

Research Article

# Challenges and Inspection Done on Some Businesses by the Department of Labour in the South African Government

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## Abstract

This article surveys enactment administration in the South African Department of Labour considering at the protagonists of the national office, provincial offices and labour midpoints. The study objective was to recognise the glitches and hindrances in executing equally the structural and distinct enactment administration structure. The verdicts were that, though around are well advanced enactment administration outlines, they have not really been successfully implemented. There are four categories of obstructions distressing the application of enactment administration. The first category is that of problems of measurement and design. The second category is that of the gaming of the system and a lack of compliance in the signing and evaluation of individual performance agreements by senior officials. The third category is lack of capacity which includes inadequate information technology systems and poor quality of staff. The fourth category is that of accountability. There needs to be strong accountability of bureaucracies if performance is to be taken seriously and public bureaucracies are to work effectively. Afresh self-governing South Africa adopted New Public Management (NPM) reforms as part of its public service reform programme. Cameron (2009) in a 10-year review of the country's public service reform argues that although there are elements of NPM in the South African government's programme, they have been implemented in a lukewarm fashion. There are nevertheless well developed NPM frameworks, including elaborate organisational and individual performance management systems. This article examines enactment administration in the South African Department of Labour (DOL). Policy making resides in a relatively small national government department and implementation is the accountability of labour centres, which have a certain degree of autonomy in providing certain labour services. There are also provincial offices of the DOL whose function is to support labour centres. The article examines the two main components of the DOL, namely the Public Employment Services (PES) and Inspection Enforcement Services (IES). The research objective was to identify the problems and obstacles in implementing both the organisational and individual performance management systems.

**Keywords:** New Public Management; Enactment administration; Inspection and accountability

## Introduction

The South African Government is presently facing challenges as some businesses incline to overlook the Basic Conditions of Employment Act, Act 3 of 1983, which is enforceable and disciplinary if not obeyed to when you're an employer of ten staff members or more. The purpose of this study is to probe the role of Department of Labour Inspectors in making sure that workers' conditions of employment are protected, with particular focus on small businesses as per Section 50 of the Basic Conditions of Employment Act, Act 75 of 1997. The exploration will gaze at what the legislation requires, how frequently labour inspection checks are done and challenges thereof [1-3].

The Department of Labour was fashioned through the 1994 democratic election to protect workers. Its vision is "to strive for a labour market which is conducive to economic growth, investment

and employment creation and which is characterised by rising skills, equity, sound labour relations, respect for employment standards and worker rights" (Basic Conditions of Employment Act, Act 75 of 1997). Several sectorial determinations were promulgated during the second cycle of our democratic rule which were necessary in order to protect workers whose unique work circumstances render them susceptible to the worst forms of abuse by their employers. Labour Inspectors of the Department of Labour visit workplaces from time to time to check the level of compliance with labour legislation. Labour inspection has a key role in promoting decent work and implementing labour standards at the workplace. The many demands brought to inspectors have to be dealt with in a timely and appropriate manner, effectively, efficiently and impartially (Government Notices No. R1295 of 1999).

## Statement of the problem

The Department of Labour has appointed Inspectors in terms

of Section 63 (1) of the Basic Conditions of Employment Act, Act 75 of 1997, as amended, to monitor and enforce the following legislation: Basic Conditions of Employment Act, Act 75 of 1997 [3]; Compensation for Occupational Health and Safety Act, Act 85 of 1993 [4]; Unemployment Insurance Act, Act 30 of 1996 [5]. The job of a labour inspector is to conduct inspections and investigate labour abuses in all sectors of the work force, and may question persons and inspect copy and remove records and other relevant documents (s 64-66). Corruption is a real problem and, combined with the lack of resources, serves as a major deterrent in active monitoring, according to a Human Rights Watch study [6]. The department also acknowledged problem that employers would like to comply with labour legislation, but are not sure on which areas to focus. The Department of Labour requests employers to collaborate and support Inspectors when they visit the numerous workplaces.

As part of an on-going campaign by government to further protect the most vulnerable of workers, the Department of Labour inspectors started conducting countrywide inspections in 2006 aimed at checking observance to several labour laws. Apart from the traditional inspections, these inspections were specifically targeted at small and medium sized businesses, which would also include spaza shops. The then Minister of Labour, Membathisi Mdladlana made a statement in 2006 that "It is His view that all employers regardless of the size of their businesses, should adhere to our labour laws. Workers employed in such businesses are also entitled to workers' rights". The same sentiments were also expressed in the then Labour Department Director-General, Jimmy Manyi's statement to the Labour Portfolio Committee during that time that inspections "are to become a permanent feature of our efforts to protect all vulnerable workers."

There is widespread concern that labour inspection services in many countries are not able to carry out their roles and functions. They are often understaffed, under-equipped, undertrained and underpaid. Small transport and travel budgets and inadequate means of communication and record-keeping also hamper their capacity to perform inspections and take the necessary follow-up action.

### Research objectives

The research objective is supposed to specify the results expected and indicate what is to be done, where the primary emphasis is to be placed and what is to be accomplished. It should also give direction to the nature of plans which defines the objectives of sub units of the organisation [7]. In line with this observation, the objectives of this study are:

1. To deliver a theoretical overview of the role of the Department of Labour Inspectors in addressing challenges faced by workers with specific reference to small businesses in the Western Cape.
2. To ponder the challenges and inspection checks in the Department of Labour
3. To critic means explored to monitor irregularities in the Department of Labour
4. To find amicable solutions for the protection of workers' rights and smooth flow of work in the Department.

### Research questions

1. To what extent is the Department of Labour performing its function and mandate to protect the labour relations rights of the fellow South Africans with specific reference to those working for small businesses in the Western Cape?
2. How far possible the Labour Inspectors are fully equipped in order to perform their functions efficiently and effectively?

### Review of Literature

Theoretical information will be extracted from various books, journal articles, internet, newspapers, and government publications, specifically by the Department of Labour and legislation.

### Methodology and Design

Research methodology is about specifying how a researcher will go about finding solutions to the problem and what steps or processes are necessary to help the researcher find these solutions [8]. This study will employ Qualitative Research methodology.

Qualitative Research implies an emphasis on processes and meanings that are not rigorously examined or measured in terms of quantity, amount, intensity or frequency. Qualitative research methods' aims are to establish the socially constructed nature of reality, to stress the relationship between the researcher and the object of the study [9].

Qualitative researchers employ a naturalistic approach that seeks to understand phenomena in context-specific settings, such as "real world setting where the researcher does not attempt to manipulate the phenomenon of interest" [10]. Therefore the researcher will use qualitative research methodology to study people in the context of the present situation in which they find themselves. For this qualitative study interviews will be conducted with the personnel of the Department of Labour with the notion of finding out the roles, processes and procedures followed by the Labour Inspectors in performing their duties effectively.

### Data collection

This study will make use of the following data collection techniques: unstructured interviews focussing on a random sample of participants. This will guide the researcher to get different opinions from the Labour Inspectors using the same questions that the participants will answer.

### Interview

An interview is a conversation between two people (the interviewer and the interviewee) where questions are asked by the interviewer to obtain information from the interviewee. In the study the most important aspects of research will be to find solutions to the basic working conditions faced by those working for small businesses in the Western Cape and the focus is to evaluate the effectiveness of the Labour Inspectors of the Department of Labour in order to protect the rights of workers who might be exploited. An interview with the Labour Inspectors will also be done to get their insight on whether the Department of Labour provides them with sufficient equipment in order to perform their functions effectively.

1.7.3 A population is a group of persons, objects, or items from which samples are taken for measurement or study. It can be divided

into different groups based on some characteristic or variable [10]. To draw conclusions about populations from samples, we must use inferential statistics which enables us to determine a population's characteristics by directly observing only a portion (or sample) of the population. However, in qualitative studies we understand data obtained from samples by analysing the spoken words.

Sampling is the act, process, or technique of selecting a suitable sample, or representative part of a population for the purpose of determining parameters or characteristics of the whole population. Researcher will use simple random sampling in this research.

### Simple random sampling

Simple random sampling is the usual method of selecting a sample from a homogenous or same kind of population. Every member of the population has an equal chance of being selected for the sample. I will use random sampling to interview the Labour Inspectors.

### Data analysis

Data analysis is the process of bringing order, structure and meaning to the mass of the collected data. It provides information about the human side of an issue, i.e. the often contradictory behaviours, beliefs, opinions, emotions and relationships of individuals.

## Results and Discussion

Labour inspection is a crucial component of any labour administration system for continuing the employment of labour policies, on condition that response and consenting for an alteration of these policies is obligatory. The significance of labour inspection in encouraging decent work has been widely recognized. However in several countries, the changing world of work with its new employment patterns has been accompanied by reduced government interventions in the workplace. Even where there is a general agreement on the benefits of labour inspection, the real impact of labour inspectors has often been limited, especially among vulnerable or hard-to-reach groups and in the large informal economy. The International Labour Organisation (ILO) is operational to reinforce labour inspection systems with a view to safeguarding labour law compliance through the promotion of relevant international labour standards, and technical advisory services and projects. This discussion provides a theoretical (and/or) legislative overview of the work of labour inspectors nationally in order to protect the rights of the workers. That can only be achieved if the Basic Conditions of Employment Act (BCEA), Act 75 of 1997 [3] are adhered to.

### Department(S) Responsible for Labour Inspection

The Department of Labour is divided into 4 branches, among which is the Service Delivery Branch, divided into different Directorates. The Directorate of Inspection and Enforcement Services (IES) is responsible for ensuring compliance with legislation, protecting vulnerable workers, promoting equity and skills development in the workplace and for Sector and Hazard Specific Advocacy. The Office of the Inspector General comprises three teams, Occupational Safety and Health, Minimum Labour Conditions, and Employment Equity, each of which is responsible for labour inspection matters within its jurisdiction. The Unemployment Insurance Fund (UIF) and the Compensation Fund also have inspectors to ensure that appropriate

contributions are made by employers. Technical and OSH inspections in mines are carried out by a specialized body operating under the Ministry of Mineral and Energy Affairs.

### Laws that cover organization

1. Labour Relations Act 66 of 1995 (LRA). [N.B. This law was amended in 2002. Text of the Labour Relations Amendment Act, 2002 [11,12].
2. Basic Conditions of Employment Act 75 of 1997 (BCEA). [This law has also been amended in 2002 by the Basic Conditions of Employment Amendment Act 2002] [2,3].
3. Employment Equity Act 55 of 1998 (EEA) [13].
4. Skills Development Act 97 of 1998 (SDA).
5. Unemployment Insurance Act 30 of 1996 (UIA) [NB: This law has been repealed and replaced by the Unemployment Insurance Act, 2001] [5].
6. Occupational Health and Safety Act 85 of 1993 (OHSA) [4].
7. Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA) [14].

### Role of preventive measures

Advocacy and education are the key components of the work of the labour inspectorate in the area of OSH. Employers have the legal obligation to report occupational accidents and occupational diseases. The enforcement approach relies primarily on administrative and civil enforcement and restores the rights of employees to institute proceedings to enforce basic conditions of employment. Labour inspectors are empowered to issue compliance orders against employers who do not comply with statutory obligations. Compliance orders that are not obeyed can be made into and enforced as orders of the Labour Court. Financial penalties may be imposed on employers who do not comply with these obligations.

Labour inspectors may in writing prohibit an employer from continuing or commencing with an act which in the opinion of an inspector threatens or is likely to threaten the health or safety of any person. Currently, cooperation with social partners exists with regards to occupational health and safety. Both employers and workers have stressed the need for inspectors to take a more authoritative approach to labour inspections.

### Purpose for protection of workers' rights

Inspection and Enforcement Services are aimed at ensuring a fair and equitable labour market where all players adhere to the provisions of legislation that governs the labour market. The main functions of the inspectorate are to conduct workplace inspections and audits of Accredited Inspection Authorities (AIAs) to monitor and enforce compliance with labour legislation; to provide advice, technical information and support services to empower both workers, employers and stakeholders and to prevent labour disputes and workplace accidents; to investigate workplace health and safety incidents once reported. Inspectors focus on conditions of service that include wages, hours of work, leave, prohibition of child labour and forced labour, termination of employment, information concerning remuneration, deductions and other acts relating to

remuneration as well as written particulars of employment.

### Effects due to possible lack of protection of workers' rights

In many developing countries, labour inspection officers receive only limited initial training and have little opportunity to receive any in-service training. This leads to a decline in the quality of inspections undertaken. Other factors that challenge the authority and credibility of labour inspection services include violence against inspectors and corruption, weak networking structures and no possibilities to establish the electronic databases that can generate annual reports and help in identifying inspection priorities (e.g. high-risk workplaces) [15].

A further important area is the promotion of voluntary compliance through advisory services and cooperation with employers' associations and trade unions. The precise mandate for labour inspectors to engage in conciliation and mediation differs between countries but in most systems inspectors seek to ensure that workers and employers cooperate to ensure respect for labour laws. The balance between exercising the power to enforce laws through legal sanction and establishing commitment to voluntary compliance is a continuing challenge which can realistically only be met by experienced and well-trained inspectors on a case-by-case basis. Close cooperation with employers' organizations and unions can greatly assist inspectors in meeting these challenges [15]. The sections above are not your own discussion. Rather they read like a literature review. You should move them to an earlier section where you briefly mentioned what literature would be reviewed. Replace this section with your findings and a discussion based on those findings [16].

## Conclusion

Labour inspection is a key element of any labour administration system for enduring the implementation of labour policies, providing feedback and allowing for a readjustment of policies as necessary. The Labour Inspection and Enforcement Services are aimed at ensuring a fair and equitable labour market where all players adhere to the provisions of legislation that governs the labour market.

Even though labour inspectorates have been strengthened in so many countries with the recruitment of new inspectors and the professionalization of existing frameworks, a traditional perception of labour inspection work as excessively bureaucratic, legalistic and reminiscent of obsolete and inefficient forms of state control persists in the public imagery. This is due to two main reasons. First, more often than not, labour inspection administrations report their work through static output indicators (e.g. number of fines/citations issued, amount of money collected through fines, number of firms visited, etc.), rather than making public, the developmental impacts of their work. Second, researchers and other actors interested in labour regulation have made little progress in terms of developing the analytical framework and methodological tools for identifying and exploring the links between labour inspection and socio-economic development.

## Recommendations

It is recommended that the Department of Labour improve Labour Inspectors conditions of service such that they are assured

of stability of employment and are independent of changes of government and of improper external influences by adhering to the requirements as proposed by the International Labour Organisation (ILO) Convention No.81 to which they subscribe to.

It is recommended that the Department of Labour motivates the Labour Inspectors by means of providing incentives and assist with enough resources more especially where they are expected to conduct inspections that are situated in remote places, by providing subsidized vehicles or provide pool vehicles during the times they are expected to go and conduct the inspections.

It is recommended that the Department of Labour consider employing sufficient Labour Inspectors during the 2011/2012 financial year to secure the effective discharge of the duties of inspectorate in the 12 Labour Centres (because the current 98 Labour Inspectors for the 12 Labour Centres is not enough) in line with President Zuma's declaration in his State of the Nation address in Parliament this year that 2011 is South Africa's "year of job creation" therefore funding should not be a challenge since the Department of Labour will be fulfilling the promise.

It is recommended that each province should have its hot-line number with electronic database which is able to generate reports, to be linked to the Head Office for monitoring purposes in order to deal with complaints. The National Head Office can check outcomes of the investigations on a monthly or quarterly basis to identify if inspection priorities have been met [17-19].

It is recommended that the Department of Labour secure free SMS line whereby employees can submit their complaints instead of using telephones because some employees might not have the telephone facilities close-by. This type of system can protect the employees from victimization as it is un-obstructive. This type of advertisement will be of benefit all employees since most of them are mobile.

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