

Street level bureaucrats

Labour inspectors and enforcing decent work

Too few labour inspectors are employed to monitor workplaces. In addition, as **Kholofelo Ngoepe** tells from seven weeks of shadowing inspection teams, they are confronted with many obstacles which are more or less difficult to solve.

According to the Department of Labour (DoL), there are about 900 000 workplaces in South Africa and only 900 labour inspectors. This means a workplace is inspected once every three to four years.

In this light, I conducted a study focusing on the challenges faced by inspectors in the DoL in Johannesburg.

Johannesburg Central consisted of 66 inspectors and I shadowed 33 from their offices to inspection sites. I observed the inspection - the procedure, documents and the writing of inspection reports. I assessed the effectiveness of follow-up visits and noted what recommendations they made and what procedures they followed thereafter. I also observed 'blitz' inspections which happen without appointment.

I used a diary to record my experiences. Each day I went with one or two inspectors to about three workplaces.

The study was aimed at assessing the extent to which the policies that inform 'fair labour practices' or decent work, are implemented and enforced by inspections. This meant noting implementation shortfalls and the enforcement of labour laws.

Writers such as A Rycroft and B Jordan express concern that 'labour policies are simply symbolic politics,

giving the appearance of action with little done to tackle the problems'. And indeed there appears to be a disjuncture between labour laws and their implementation or enforcement.

For instance: there are about 5,8 million workers who are not registered with the Unemployment Insurance Fund. This is half of the workforce. Furthermore 4.1 million workers in South Africa do not have paid leave and there has been an increase in the number of hours worked of approximately 1.5 hours, from 47.6 hours in 2000 to 49.1 hours in 2008.

These statistics imply that poor working conditions are driven by a lack of regulation. In fact, many less developed countries have extensive labour regulations and social security systems but compliance and enforcement levels are low.

INSPECTION AND ENFORCEMENT

The role of the Inspection and Enforcement Services Unit in the DoL is to promote good labour practices, improve conditions at work and minimum wages, provide information and advice on labour laws and ensure compliance of laws by being pro-active.

Similarly, the role of an inspector under the BCEA (Basic Conditions of Employment Act) is to promote, monitor and enforce compliance

with employment laws by

- (a) advising employees and employers of their rights and obligations in terms of employment law;
- (b) investigating complaints made to an inspector;
- (c) ensuring compliance with the law by securing an undertaking or issuing compliance orders.

Literature focusing on labour market regulation often argues that high labour costs resulting from protective labour laws are a constraint on employers and cause higher levels of non-compliance with labour laws.

However, this literature neglects the importance of labour standards as a possible contributor, instead of hindrance, to economic development. S Storm shows that in countries that have stricter labour laws, workers are more likely to be motivated and committed to their jobs because they know they have rights and are protected.

INSPECTORS' PROBLEMS

I observed that inspectors faced many problems. The first was labour court backlogs.

Soaring labour disputes and a shortage of judges have resulted in backlogs of cases which will take over a year to clear. The delays have serious cost implications for companies and for employees who may have been unfairly treated or

dismissed. Backlogs can be attributed to increasing volumes of work over the past two years, and that more judges have not been allocated to labour courts.

As a result, this has created difficulties for the speedy finalisation of cases brought to the court by the CCMA (Commission for Conciliation Mediation & Arbitration) as well as by the DoL.

This also has serious implications for the ability to enforce fair labour practices because as I Salie and S Mangxamba indicate: 'If a case only gets to court in a year's time, there is a strong likelihood that company witnesses will no longer be in the same company, province or country.. And the company might have to bear the costs of flying them back for the hearing, or attempting to run the hearing without them, with the risk of losing the case because of a lack of witnesses.'

It can also mean that the lengthy process, due to backlogs, enables non-compliant companies to go free because they have enough time to close down and re-emerge under a new name.

SANCTIONS: SLAP ON WRIST

Inspectors also face the problem of inadequate sanctions for non-compliant companies. Schedule Two of the BCEA stipulates the maximum fine for employers who are non-compliant with laws. However these sanctions are 'a slap on the wrist' for employers who are contravening the Act.

The sanctions make it easy for employers to bypass laws. As one inspector said, 'One employer laughed in my face when I told him that I am taking him to court because he refuses to pay his employees. He just said to me "fine take me to court, what they are going to do?"' Clearly this is disempowering for inspectors because their attempts to pressure employers into

complying are not taken seriously.

INSPECTORS' EXPERIENCES

In South Africa, as compared to other countries such as Hungary and the Netherlands, the requirements to qualify as an inspector is a grade 12 certificate and a driver's license. Only inspectors who specialise in the Occupational Health & Safety Act (OHSA) and in the Employment Equity Act (EEA) need tertiary qualifications.

All other inspectors are trained only in the basics of BCEA, OHSA and the EEA. This poses a challenge to inspectors when they mediate in meetings between employers and employees as employers are represented by legal experts.

Unfortunately, the little in-house training given to inspectors does not equip them with enough technical and legal knowledge of labour laws. As a result inspectors are often undermined by lawyers and the purpose of the mediation meeting is defeated as more often than not legal experts win the case.

Inspectors also suffer from a lack of basic resources. With all inspectors I shadowed, including team leaders, the DoL was very slow in providing resources necessary for inspections. These included maps, computers and printers.

Inspectors need maps to find their way to sites. They require computers to update information about their cases and they need to print documents for an inspection such as the checklist and subpoenas.

Finally, inspectors need suitable offices to hold mediation or other meetings requested by the complainant or the employer. However, this was not always the case. Often inspectors shared offices with three to four people using one computer. This meant that while an inspector was using a computer the others had to wait.

Many inspectors said they were

intimidated by difficult employers who would not allow access to their workplaces. For instance, according to one inspector, Sandile, 'I was threatened with dogs in one company in Turfontein, around March this year. The employer told me if I don't get off his premises then he would release his dogs. This is especially so of farmers.'

An October 2008 *IOL* report told that, 'One of the inspectors was physically attacked by the son of an employer at Ladysmith printing business where he was conducting a follow-up inspection. He had been revisiting the business after finding... that workers were being allowed a meal interval of only 15 minutes and that there was no valid first aid certificate.'

A second incident took place in Pietermaritzburg 'where an employer verbally abused and physically handled an inspector there to discuss injury-on-duty compensation.'

What exacerbates the situation, according to inspectors, is that often the police do not cooperate with inspectors. They refuse to accompany them to inspections or to open a case when necessary. The implications are that aggressive employers who abuse workers' rights are able to bypass the law because there are no effective measures to force them to obey the law.

Not only are inspectors undermined, but so are the police. This can be misleading to employers who are cooperative. As one employer stated during a routine inspection, 'I don't understand you government people. You like to harass those employers that are compliant with the law and always leave those that are non-compliant. I never disobey the law but I know a security company in my area that underpays its workers, doesn't give any benefits, nothing. But you are here wasting my time, so why can't I do the same.'

MOTIVATION

The consequence of these problems is to de-motivate inspectors. I witnessed inspectors manipulating data for things such as assault or not being able to locate the workplace for an inspection because they did not have a map.

In addition, de-motivated inspectors used inspection visits as social gatherings or opportunities to seek new employment. This compromised the quality of inspections or led them into accepting bribes from what they called 'possible future employers'.

CONCLUSION

There is a need to improve the quality and efficiency of the implementation of labour policy. Inspectors face a number of challenges but these are linked to the bureaucratic structure within which they operate.

Policy intervention should be on three levels. Firstly, the shortening of enforcement procedures to hasten the implementation of penalties and to avoid fuelling a perception from workers and employers that inspectors are 'toothless bulldogs'. Inspectors also need to be better skilled and informed in order to take on employers effectively.

Secondly, the D oL needs to address court backlogs because this has a trickle-down effect on the efficiency of inspections.

Finally, there is a need to have stricter sanctions against non-compliance. This will make it harder for employers not to comply with laws. However, these sanctions also need to be enforced. LB

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Some comments

Below are some comments made by participants at a seminar presented by Ngoepe:

- Labour inspectors should only meet employers with worker representatives or shop stewards.
- Greater involvement of trade unions would solve the problem of inspections becoming social gatherings.
- We should stop using the word 'inspector' and rather talk about educators who assist workplaces to comply with laws.
- If an inspector does not understand an industry s/he will walk past problems. Modern processes are complex and release many harmful by-products.
- Inspectors should specialise in industrial or public sectors.
- Procedures are clear but more training is needed in implementing the nitty gritty.
- Some problems can be easily resolved.
- In small enterprises it is rare to see a D oL inspector, you are more likely to see a bargaining council agent. Such agents conduct more effective inspections although there is a similar lack of agents, eg in the motor bargaining council there are 17 000 employers, 230 000 employees and 90 agents. Agents plan with greater care. They first focus on giving advice to employers/employees and then on doing inspections. They have laptops so they can tell employers if they owe anything to the Council. Bargaining agents should discuss issues with D oL inspectors to come up with solutions.
- Employers are given 21 days to rectify a problem. Should the D oL close the workplace if they have not complied within this time? Unions will complain that this is destroying jobs.