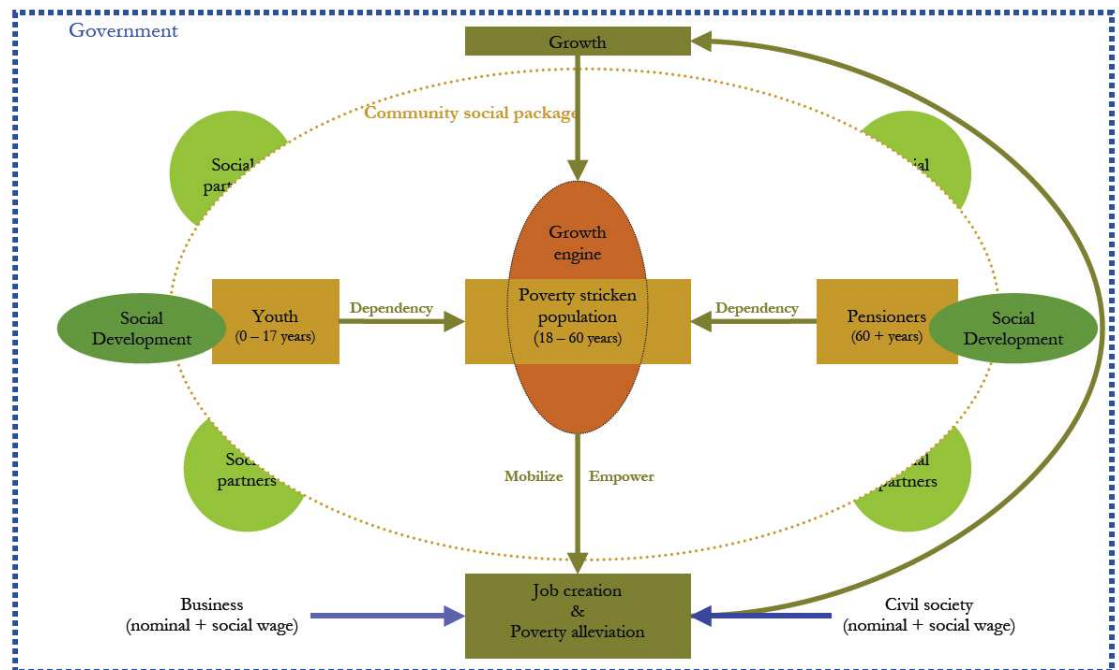
Rural development will alleviate the pressures associated with urbanization;

- Improved social development will significantly contribute to GDP growth, primarily through employment creation;
- Employment creation will lower the dependency of society on social grants and ensuring the sustainability of the programmes; and
- The contributions from business, labour and civil society, on the back of incentive guidelines, will establish the “shared” responsibilities and will augment government’s capacity in the provision of socio-economic services.

Designing unique and targeted programmes will require:

- A more in-depth analysis of job-generating industries; and
- A profile and backlog analysis of the poverty pockets in terms of infrastructure and services needs.

Figure 3: An integrated national strategy for social development – a conceptual framework



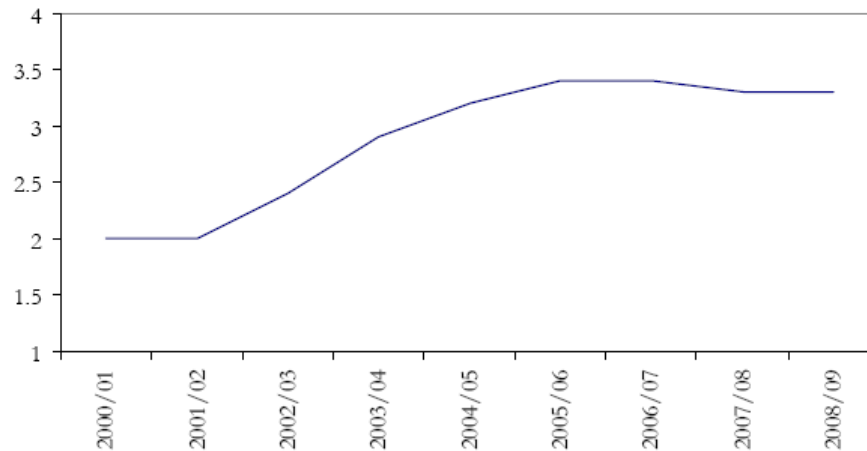
3. Empirical evidence

The impact of social grants and social development

Social grants expenditure has been exerting pressure on spending patterns of the provinces over the last 15 years. The budget has been growing steeply at an average rate of more than 15 per cent per annum, constituting close on 3.5 per cent of gross domestic product and 20 per cent of total government expenditure.

The expenditure for social grants and the administrative component thereof will decline over the medium term to longer term. Figure 4 depicts the trends over the last four years and reflect the fact that the growth has been close on exponential. The projection indicate that as a share of total government expenditure, social grants spending will decline to 3.3 per cent as a share of GDP.

Figure 4: Social grants as a percentage of GDP



Notwithstanding the growth in demand and pressure placed on the fiscus, research indicates that the provision of social grants have been and continue to be government's most effective poverty alleviation programme. Although the extent of poverty reduction is contested by Meth (2005), both he and Van der Bergh *et al.* (2005) provide evidence of the impact of grants having been effective in reducing poverty. A strong case therefore needs to be made to at least keep the social grants at 3.4 per cent of GDP.

From a macroeconomic perspective, research also provides evidence that social spending have in the past contributed to some employment creation and therefore output growth.

Employing the macro-econometric model of the University of Pretoria, which follows a supply-side approach and distinguishes between skilled and unskilled employment, renders the following empirical results. Given the current structure of the South African economy, a 10 per cent increase in spending on social security and welfare, housing, education, order and safety, and health results in a 3.6 per cent increase in the employment of unskilled workers, which relates to a 1.3 per cent increase in total employment and generates an additional 0.3 per cent GDP growth.

However, an innovative and skilful redesign of existing policies will significantly impact on the returns of social spending on employment and growth.

An accelerated growth scenario

Once again the macro-econometric model of the University of Pretoria is employed to generate a scenario whereby the South African economy becomes more competitive as measured in terms of the average performances of other emerging economies. Emerging economies are broadly defined as all developing economies with a gross national income (GNI) per capita of US\$9,265 or less, falling into the low-to-middle per capita income category³.

The growth potential results for the emerging market benchmark scenario are presented in table 2.

Table 2: Emerging market benchmark potential growth scenario

Assumptions and targets	Results		
	Real potential output growth	Investment/GDP	New jobs in 10 years
<ul style="list-style-type: none"> • UER = 12% • FDI/GDP = 4% • S/GDP = 25% • TFP, proxied by openness = 0.55 	6.5%	26.5%	6.5 million

Given an unemployment rate (UER) of 12 per cent, a foreign direct investment to GDP (FDI/GDP) ratio of 4 per cent, a saving-to-GDP (S/GDP) ratio of 25 per cent and a 5 per cent growth in the level of South Africa’s openness as a proxy for desired levels of total factor productivity growth, South Africa’s growth potential increases to 6.5 per cent. The resultant investment-to-GDP ratio is 26.5 per cent and an additional 6.5 million jobs in 10 years can potentially be created.

These results clearly highlight the importance of job creation as an accelerator of

growth. Given the structural impediments to job creation in South Africa, GDP growth will not be successful in lowering unemployment, but growth strategies need to be targeted at mobilising and empowering the untapped workforce as a potential source of growth.

4. A microeconomic reform of Social Security: a programme on building human capital targeted at the unemployed and extreme poor

Moving from the conceptual framework to the required microeconomic reform of Social Security, a couple of suggestions are presented towards the design and implementation of a development plan with tangible outcomes.

The programme design will encompass geographic, community and household targeting. Within these groups age cohorts will be targeted for social grants and job opportunities. Table 3 outlines the age cohorts and the proposed interventions to those who are vulnerable.

Table 3: A microeconomic reform of social security

Age cohort	Proposed intervention
<14 years	Child support grant, foster care and care dependency grant
14 to 17 years	Education support
18 to 22 years	Education and training support
23 to 40	Training and skills development
41 to 50 years	Training, job placement and self-employment support
50 to 59 years	Job placement in services industry
60 to 65 year males	Old age pension
>60 year females >65 year males	Old age pension

After a classification of the poor, vulnerable and socially excluded, the Department will need to redesign policy to provide income support in line with the need as well as diversion objective for each of the age cohorts. The Social Security Agency, whose mandate it is to manage, administer and pay social grants, will have to work with beneficiaries, to profile and shape the services it will provide.

Through the Agency, a new class of client service agent must be deployed, such that after the award of a social benefit, the service agent works with beneficiaries to enhance their chances of entering the labour market.

It is proposed that for vulnerable groups in the age cohort of 14 to 17, income support is provided to ensure that schooling is completed. The collaboration between the Departments of Social Development and Education would be essential for this targeting and policy implementation.

For the age cohort 18 to 22, support is broadened to ensure higher education at technical or further education institutions. In the case where no further education is pursued, skills development and job placement becomes the objective. Income support should be provided.

For the age cohort 23 up to under the age of 50 years the proposed interventions should be skills development opportunities and job placement. Limited income support should be provided while active work with the beneficiary is a priority. This could be deemed a jobseeker's support in the form of three-month financial support.

For the age cohort 50 years to 59 years, job placement could be pursued in relevant service industries such as the hospitality industry, care for the infirm, aged, children, etc. The rationale being that sophisticated skills development may not be appropriate.

It is proposed that for the vulnerable groups of males older than 60 years but under 65 years of age, government could consider the provision of an old age grant since it may be more cost effective to provide a pension than to pursue job placement or skills development.

5. Funding the expansion of social grants

The improvement of the social grants system has been initiated and will over the medium term generate savings. The improvement initiatives will continue to take place in respect of ensuring the appropriate grant amount is paid to the right person; that fraud, leakage and corruption are reduced and that the operational cost as a proportional share of the total budget of social grants is reduced.

It is significant to note that for the first time in the last 9 years expenditure on social grants reflects savings generated, while over-expenditure is only projected for two provinces. At a national level, government will for the first time not exceed the projected budget.

Non-expenditure of social relief of distress should be addressed and marketed more widely. These funds could be put to use with the conditionality of training and/or employment.

The primary source of funding for the expansion of social grants will be generated through the contributions of the increased productive population, thereby lowering the dependency of existing beneficiaries, enabling the broadening of the social safety net.

However, a more in-depth costing analysis will be required regarding the following:

- How much cash assistance to provide recipients?
- Whether recipients could enrol in education and job training programs to fulfil their work requirement.

- Whether to provide child care and transportation assistance to working recipients.
- Whether to provide state-funded assistance to immigrants who were losing eligibility for federal assistance.

6. Social development alignment with ASGI-SA

The proposed programme on the development of human capital, targeted at mobilising and empowering the unemployed and extreme poor through an integrated national strategy on social development and innovative redesign and redeployment of social grants, supports the ASGI-SA initiatives in a number of ways:

- General: the design and implementation of the programme will be built on an alignment with existing initiatives and programmes, but targeted at the unemployed and extreme poor communities;
- Infrastructure: community based skills development and training programmes will require infrastructure development in terms of schools in rural and less developed areas, which again will require an integration and collaboration between social partners;
- Sector strategies: Community based programmes will be geographically and industry targeted, along ASGI-SA guidelines;
- Education and skills development:
 - the key component of the proposed programme is education and skills development of the unemployed and extreme poor,
 - it will require the contributions of experienced professions and managers,
 - implementation of the programme will hugely benefit from the JIPSA initiative;
- Eliminating the second economy:
 - Developing human capital of the unemployed and extreme poor, will empower and mobilise individuals and communities alike and will contribute substantially towards eliminating the second

- economy;
- Skills development through the effective utilisation of Expanded Public Works Programmes will also support this initiative;
- Macroeconomic issues:
 - The nature of the programme, given the development of human capital and therefore the supply-side drivers of the economy, will ensure higher and sustainable economic growth that is effective in alleviating unemployment and poverty;
- Governance and institutional interventions:
 - The design of the programme requires national integration, as well as shared responsibilities of business, labour and civil society;
 - This will expand government's capacity and ensure more effective service delivery.

4. CONCLUSION

South Africa faces the twin challenge of high unemployment and poverty. Many of the poor and unemployed have given up hope. Even with the implementation of several initiatives as part of the Accelerated and Shared Growth Initiative, the poorest of the poor, those demoralised, will require support to become gainfully employed. This support should be given in the form of income that will help the unemployed and poor to access education, training, skills development and employment opportunities. Government could achieve these objectives within the current macroeconomic framework through the redesign of current social security policy and the mode of implementation of these policies.

The strategy is about increasing people's chances of getting employed. The redesign would be geared towards ensuring that a benchmarked budget or earmarked social security tax is designed to broaden its reach with a view to expand the social protection. The expansion of the safety net requires that able-bodied individuals are supported to seek and find employment – thus achieving the objective of enhancing the link between social benefits and

economic activity. South Africa cannot escape the dire need for an integrated national strategy for social development towards mobilising and empowering the South African population.”

Building integrity amongst employees: Understanding the effects of corruption on growth and development.

(Ms Mpho Nkeli)

A brief overview of Alexander Forbes was given.

The lack of integrity was defined as the lack of an internal guide to do the right thing all the time and corruption was defined as a gain of any kind derived from non-legal or unethical means. Alexander Forbes was used as an example to show integrity.

How to build integrity in an organisation:

The first prize would be to employ people who have it as it cannot always be policed. The organisation must have a policy that addresses integrity and corruption and this must be communicated to staff. The practice of dealing with integrity must be aligned to this policy, and must form part of performance management contracts.

- Integrity must be rewarded, and lack of integrity must be punished.
- By codifying unwritten rules it would determine behaviour and decision making, inform you when in doubt and allows you to develop a set of acceptable and un-acceptable behaviour for the business.
- This can be done by using a bottom up approach for exclusivity and ownership, define each practice for common understanding, train all staff on the practices and measure regularly how you live the practices & take corrective action and reward
- Integrity can be learnt from observing those around you.
- When building integrity the things to avoid are winning at all costs,

keeping clients whose values are not aligned to yours, top management not walking the talk, rewarding unwanted behaviour, no reward for the right behaviour, no consequence to unwanted behaviour, turning a blind eye and short-term view of life.

Corruption has a negative impact on delivery, economic growth and development. It kills healthy competition on price, quality and service, staff who comply feel hard done by if the perpetrators are not punished, the credibility of organization is damaged and it takes long and is costly to re-build lost trust. Corruption also short-changes intended beneficiaries.

The vision, strategy and values of a business determines the type of people to employ in order to meet goals.

Conclusion

Integrity can be built and developed, people do want to do good and they thrive in a fair environment. Alexander Forbes is proud to be associated with this conference and contributing to the realisation of the Public sector goal of ensuring dialogue on such important labour issues.

Comments raised by delegates

- If you want something to happen you must find ways of filtering it into performance management or in contracts of employment otherwise it will not happen.
- All financial consultants have the right training and should disclose to you what commission they are earning. Insurance sellers must go through the policy with you word for word before you sign it. Individuals must know what their rights are.

State & Employment Creation: Re-imagining the State

(Mr Oupa Bodedi)

ASGISA has set targets and objectives for the reduction of poverty and unemployment, the improvement of the institutional capacity of the state, public investments especially in economic and social infrastructure and skills development in identified areas of critical need. South Africa faces mass unemployment which has gone through several phases.

Nature of unemployment

- New labour market entrants being unable to find jobs and outstrip exiting job opportunities;
- Labour absorption low compared to other middle income countries;
- Small non-formal employment – over 70% is in the formal sector;
- Growth path that is skill absorbing and low skill shedding. But still on average unemployed have at least 12 years of education.

The causes of unemployment are capital intensity in mining, heavy chemicals as there is heavy minerals dependence, fiscal austerity in the mid to late 1990s, trade liberalisation which has caused unskilled labour-intensive exports to decline and skill intensive exports to increase.

The Public Service includes service delivery functions and civil administration. Currently South Africa's Public Service employs 9% of the labour force, 10% of non-agricultural labour force and accounts for 18% of formal employment. In the 1990s Public Service employment contracted and this coincided with debate around efficiency of the state. This debate was around creating a Single Public Service, rightsizing the Public Service – often meaning reducing the number of public servants, subcontracting several functions especially support functions like maintenance and public works and privatisation and closure of SOEs.

A "one size fits all approach" ignored serious shortages in and historical disparities such as health care, shortage of teachers and security and justice cluster.

Historically the Public Service was important for employing African women in nursing and teaching. It's been overtaken by retail in this role. The Public Service is also important for improving productivity in the rest of the economy through improvement in human capital resulting from better education and health care.

The challenges for the Public Service in creating employment are enhancing the absorption of low skilled labour and skills base of the labour force, promoting non-traded goods and meeting basic needs as part of an industrial strategy, promoting services such as housing, or social and economic infrastructure and social services such as ECD, home community based care, school feeding schemes and community development schemes, government expenditure as leverage to push investment in towards sectors with higher employment creation potential and shift government strategy from short term employment project to more large scale project.

The state has a direct and indirect contribution to employment creation by providing an infrastructure and social services and by creating public investment initiatives. Focus on non-traded sectors is important in employment creation because of unmet demands for basic goods and services, civil construction and social and personal services have the highest employment coefficients, the possibility of expansion without concern for WTO rules and government expenditure is a lever to influence nature and pace of expansion of employment in industries where it provides and procure services.

The Public Service creates direct employment by increasing the number of teachers, expanding ECD and support staff in education, increasing health care workers especially nurses and support staff in the health care sector and the criminal justice system through employment of police, correction and court officials to deal with backlogs and overcrowding. Support personnel can release police from administrative work.

Analysing the capacity needs in terms of skills, resources and infrastructure of the Public Service.

(Prof Johan Burger)

The purpose of this presentation was to explore the strategic assessment of immediate to medium term capacity demands, given the apparently overwhelming realities that we are confronted with on a daily basis.

The current reality is that if the economy indicates sufficiency, if not abundance, what are the realities with regards to the skills, resources and infrastructure required for Public Service delivery?

There is an acknowledged shortage in skills in the Public Service. Modernising the Public Service requires increasing the size, but as result of intended service delivery objectives, a bigger public sector not the objective.

The mechanisms to develop skills are through the Skills Development Act 1998, ASGI-SA and JIPSA. These will be effective in the medium term, however the critical short term imperative is the skilled implementation of "nice ideas".

The Strategic Framework for Sustainable Development in South Africa (draft 29 September 2006) articulates national vision for sustainable development. The acknowledgement of need for sustainable development and utilisation of resources is not enough, it calls for the skill to engage with the resource realities, which are municipalities running out of water, projects running out of cement (SA water already almost 100% allocated), shrinking budget deficit (if not in balance of payments deficit), but currently (2003) resource consumption deficit of 27%: ASGI-iSA will increase that deficit.

The ability to adhere to perspectives and guidelines such as the National Spatial Development Perspective (which provides common platform of principles for infrastructure investment) and the Treasury Guidelines for 2007 and the

MTEF (which provides guidance on new and existing infrastructure proposals) to ensure better infrastructure management.

To achieve a sustainable future, resources need to be conserved, infrastructure needs to be developed and maintained and skills need to be developed. However, capacity realities are the challenge.

In dealing with these challenges we face a historic task: how to govern human affairs to address challenges of a size, complexity and uncertainty unprecedented in human experience - the challenges of sustainable development. Humans are changing the planet, with profound consequences for our future.

Moving towards a ten year review requires both focus and decisiveness on the part of government, the will to weigh trade-offs and make choices, as well as strategies to inspire all of society to proceed along a new trail.

Quite often lack of delivery is ascribed to poor capacity in the fields of technical skills such as project management and financial management, but even the extended application of these worthy management skills within government operations will not correct service delivery shortcomings as long as the tactical gap between strategic intent and managed operations remains.

Information on output, outcome and measuring performance can be obtained from analysing the annual report, the proportion of and reason for the non-productive (overhead) costs and the performance indicators. The operational managers must have knowledge and understanding of the annual report, the ability to make sense of it and they must have project and financial management skills.

Transforming the workplace for enhanced service delivery – how should management and organised labour work together?

(Ms Sylvia Baloyi)

The external factors influencing the workplace are politics, social trends, technology, markets, economics and globalization. Internal factors include behaviour and processes.

The theories of organisations are the following:

- Classic organization theory which encompasses division of labour, strict rules and regulations, centralised authority, narrow span of controls and chain of command.
- Human Relations theory where X managers control subordinates and use punishment and rewards, Y managers motivate subordinates and provide responsibilities and challenges to subordinates.
- Contingency theory which is Mechanistic v organic, small batch, large batch and continuous process organization and socio technical approach.
- Ecological/ Evolutionary theory where organisation forms do not change easily, resources are scarce, competitive pressures are unpredictable and uncontrollable. Humans have limited rationality and can make poor decisions.

Mergers/Acquisitions, takeovers, privatization, outsourcing and consolidation cause changes in the workplace. Changes could be episodic and/or continuous.

Resistance to change is caused by economic fear, fear of the unknown, fear of altered relationship, structural inertia, work group inertia, threats to power balance and prior unsuccessful change efforts. This can be overcome by facilitation and support, education and communication, involvement, negotiation, manipulation and cooperation and coercion.

The role of the government is to regulate through acts, legislation and basic guides. The government's transformation priorities are representivity

and affirmative action, human resource development and training, employment conditions and labour relations, rationalisation and restructuring, transforming service delivery, information technology, promoting a professional service ethos, institution-building and management, and democratising the State.

Concerning service delivery the World Competitiveness Scoreboard includes economic performance, government efficiency, business efficiency and infrastructure. In the Public Service the initiatives include Bathopele principles and public private partnerships.

Bathopele principles are to regularly consult with customers, set service standards, increase access to services, ensure higher levels of courtesy and provide more and better information about services, increase openness and transparency about services, remedy failures and mistakes and give the best possible value for money.

The types of public private partnerships are:

- where the private party performs an institutional/municipal function;
- where the private party acquires the use of state/municipal property for its own commercial purposes; and
- a public private partnership may also be a hybrid of these types.

Stakeholders in employee relations are management, unions, employees, shareholders, customers and communities etc

Traditional employee relations include hostility, mistrust, conflict, violence and negative attitudes.

There are two dimensions of conflict – functional and dysfunctional. Conflict can be managed by using a win/lose approach, withdrawal, smoothing, compromise, mediation and arbitration and problem solving.

Various approaches to negotiation can be used such as distributive bargaining, integrative bargaining, attitudinal restructuring and intra-organisational bargaining. The strategies used are competitive, collaborative and compromises.

The key aspects of in effective relationships are commitment, trust, communication and consultation / participation.

The challenges in transforming the workplace for enhanced service delivery can be dealt with at an organizational, group and individual level. Organizational transformation would include survey feedback, cultural analysis, appreciative inquiry, review and align HR policies, systems and procedures and to educate employers and employees about changes in the workplace. At a group level transformation would include conduct team building, facilitate inter-group activities, encourage dialogue in the organization and third Party peacemaking, and at counselling, coaching and mentoring, life and career planning and self-help resources.

4. CLOSING ADDRESS: PROF STAN SANGWENI, CHAIRPERSON OF THE PUBLIC SERVICE COMMISSION

My fellow Commissioners, Vice-Chairpersons of the Public Service Co-ordinating Bargaining Council, distinguished speakers, ladies and gentlemen, we have come to the end of what I would want to term a historical event: the first Biennial Labour Relations Conference for the Public Service. As co-partners, the Public Service Commission (PSC) and Public Service Co-ordinating Bargaining Council (PSCBC) have initiated and will have left behind an important legacy on the South African Labour Relations landscape. It is therefore with no small measure of pride, that as Chairperson of the Public Service Commission, I view this Conference as a resounding success.

Over the past two-and-a-half days we were able to share viewpoints and debate ideas on very interesting and topical issues in labour relations. We have been exposed to diverse and provocative speakers. As we leave this conference we may not be in agreement with all that has been said but will definitely leave enriched with a greatly expanded frame of reference to draw from in the future.

We were fortunate to have the Minister for Public Service and Administration, the honourable Geraldine Fraser-Moleketi to deliver the Key Note Address. In her address the Minister stressed the importance of dialogue as the cornerstone of labour relations and the need for harmonisation. As the parties resume the wage negotiations I trust it will be tempered by the strengthened partnerships that emanate from this Conference and will relive the theme: Knowledge through Dialogue: Harmonising Labour Relations in the Public Service.

It has been heartening to witness the vibrant debate during the Plenary Sessions and the various Commissions. The depth and quality of the presentations and the level of

engagement on challenging and complex subjects bears testimony to the participants' expertise. If this Conference was used to show-case and evaluate the calibre and quality of labour relations role players within the South African Public Service, I would

submit, that observers would have been highly impressed.

Practitioners experienced in the field were complemented by the valuable input made by academics and other professionals in the labour relations and related fields. Their substantive and informed inputs have in no small measure broadened our knowledge base in the field of labour relations.

It is not my intention to summarise everything that we have engaged with in this Conference. We have a very capable programme director to do this. Sub themes and commissions ranged from institutionalised dialogue systems to promote sound labour relations, the strategic positioning of human resource management in promoting sound labour relations, the management of disputes and discipline to the role of labour relations in halving poverty and unemployment by the end of the decade. Through navigating these various topics participants were able to transcend personal and vested interests to critically engage each other with a common view to gain knowledge and impact positively in our respective roles.

Without repeating the insightful content, some key issues emerged. As I said earlier, the theme of effective communication and dialogue was reinforced throughout the two and a half days.

The role of human resource practices highlighted serious concerns around non-compliance and ineffective implementation of frameworks on the part of managers in the Public Service. Concerns arising out of the Performance Management and Development System, grievance management and fair application of disciplinary processes and systems were vociferously singled out. A recurring theme arising from such discussions was the view that managers

were not managing the implementation of the systems appropriately. A strong view prevailed that lack of commitment to effective implementation of such systems in the Public Service appears to be contributing to labour discord.

There is always two sides to a story, however. Unfortunately, managers among us did not take the opportunity to highlight some of the inherent difficulties and challenges that they experience in implementing these systems. This could result in many participants leaving this conference believing that our managers have failed the system, and yet research has shown that the situation is far more complex than a simple indictment against managers' inability. What it does say, however, is the need to call for a renewed commitment from all stakeholders to compliance and implementation of frameworks.

On the whole, however, the Conference created a platform for knowledge sharing and debate. What struck me the most was the substance of the programme. Those who formulated it reflected a deep understanding of the subject and credit must be given to this. Whether, as a participant, you regarded yourself as a novice or an "old hand" in labour relations you would have found a subject from which to take away and to add to your repertoire of labour relations.

Looking at the conference objectives, I am confident that we have realised all of them. More importantly a strong foundation has been laid for future conferences. However, let us not wait until 2009 to come together as labour relations practitioners. We need to consolidate this very important relationship by ensuring regular and meaningful activities around critical issues impacting on the workplace and workplace relationships. I am sure the organisers from both institutions are already looking ahead and preparing structured debate on such contentious issues as performance management, the role of labour relations officers and issues around collective bargaining.

In conclusion I wish to extend my gratitude to all speakers for their participation and their contribution to the success of the event. Without exception, these are all people with busy schedules, yet when approached, they had no hesitation whatsoever to set aside time to prepare papers and to come and present these in a most professional and dynamic manner.

I do believe that the Director-General of the Public Service Commission's Office, Ms. Odette Ramsingh and the Chairperson of the Public Service Co-ordinating

Bargaining Council, Mr. Edwin Molahlehi, should take a bow for establishing this cooperative partnership that must benefit the field of labour relations in the years to come, and for the impressive manner in which the Conference was put together. In my estimation, a sense of professionalism and a climate of easy engagement prevailed throughout the past Conference.

I would also like to extend an appreciation to the working group of our respective institutions for their hard work, dedication and commitment in turning a vision into reality. In this respect I want to single out Ms Shamira Huluman of the PSCBC, Mr Admill Simpson and Ms Mmathari Mashao of the OPSC and their respective teams. Finally a word of thanks again to our sponsors: Alexander Forbes, LexisNexis, Sabinet and Juta. We look forward to a continued relationship in all future activities which will culminate in the second biennial Conference in 2009.

Last but not least, a word of appreciation to the delegates who attended and robustly participated. In the absence of such enthusiasm, the Conference would not have been the success that it has turned out to be.

Enjoy your lunch and take care on your way home and I hope that we see you all back in 2009!

5. CONCLUSION – PROGRAMME DIRECTOR

TOKISO Dispute Settlement (Pty) Ltd is proud to be associated with this landmark conference.

The conference was in my view remarkably successful in achieving its broad aims and objectives. The calibre of participation by the speakers and the participants was remarkably enlightening. The attendance by venerable political leaders, international guests and key role players from both the trade union and employer delegations gave legitimacy to this event. The generous contributions by the sponsors further reflect the necessity and importance of the conference.

It is further, a reflection of the importance of the Public Service that there has been such a high level of participation. The conference was at times marked by interesting and contentious debate. It is however important to reflect on these wise words *"A true friend is s/he who tells you the truth, and not what you want to hear."* There is no doubt that the delegates and organisers of this conference have many true friends.

Given the broad spectrum of topics that were covered at the conference it was at times difficult to allow for the full spectrum of queries and concerns. Firstly this is indicative of the need of this type of conference and secondly it highlights the need for specific interventions, such as training, development and coaching to develop the competency within the Public Service. The hunger to obtain knowledge was particularly striking.

Needs that were emphasised in most sessions:

- Effective and diverse communication is critical.
- Abiding, without compromise, to the principles of ethics and discipline.
- A long term plan and vision, in all areas, of the Public Service.
- Auditing and if necessary updating/overhauling existing disciplinary rules and procedures.
- Robust Training and Development programmes on content and skills.

The challenge for any organisation is to harness the passion and commitment that was demonstrated over the three days. The further challenge rests with all of us to take on the responsibility and create an environment in which the objectives of the conference can be echoed within the Public Service.

A special vote of thanks to:

- The organisers who worked tirelessly
- The sponsors who contributed generously.
- The speakers who contributed, without financial reward, excellently.
- The chairpersons of the sessions who worked energetically throughout.
- Every individual who worked exhaustingly behind the scenes.
- The team from Tokiso who lived and slept the conference for three days.
- And lastly the delegates whose enthusiasm and participation gave life to the event.

We look forward to the next conference!

Ebrahim Patelia

Report first signed at Johannesburg on the 23rd day of April 2007



Ebrahim Patelia
Programme Director

Handed to the PSCBC / PSC on this day of 2007

FOR PSCBC / PSC
NAME:

