



INDEPENDENT MEDIATION SERVICE OF SOUTH AFRICA

# ON THE FRONTLINE:

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Ten years of the  
Independent Mediation Service  
of South Africa

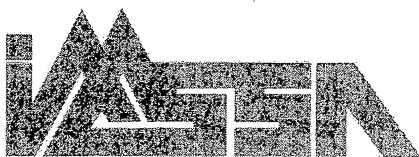
1984 - 1994



IMSSA Review Number 16  
Special Tenth Anniversary Edition  
September 1994



From: Tokiso Archives  
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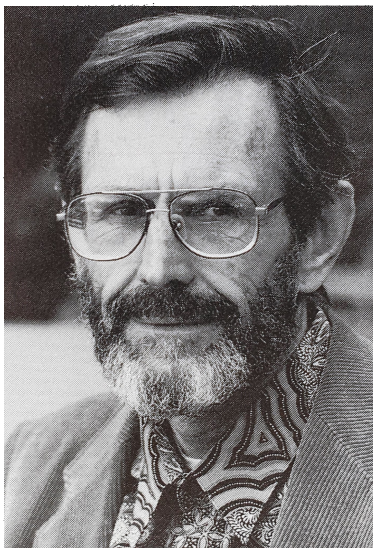
**O**n August 13 1984 the Board of Trustees of the Independent Mediation Service of South Africa (IMSSA) met for the first time, formally acknowledging the birth of a new organisation which had been slowly emerging over the past three years, and which was, over the next ten years, to have an increasingly important impact in a society marked by conflict in the economic, political and social spheres.

# **1 AN ORGANISATION IN THE MAKING - THE EARLY YEARS**

## **1.1 The formative years - from vision to reality**

The people who were involved with IMSSA in its formative years, the years before it became an established organisation, believe that the organisation owed its existence initially to the vision, foresight, persuasiveness and persistence of one man - Loet Douwes Dekker, then a lecturer, now a professor, at the Graduate School of Business of the University of the

Witwatersrand, generally acknowledged by the early pioneers in IMSSA as the organisation's "founding father".



*Loet Douwes Dekker: "Founding Father" of IMSSA*

## LOET DOUWES DEKKER

Loet Douwes Dekker has been a senior lecturer in Industrial Relations at the Graduate School of Business of the University of the Witwatersrand since 1981 and was appointed Professor in 1990.

In addition to his professional qualifications, he has a valuable "hands on" record of association with the trade union movement and industrial relations in general. He was Assistant General Secretary of the Trade Union Council of SA for three years, and Assistant Secretary of the Industrial Council for the Clothing Industry in the Transvaal for six years. He helped found the Urban Training Project, a workers' educational association, in 1971. UTP assisted worker leaders to establish 13 black unions during the seventies. He was banned for three years in the late seventies.

In 1989 he established the Bilateralism Project of which he is the Director. The objectives of the Project are to analyse the operation of bilateral and tripartite institutions and to assist the parties to define the parameters of labour market policy.

Douwes Dekker is a prolific and challenging writer and his book *Industrial Relations for a Changing Society* (1990) is based on lectures and papers delivered in the eighties.

He was responsible for taking the first steps towards establishing IMSSA, was its first Vice Chairperson and serves on the Board of Trustees as Technical Expert. He is a member of the South African Society of Conflict Intervention (SAACI) and was its first Vice President.

Charles Nupen, National Director of IMSSA, calls him:

*an innovator, an original thinker, ahead of his time. If he believes in something, he runs with it, even if it is an unpopular idea at the time.*

John Brand, a colleague of Douwes Dekker's on the first IMSSA Board of Trustees believes that

*his contribution was very significant, very formative. He was a major, major player and a driving force in those early days.*

Dren Nupen, who worked closely with him in the early days of IMSSA, says:

*He has such a passion for service. He is a visionary and a thinker.*



The early eighties were a time of dramatic change in industrial relations in South Africa. The decision by the South African government in 1979 to grant black workers freedom of association changed the nature of worker/employer relations. Freedom of association implies not only the right to organise, but also to participate in collective bargaining and, if deadlocks cannot be resolved, to strike or lock-out. For the emerging black trade union movement, the challenges were enormous, and no less so for the employers. Some of the latter were threatened by the development of an organised work force on the factory floor. Others welcomed the opportunities it presented, albeit with some caution. One of the obstacles to the successful implementation of the new dispensation was the unfamiliarity of both sides with the dynamics of the collective bargaining process.

Douwes Dekker was aware that in other Western countries the institutionalisation of industrial conflict had been accompanied by the establishment of a government service to assist parties in deadlock over conflicts of interest such as wages and working conditions, and conflicts of rights such as unfair labour practices. He believed that South Africa could benefit from what he calls "the late development effect", and learn from experiences elsewhere. Indeed, the South African government had made some provision for this by allowing for the Minister of Manpower to appoint an arbitrator (primarily for conflict of rights matters), or a mediator (for conflict of interest matters). In addition, from the early eighties on, the Industrial Court became an important mechanism for determining unfair labour practices. But government institutions lacked credibility with the black unions, as did government appointed arbitrators and mediators, and the Industrial Court process was lengthy, laborious and expensive.

Against this background, Douwes Dekker convened two workshops at the Wits Business School in 1981 to discuss mediation in the field of labour and the possible creation of a mediation service. These workshops were, in themselves, remarkable, bringing together, as they did, representatives of employers, of the established white trade unions, the emerging federations of FOSATU (the Federation of South African Trade Unions, later the Congress of South African Trade Unions [COSATU]) and CUSA (the Council of Unions of South Africa, later the National Council of Trade Unions of South Africa [NACTU]), and the independent black unions, such as the General Workers Union and South African Allied Workers Union (SAAWU).



The work environment shared by these organisations was a hostile and adversarial one, yet the representatives, in their individual capacities, came together and discussed seriously the possibility of setting up an independent mediation service in South Africa. The idea was received with caution by the employers, and with suspicion by the unions. Management was sceptical as to the practical feasibility of such a service, the white unions were suspicious of a service that would usurp the government's role, and the black unions were wary of any device that might be used to maintain the *status quo*. A very real concern of all the parties was the absence of truly neutral third party actors who could be trained as mediators. Theo Heffer, then Group Industrial Relations Consultant of Grinaker Holdings, and someone who quickly identified with the idea and joined Douwes Dekker as one of the important figures promoting the idea, remembers it this way:

*There was enormous suspicion - it was rejected from both sides. The black unions saw it as another management ruse, and management thought it was just another bunch of pro-union lefties getting involved.*

Undeterred, the growing group of people who saw the potential of such a service as a resource to the collective bargaining process, rather than an alternative to it, continued in their task of persuasion. That they were relatively successful had much to do with their own personal credibility. Manene Samela of the South African Chemical Workers Union, a NACTU affiliate, says:

*We didn't regard IMSSA as a front because we knew people like Loet (Douwes Dekker).*

Perhaps one of the most important steps that the Planning Committee took at that stage was to invite two outstanding proponents and practitioners of mediation to visit the country. In 1982, first Jim Power of the Federal Mediation and Conciliation Services (FMCS) in the United States, and then Andy Kerr, chief conciliator of the Advisory Conciliation and Arbitration Services (ACAS) in the United Kingdom, came out. Their contribution was crucial in creating awareness about the potential of the process. They addressed meetings of trade union and employer association representatives, jointly and separately, ran events for labour lawyers, and Jim Power ran the first mediation training course for a group of people, some of whom would form the first IMSSA mediation panel. The professionalism and objectivity of these overseas mediators, and those who followed

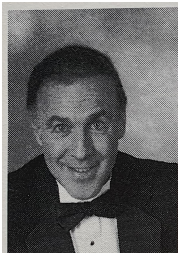


them over the years - people such as Tom Colosi, Richard Bloch, Tony Shepherd, Arnold Zack and Dick Salem - impressed those with whom they met. Samela says:

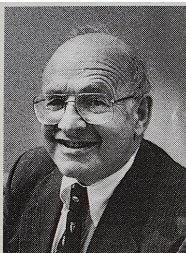
*We in the unions began to feel it could assist, that it could put some oil in the wheels of negotiation. We began to see beyond "capitalism" to a mechanism that could unlock the logjams and deadlocks - that was mediation.*

Charles Nupen, the current National Director of IMSSA, believes that the organisation owes an enormous debt to those overseas visitors and their organisations which have continued to be supportive of IMSSA through the years, providing input and encouragement and the opportunity for IMSSA staff and panellists to travel overseas and learn from international experiences.

*We were able to develop only as a result of the support of the international community. We owe our development and growth to their involvement, and to the faith of the early funders like the Ford Foundation.*



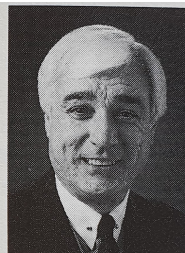
*Richard Bloch, American arbitrator.*



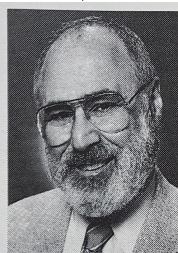
*Arnold Zack, American arbitrator.*



*Tony Shepherd, of ACAS in the United Kingdom.*



*Thomas Colosi of the American Arbitration Association.*



*Dick Salem, of the United States.*

It was the Ford Foundation which provided the seed money and the financial support IMSSA needed to get off the ground, and it was the credibility of the members of the early Planning Committee, as well as their understanding of the process, that encouraged the early support from donors. Steven Burkeman of The Joseph Rowntree Charitable Trust which co-funded Andy Kerr's first visit, says:

*The Trust had a longstanding connection with Loet Douwes Dekker and also with Theo Heffer.*

Nupen believes that organisations and individuals from countries where the benefits of independent mediation had already been observed were better placed to see its potential in South Africa than were many of those directly involved in what appeared to be an inherently adversarial situation within the country itself. Paul Pretorius, current Chairperson of the Board of Trustees, who was involved from the earliest days, says:

*Those visitors taught us the basic processes of mediation and we built on that.*

The Planning Committee became a Steering Committee and names on that committee included not only Douwes Dekker and Heffer, but also Ike van der Watt of the South African Boiler Makers Society, Phiroshaw Camay of CUSA (who continues to be one of IMSSA's most hardworking panellists today), Fred Ferreira of Ford Motor Company, Arthur Chaskalson, now President of the Constitutional Court, Paul Pretorius, Graham Giles, Professor Blackie Swart and a range of other names representing the more enlightened sectors of business, legal and academic life at the time. In general, the black unions steered clear of formal involvement, but were increasingly interested in what such a service could do for them.

In January 1983, the Steering Committee issued a press release in which Theo Heffer, who was to become the first Chairperson of the Board of Trustees, announced that a decision had been taken to establish a non-profit independent mediation service for South Africa. A panel of mediators would be formed on which trained people would be invited to serve on a part-time basis. It is worth noting the underlying principles for the nascent service which were stated in that press release because they remain the underlying principles of the service today:

- A mediation service must be independent and impartial;



- Mediation intervention is dependent upon the voluntary agreement of both parties;
- Mediation is a resource which can only assist the process of collective bargaining;
- Mediation recognises the principle of self-governance where the regulation of the relationship is left in the hands of management and trade unions.

Although it was only in 1984 that an office was set up and the Trust formally constituted, IMSSA began operating immediately. More visitors from abroad helped in the intensive training of panellists, and the number of panellists grew, as did their credibility. Bokkie Botha of AECI, remembers the extraordinary degree of professionalism exhibited by the panellists from the start, and says the infant organisation owed the almost immediate establishment of its credibility to the calibre of its service. Heffer says:

*Almost everyone involved in labour law in any way was linked to IMSSA and those early people were very important in terms of our credibility.*

Indeed, it was, says John Brand one of those early panellists and Board members, almost "incestuous", and he remembers an early arbitration where the arbitrator, company representative, and union representative were all on the IMSSA arbitration panel. Heffer adds:

*It was a unique experience. The process was accepted by both sides, starting from a climate where that just wasn't possible.*

Between May 1983 and June 1984 when IMSSA opened its own offices, 15 mediations were conducted. (Arbitration was only introduced in 1985.) It was a small but significant beginning, from which major things would grow.

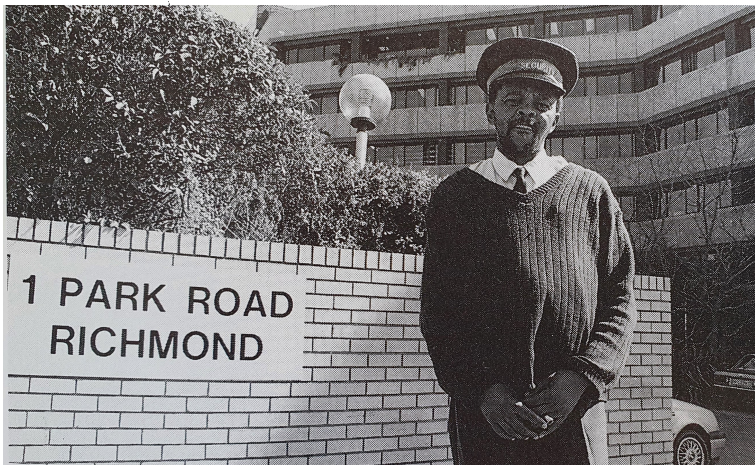
What motivated those early proponents who saw the initial process through from vision to reality? A passionate but pragmatic belief, fuelled by the input of the international contributors, that this was a process that could make a difference in the volatile South Africa climate. Pretorius says:

*It was a way of contributing. It wasn't trendy, it was even unpopular, but it was challenging, and we felt compelled to spread the idea in which we believed.*

## 1.2 Building an organisation

In February 1984, the Steering Committee appointed Dren Nupen as IMSSA Co-ordinator. For the first few months she operated out of "a broom cupboard" at the Wits Business School. For Douwes Dekker, the moment "when we knocked on Dren's door" and established an administrative structure, was a watershed event in the development of IMSSA as an organisation. Nupen had a background in Wages Commission work with black unions in the seventies in Natal and had recently done her Honours Degree in Industrial Sociology, writing a thesis on the Wiehahn and Riekert Commissions which had presaged many of the changes in industrial relations. She was, says a current Board member, "the right person at the right time".

On her shoulders fell the job of creating an organisational infrastructure that could support the growing service. By all accounts, the job was in very capable hands. It went far beyond setting up mediations, and included, image creation, interior decorating, furniture removal, buttering rolls and running across town to get cheques signed by the Chairperson of the Board.



*The entrance to 1 Park Road where IMSSA has been housed since mid-1984, with long-time gatekeeper Hamilton Hlomendlini.*

Speaking of those days and the move into the offices at 1 Park Road, Richmond, in June 1984, Nupen says she had to choose a middle road between an image that was too up-market and one that created a "candles and grass mats atmosphere". She pays tribute to Andre Lamprecht of Barlow Rand, then a trustee,

for his support in helping her to reach the right compromise, the quietly smart and efficient environment that was created with inexpensive carpenters and upholsterers, and secondhand furniture which Dren and a friend carried in and out of the lifts on the fourth floor themselves. When Andy Kerr from ACAS addressed the Steering Committee in 1984, Nupen and her friend catered, off a cadac cooker, with cutlery and crockery brought from home. Bontle Mpakanyane, the second IMSSA employee, who joined the staff as Administrative Assistant in January 1985, and Nupen both remember how they would put on the answering machine at 12 noon when there was an arbitration or mediation in the offices, butter Portuguese rolls for the trade union and company representatives, wash the white flour off their hands, and rush back to arranging mediations and arbitrations. A pregnant Nupen once fainted while serving one of these lunches, and came to surrounded by Portuguese rolls and an anxious mediator. She says:

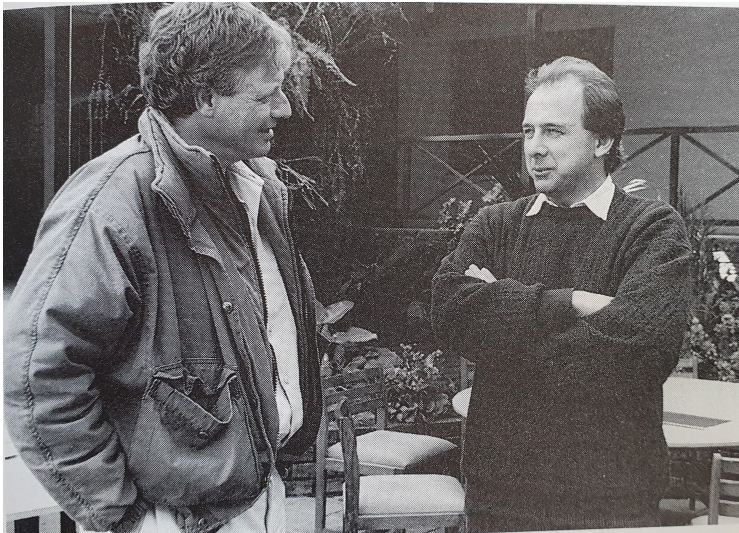
*We were well known for our lunches and when finally the Director decided that it was no longer feasible due to the number of events occurring on a particular day, the workers were furious and demanded the reinstatement of the Portuguese roll era.*

*Bontle Mpakanyane and Dren Nupen, IMSSA's first two employees, both of whom still work for IMSSA.*



In 1985, the Board of Trustees appointed Julian Riekert, an advocate who was a lecturer in labour law at the University of Natal in Pietermaritzburg, as IMSSA's first Director. He is remembered for his professionalism, his humour and his "beautifully written arbitration awards". Bokkie Botha says he was the first of the outstanding Directors of IMSSA. Dren Nupen believes his appointment gave the organisation a standing and stature it had not had before, because he was a male lawyer in an arena dominated by men and lawyers, and because he was "good".

With three staff members, three offices, a boardroom and a library, IMSSA now had an established infrastructure, and in 1985, 60 mediations and 24 arbitrations were organised under its auspices. In 1986, it was 139 mediations and 73 arbitrations. In 1987, when Julian Riekert emigrated to Australia, and Charles Nupen took over as Director, the figures rose to 199 mediations and 162 arbitrations. Nupen was also a lawyer, and, prior to his joining IMSSA, he had worked at the Legal Resources Centre.



*Charles Nupen (left) was initially sceptical about the potential of mediation, until Paul Pretorius, a colleague and an IMSSA panellist, paid for him to fly to Pietermaritzburg to watch Paul doing a mediation. Says Charles: "I saw two parties in dispute, dug in, holding firmly to apparently irreconcilable positions ... yet, in the course of six hours they reached agreement". After that he was converted, and attended some of the earliest training courses.*

Dren Nupen remembers Charles, shortly after his appointment, wondering whether he would have enough to do. In fact, his appointment was followed by unprecedented growth, not only in IMSSA-organised interventions, but also in the infrastructure of the organisation. Douwes Dekker says of Nupen:

*He grabbed the ball and ran with it.*

Mpakanyane remembers:

*Everyone wanted us. Everyone wanted Charles.*

Felicity Steadman, a long-time panellist, who was also Nupen's Personal Assistant for a while, says of him:

*He was a wonderful person to learn from.*

He himself sees his job in that period as having been "to innovate, develop and inspire" rather than management which would come later when the organisation had grown beyond the intimacy of a small to medium-sized enterprise, a change which he accepts as having been inevitable but which he regrets. The other side of the coin, he admits, is that "the important thing about growth is that it significantly increases your impact".

### **From the frontline ...**

Bontle Mpakanyane remembers Charles Nupen asking her to stay for an hour of overtime to type up an agreement for a mediation he was conducting. She staggered out of the office at 5 a.m. the next morning and went home to sleep. Nupen went back to the mediation.

By March 1989 there were 10 staff members. There were also 56 members of the arbitrators' panel, and 75 of the mediators' panel (many panellists were on both), with panellists in the Transvaal, Natal, the Western Cape and the Eastern Cape. A vast amount of training had been organised by IMSSA in the intervening years, using both external resources and the growing internal resources of the organisation. That year IMSSA panellists conducted 475 mediations and 212 arbitrations,



indicating not only a growing recognition of the need for the service, but also a recognition of the high standard of the panellists. There is also a general recognition from the users of that time that the administrative infrastructure was professional and efficient. Dren Nupen says:

*We never said no to anyone. We broke our backs to make it work.*

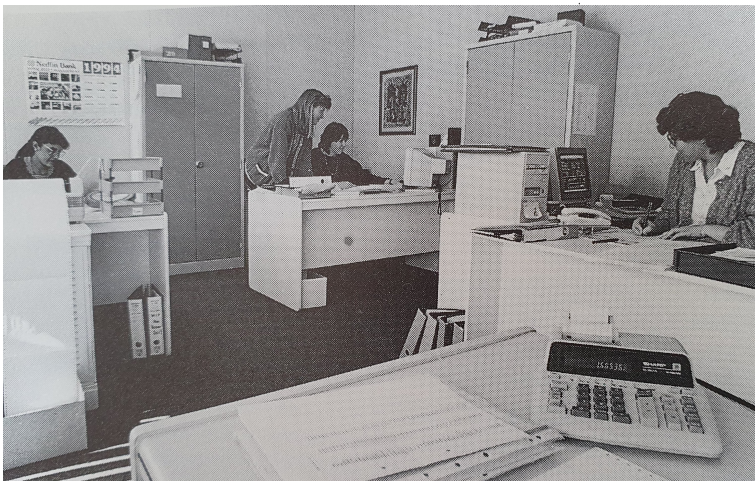
The Board, first under Theo Heffer, and then Paul Pretorius, has played a decisive role in the development of IMSSA as an organisation, and has fulfilled the difficult function of making tough decisions, ensuring that the independence and credibility of IMSSA are enhanced through the quality of the panellists, and that the organisation remains viable and responsive. Charles Nupen says:

*The job of the Board has not been easy. Historically our Board has shown itself to be able to evolve, change and develop and has served IMSSA well.*

IMSSA now has 59 staff members, spread over a national office, and regional offices in the Transvaal, Natal, the Eastern Cape and the Western Cape. Just under 200 panellists serve on its various panels, it runs four projects, three of which are active in all the regions, and has a whole department dedicated to research and training. It occupies all of the first floor at 1 Park Road, and has overflowed on to the fifth floor which houses the National Directorate and the Finance Department. Meeting rooms, training rooms, caucus rooms abound. A housekeeping staff takes care of domestic requirements, a receptionist answers the telephone which rings incessantly. It is a big organisation which buzzes with activity, as staff, users, mediators and arbitrators go about their business. It is difficult to believe that this all had its beginnings in "a broom cupboard" at the Business School, and the physical reality of IMSSA is a testament to the dedicated staff, starting with Dren Nupen and Bontle Mpakanyane, and the guiding hand of the Board of Trustees, over the years.



IMSSA's busy  
Finance  
Department in  
1994 - a far cry  
from the two-  
mornings-a-  
week  
bookkeeper of  
the past.



### 1.3 Developing a service

While the building of an organisational infrastructure played an important role in establishing IMSSA as a significant actor in dispute resolution, the infrastructure, in fact, reflected the development of the heart of IMSSA, the services it offered. In the early days, IMSSA operated only in the field of industrial dispute resolution. Initially it offered only mediation, but, by early 1985, largely through the commitment of Paul Pretorius to the concept, the training of arbitration panellists had begun. Charles Nupen believes this is typical of the contribution which Pretorius has made to IMSSA:

*He is an innovative thinker, a leader. He has never let IMSSA rest on its laurels, he is constantly stretching us.*

Mediation is a process oriented towards assisting parties to forge an agreement, the terms of which the parties themselves determine. The role of the mediator is to deal with the parties in a way that helps build and strengthen their relationship while they reach the agreement. Arbitrations are less "personal" in the sense that the parties put their cases to the arbitrator and then accept his or her decision as final and binding upon them.

Until 1990, Richard Bloch, a labour arbitrator from the United States did all the arbitration training for IMSSA. Writing of those early days, Bloch says:

*I travelled around during my first visit, preaching to the*

*generally unconvinced. Companies were, in large part not persuaded that a third party should be admitted to the dispute settlement process; Unions were distrustful of any threat to their strike prerogatives. I left South Africa after the first visit ... not yet persuaded that the new infant would receive a warm reception. ... Periodic visits quickly changed my perceptions. I had underestimated the enormous energy and dedication of the IMSSA staff and its friends, The good will and integrity of the arbitrators had become an established and accepted given. IMSSA had developed a core and character, a reputation of neutrality that was desperately needed and increasingly desired. The infant with little more than a cheerful demeanour and a wellspring of energy had developed muscle and credibility.*

Charles Nupen says that it was Bloch who "made arbitration live for us". Arnold Zack, another of the early arbitration trainers, remembers doing his first training workshop in Julian Rieker's kitchen. According to him, the prime importance of IMSSA in those early days was in demonstrating the feasibility of mediation and arbitration in resolving not only labour/management disputes, but bigger ethnic, racial and political disputes. It showed the practicability of private dispute resolution as an alternative to an unacceptable governmental judicial system.

*Above all, through its care in selecting and monitoring the ethical standards of its panel members, it established the criterion of impartiality which provided its members the necessary authority to positively influence so much of the welcomed political change.*

### **From the frontline ...**

Advocate Fikile Bam, one of IMSSA's first black panellists and Board members, remembers going to Bloemfontein to do an arbitration in the early days of IMSSA. The IMSSA office had declined to tell the conservative Afrikaner company to expect a black arbitrator. He arrived at the airport and, seeing some men clearly looking for an arrival, went up to them and asked if they were looking for Advocate Bam. "Ja, waar



is hy?" they replied. When he explained that he was the expected arbitrator they were very quiet, as were their colleagues back at the company premises when he arrived. Bam was fortunately able to talk to them in Afrikaans and they began to ease up. Bam was on his mettle and the arbitration was a very thorough process which, in the end, went against the company. Despite this, the company spread the word that Bam was a good arbitrator and it was **this** arbitration, he says, that really established him as an arbitrator.

Incidents like this, and one when, during the repressive eighties, a conservative Afrikaans union in the Eastern Cape asked for him, particularly, to arbitrate, made him feel very good about his role.

Panellists active at the time remember the period for the range of conflicts, the intensity of the learning experience in such a short time, as the parties in mediations, and, indeed, the mediators themselves, began to grasp the difference between position-based and interest-based negotiations, and to move towards the latter, which created the possibility of mutually beneficial outcomes. They saw themselves as managers of information, openers-up of communication, and, whatever their styles as mediators and arbitrators, and they differed considerably, they were supported by the process:

*One had a process and it worked.*

### **From the frontline:**

Paul Pretorius did one of his first mediations with the Commercial, Catering and Allied Workers Union of South Africa (CCAWUSA), then with Emma Mashinini as General-Secretary. He recalls that neither management, the union nor he himself were really confident they knew what was going on - "although we all obviously tried to look as if we did". He believes that one of the main



reasons why the mediation was successful was because no-one really knew when to stop and they just carried on until the parties eventually settled. For him, that experience, that collective bargaining really worked, just as Jim Power and Andy Kerr has said it would, was "a novel and most satisfying one".

Although staff and panellists enjoyed a sense of collegiality, of commitment and belonging, there were often difficult times. A 1986 IMSSA document, providing guidelines for mediators, has this to say:

*Mediation is one of the loneliest occupations in the world. There will be times when, alone in your shabby country hotel bedroom, you wonder why you ever got involved in the game.*

But it was also an enormously exciting time to be involved in the organisation. It was still a period when stakeholders had to be persuaded to come on board and Dren Nupen says that IMSSA owes an enormous debt to certain trade unionists, people like Manene Samela and Bernie Fanaroff, who "drafted" their unions and the companies with whom they were dealing, particularly in the food and metal industries, and persuaded them to use IMSSA's services. "They drove the concept of mediation in the unions". In those early days, most of the events were small ones; the big ones which caught the media's attention were to come later. Nupen is proud of the relationship of mutual respect which developed between IMSSA and its users in the days when third party mediation was not yet an accepted practice.

### **From the frontline ...**

Graham Giles, a member of the original Steering Committee and a long-time panellist, remembers a mediation that went on until 4.30 a.m. in the morning, in the company building. The union representatives were so hungry that they raided the company's fridges and ate all the food they could find. The company didn't mind - the dispute was settled!



When Charles Nupen was asked in 1989 how IMSSA measured its success rate, he said:

*I prefer to take the attitude that one doesn't measure success of the mediation process by how many settlement agreements are written at the end of the process. At this point in time over 50% of our mediations end up in settlement between the parties. But in a great deal of the mediations, where the parties don't actually settle, an environment is created, through the intervention of the mediator, which allows the parties to go away and settle the dispute between themselves without the need for industrial action or force. So, you see, I don't measure success by whether or not the parties emerge clutching a settlement document. The success of mediation must be measured in terms of whether or not the parties have been given insights, the impetus and the tools to enable them to break through the deadlock and settle their dispute in a rational way.*

In the first two years of its operation IMSSA focused on the mediation and arbitration service. In 1985, however, Dren Nupen went to England and received training in balloting techniques which enabled her to establish a service which offered employers and trade unions balloteers to conduct strike ballots, verifications exercises, provident fund elections and trade union elections. Although this area of work had small beginnings, it was to grow enormously in the nineties and led to the involvement of IMSSA in the national elections of 1994.

Another process which was brought to South Africa by mediators from the United States, after a visit by Douwes Dekker, was Relationships by Objectives. Ken Evans and Don Power of the FMCS came out to South Africa early in 1986 and ran a pilot Relationships by Objectives (RBO) project for IMSSA. After meeting the representatives of the company and the union involved, Johnson Tiles and the Black Chemical and Allied Workers' Union (BCAWU), they conducted the three-day exercise together with three IMSSA mediators. The RBO process is a voluntary one involving neutral third parties whose aim is to facilitate the development and maintenance of a constructive relationship between labour and management. Its focus is on long-term relationships rather than the solution of immediate issues. The process is normally conducted over a period of days with follow-up from time-to-time. For it to succeed it requires a broad-based commitment to the process from both management and labour and the involvement of key



personalities and decision-makers on both sides. It is usually used in situations where there is a history of volatile labour/management relations.

The process can be a very powerful one. Douwes Dekker remembers participating in the first RBO in which IMSSA was involved and how the willingness of union leaders to discard one of the issues on which there had been previous deadlock crystallised for him a whole new vision of what the power of effective dispute resolution could mean. This was reflected too in a joint statement from management and three trade unions about what the RBO had meant to them, after another RBO:

*Sensitive points identified, discussed and tested; deep seated differences still exist, but we are looking at them more moderately ... shared ideas between the four parties and company that we are going to co-operate and help one another with problems ... to take feelings into consideration; ... overcame a lot of misunderstanding; ... we achieved an undertaking to work together in the future; ... we were open and achieved openness; we worked hard and expect to undertake more hard work; we were surprised by the common ground that exists between the parties ...*

## THE MERCEDES BENZ/NUMSA RBO

The relationship between Mercedes Benz, a major motor vehicle manufacturer in the Eastern Cape and Border area, and the National Union of Metalworkers of South Africa (NUMSA) had been very strained and difficult for a number of years. A white workers union, Yster en Staal was also involved. In 1989, IMSSA became involved with the parties when it mediated a dispute over the termination of the employment of certain union members who were found to have participated in acts of misconduct during a demonstration in the plant. The dispute was settled through mediation and in terms of the settlement agreement the parties committed themselves to a Relationship by Objectives (RBO) exercise to set their relationship on a new footing.

A team of five IMSSA mediators ran the process. At an initial site visit at a Mercedes Benz plant they found workers with wooden AK47s on their backs. At lunch time there were mock bayonet charges on effigies of management. White supervisors were



carrying real weapons and the atmosphere on the shop floor was one of deep antagonism and hostility. This was the late eighties, and the political climate was still highly oppressive. A meeting the mediators had with the union took place in a room with a board on which was written "Viva COSATU, Viva ANC, Viva SACP". Mediator Charles Nupen broke the tension in the room by going up to the board and adding "Viva IMSSA"!

The RBO took place at a neutral country hotel venue, over four days. The company was represented by its Chairman, numerous Board members and 40 other managers from various levels in the company. The union was represented by two senior fulltime union officials and 30 shop stewards from various plants around the country.

The team of mediators constructed a mini-parliament and the parties engaged each other on a range of matters of concern to them including compliance with the Recognition Agreement, racial discrimination, political issues, the development of a sound basis for future negotiations between the parties, selection, training and development of employees, the quality and nature of supervision, social responsibility of the company, consultation and participation by employees in decision-making within the company, time-keeping, job security, carrying of weapons in plant, and the management of political demonstrations in plant.

The mediators guided the debate along constructive lines and the parties were given a full opportunity to voice their opinions and were encouraged to set objectives to overcome the problems in their relationship. Consensus was reached on a series of 30 objectives to do this, and action plans were developed to give effect to the objectives. Responsibility was assigned to specific individuals and groups within each party to execute the action plans. Time limits were placed on this process. Panellist Reg Mason, who took part in some of the stages, says it was a series of "very constructive steps, painstakingly put together, step by step".

Mediator Paul Pretorius says the parties chose the right time for IMSSA to intervene - everyone was losing and was aware that something needed to be done. In the course of the process, a change in attitude was perceptible on the part of individuals within each party towards one another and an atmosphere developed that was far more conducive to sound industrial relations. Workers and management spoke to each other in a way that was cathartic and moving, both sides speaking of the humiliation they had suffered at the hands of the other, and showing the hurt this had caused them. Mtutuzeli Tom, one of the union representatives and now President

of NUMSA, says:

*It was the first time in our lives as a labour movement to sit and open our hearts to management and management to labour. IMSSA made it possible for the real issues to be looked at and we are still feeling the positive effects.*

Ian Russell of Mercedes Benz, agrees with this positive assessment:

*The IMSSA third party intervention at Mercedes Benz in 1989 was a watershed in the Company's Industrial Relations history. Despite a history of emotionally explosive and uncontrollable industrial relations which had paralysed the manufacturing plant for years, the parties were able to craft their own ground breaking constitution ... the boundaries of the practices institutionalising the relationship have been severely tested since then on many occasions but it has been the commitment to the structures from both sides coupled with the spirit of the RBO process that has enabled Mercedes Benz to enter the "new South Africa" with confidence and commitment to a long-term future in this magnificent country.*

For mediator Inthiran Moodley, who did the first follow-up after the initial process, the period immediately after the intervention was extraordinary, with the parties taking complete control of the process and achieving objectives beyond those set in the RBO.

*They translated the initial efforts of the facilitators into processes and structures they took control of.*

It was a time of experimentation in IMSSA and the links with the United States and United Kingdom were still very strong, with many of the processes being adopted in their original forms, without much adaptation. An enormous amount of work was done. In 1988 there were 313 mediations and 194 arbitrations, and in 1989, 475 mediations and 212 arbitrations. The figures show that IMSSA had been accepted as a resource to the collective bargaining process, and the panellists were beginning to build up a considerable body of specifically South African expertise and to gain the confidence which would enable the industrial dispute resolution service to come into its own. Tony Shepherd, of ACAS, says of this period:

*The fact that IMSSA overcame (this) suspicion at an early stage and that its mediation and arbitration workload*



*increased by a staggering 200% during the period 1986 and 1989 is living testimony to the absolute professionalism of its first tranche of panellists.*

**From the frontline:**

During the Mercedes Benz/NUMSA RBO there was a point when the mediating team running the process could not agree among themselves how to proceed. A union representative and a management representative came up to them and asked if they could help by mediating and proceeded to do so!

## **1.4 The coming of age of the Industrial Dispute Resolution Service**

By 1989 and 1990, collective bargaining was well-established. The parties which used IMSSA had been through several rounds of testing negotiations and their skills and the sophistication of their strategies had increased accordingly. Interest-based bargaining was becoming more frequent, as opposed to position-based bargaining, with the paramountcy of mutual interests creating the capacity for mutually acceptable settlements. Instead of just sitting it out, mediators were beginning to be aware of their responsibility to look beyond the immediate settlement to the educative value of mediation. The task of the mediator was becoming more difficult, more demanding, more challenging, as old styles and techniques no longer worked as they had done. The demand was for mediators to be more skilled, more informed and even more creative than they had been, and IMSSA's on-going training of new panellists, and upgrading of existing panellists contributed to enabling them to meet the demands.

### **From the frontline:**

Both panellists Mark Orkin and John Brand remember incidents when they thought a mediation was about to end - and then it didn't!

In Orkin's case, both parties stood up and snapped their briefcases shut at 6.30 p.m. ... and then settled two hours later, with everyone still standing up behind their shut briefcases!

Brand went to complete a mediation on a warm Saturday morning, dressed casually, sure that settlement was only an hour away. He mediated right through the night and claims he nearly died of exposure!

At the end of July 1990, more than 28 700 workers were on strike, another 127 000 were about to vote on whether or not to strike, and 4 000 had just returned to work. It was during this period that IMSSA was involved in several high profile interventions, among them the SA Transport Services/SA Railways and Harbours Workers' Union dispute (see Box), major strikes in a retail industry and a dispute in the mining and paper industries - almost every major industrial dispute of the period. This trend continued into 1991, with IMSSA mediators involved in the settlement of major disputes in the motor and metal industries.

### **THE SATS/SARHWU MEDIATION**

Members of the South African Railway and Harbour Workers' Union (SARHWU) embarked on strike action during 1989 in order to induce the South African Transport Services (SATS), a state-owned company, to agree to certain demands. SATS refused to meet those demands and dismissed many of the workers in the course of the strike. The strike lasted three months, involved the dismissal of over 20 000 workers, left at least 27 people dead and cost more than R 100-million, of which R44-million was in lost wages, and R 40-million in damage to rolling stock. At issue was the company's recognition of the union, and the right of the union



to negotiate a wage agreement.

A number of things made this a highly significant industrial dispute, including its sheer magnitude and the complexity of the ramifications, the fact that the resolution brought a state corporation into a relationship with a COSATU union for the first time, the fact that the resolution of the strike focused as much on the consequences of the strike as on the original issues giving rise to it, and the fact that the relationship and labour relations system that emerged proved to be one with which the parties could live and was, therefore, sustainable and enduring. The involvement of Cyril Ramaphosa and Jay Naidoo from COSATU and the mass democratic movement, working within the union caucus, also played an important role in allowing for the delivery of settlement.

The mediation team, made up of Charles Nupen and John Brand, spent 48 hours over four gruelling days in mediating the strike, with the last session going for a non-stop 18 hours. Brand recalls him and Nupen taking sleep breaks while the other continued with the process. The process was tense and emotional, with, at one stage, people being slaughtered on a station during the mediation. The mediators were called upon to manage the emotion and the whole process took enormous skill and endurance.

In terms of the agreement, SATS recognised SARHWU, and agreed to bargain on wages and conditions, in areas where the union was registered; all strikers, including 23 000 who had been fired, were re-employed, received their 1989 bonus and were re-instated on the SATS pension scheme; and it was agreed that there would be no disciplinary action against the strikers, although workers convicted in court of violence might face disciplinary action. Evicted strikers would be reinstated in SATS hostels. Although no gains were made by SARHWU in terms of its original minimum salary demands, Martin Sebakwane, then General Secretary of SARHWU, said:

*For the first time a black public-sector union will be recognised in South Africa. A historic document has been signed.*

For IMSSA, the intervention, which took place at the IMSSA offices, was a tough one, and the mediators were called upon to mediate in a situation which was not only hostile and violent, but where the parties came from fundamentally different political traditions and perspectives and so a relationship had to be built between them in the course of the mediation.

Jan Bredenkamp, head of labour relations for SATS, was optimistic

about the lessons that the settlement held for the future:

*There were more than 20 meetings between us and SARHWU during the strike. Obviously some common ground, and the basis for future co-operation must have been established in the process of such intensive talks.*

Another SATS representative, Willie Coetzee, said:

*We have a better understanding of the union and its members as well as the process of collective bargaining.*

Sebakwane agreed:

*We now see our limits and how best to maximise our ability. We also see clearer the myths about an apartheid institution like SATS and have learned there are ways and means to deal with them and structures to observe. We cannot wish each other away.*

Nupen said:

*Both parties were keen to settle. They had just got to the stage where they felt they couldn't do it on their own.*

The vast majority of mediations in this period occurred over wages and substantive conditions of employment and, while most still occurred in the Transvaal, a growing number were taking place in Natal, the Cape, and the Orange Free State and the organisation was beginning to talk of opening regional offices. In 1990, the first regional office was opened in Durban, under Bruce Robertson.

Issues brought to arbitration were most often individual disputes of right, including individual dismissals, or a determination regarding appropriate disciplinary action, but there were also collective disputes of right and collective disputes of interest. At this time, IMSSA took the decision to publish its arbitration awards in the form of a digest, a significant step in contributing towards the creation of jurisprudence in the field.

Although IMSSA had always offered some training in mediation and arbitration techniques to users, it was during this period that this began to be done on a more systematic basis so that parties could better prepare themselves when engaging in either mediation or arbitration. In January 1991, IMSSA conducted the mediation and arbitration training components at the COSATU Summer School, while several large companies



contracted with IMSSA for arbitration training, and a general seminar for employers was run in the Western Cape.

Upgrading of panellists skills and the training of new panellists continued, and a national seminar was held for each of the two main areas of work, drawing on local and international expertise. These national seminars became annual events from 1989 until their function was taken over by the combined National Conference in 1991.

During 1990, there were 580 mediations and 344 arbitrations. Most of these were small events which reflected the contribution of the growing number of panellists. The name of IMSSA began to be synonymous with industrial dispute resolution mechanisms. Independent mediation and arbitration had become an established feature of industrial relations life. The exposure of management and unions to collective bargaining processes had largely eradicated misgivings about third party intervention and had enhanced its value as a resource to collective bargaining. Parties used IMSSA as a matter of course, and tended to take the attitude that a person trained as an arbitrator or mediator by IMSSA would do a professional job. The performance of the mediators and arbitrators in the field had earned IMSSA an enormous amount of credibility, and had made independent mediation a truly South African product.

## 1.5 Some of the internal debates

Paul Pretorius comments, somewhat wryly, that internal debates in IMSSA have been characterised by intensity and passion, rather than cool reason, although, he adds, reason has usually prevailed in the end.

One of the heated debates in the early years was whether IMSSA mediators should accept mediation outside the auspices of IMSSA. As the priority at that stage was to educate and persuade parties of the merits of mediation as a process rather than of IMSSA as an organisation, a cautious approach was adopted and today it is no longer an issue, with most mediators and arbitrators more than happy to be associated with IMSSA and work within its parameters.

Another area of debate was the decision to exclude people who were employed by management or by trade unions, or whose primary function on a daily basis was to serve either of these

parties, from the panels. The intention was to encourage people to become mediators and arbitrators who were not in a direct relationship with users, so that their independence would not be challenged. This position became more flexible as the processes matured and became more acceptable to the unions and companies and criteria for admission to panels now concentrate more on the qualities of the particular individual who applies to be trained than on rigid rules for exclusion.

Another area of tension, and one which has not yet been completely resolved, is that of the composition of the Board, and, in particular, what role, if any, organised labour and management should play on it. Initially there was representation from unions and management on the Board of Trustees, but a restructuring process early in 1990 changed this. At that point, provision was made for the election of regional representatives to the Board, and the election of mediation and arbitration panel representatives. In effect, only the panellists had voting rights, and the Board became panellist-driven. Provision was also made for the appointment of two Resource Committees, drawn from employer and union users of the processes, the intention being that they would meet and discuss relevant issues with the Board from time to time. The reasoning behind this was that it was unrealistic and potentially compromising to expect the inherently adversarial groupings to work together on the same Board and, indeed, one unionist said that there was the potential for such an arrangement to "tear the organisation apart". Others were, however, unhappy that the organisation was no longer formally accountable to its users. The debate has continued through the years, and the issue is currently under discussion again.

Perhaps one of the most hotly debated issues was the decision about whether IMSSA should move into community mediation. The idea was first mooted early in 1989, and an in-principle decision was taken in 1990 that, provided it did not detract from the work in industrial relations, IMSSA could begin to work in this area. Paul Pretorius, who became Chairperson early in 1990, says that IMSSA ultimately had little choice in the matter:

*People from the townships said: "We need it and you have to respond."*

But there were many doubts expressed about the wisdom of the step and fears about the unintended consequences it might have in relation to the Industrial Disputes Resolution Service.



The matter was debated exhaustively, and the fact that it took a while for the Community Conflict Resolution Service to be fully launched may have had something to do with the very real concerns of some Board members about the effect such a service might have on IMSSA's reputation. Those who were reluctant to move into their field of community conflict resolution feared that the greater likelihood of failure in that very unstable area might undermine IMSSA's success in its industrial relations role, and that participation in a highly partisan arena might affect IMSSA's reputation for impartiality. There was also a fear that a change of focus might detract from the quality and innovativeness of the industrial relations service and overstretch resources, human and material, that were already under pressure. There was also the issue of duplication and competition in a field where others were already active. Arguments for moving into the field included the very real skills and experience that the organisation had to offer in mediation of conflict, the dire need, and the fact that the communities affected by the conflict wanted IMSSA to get involved. In the event, the decision was taken to launch into the community arena, and most Board members, staff members and panellists believe it was the correct decision and one which has borne remarkable fruit. The issues have, however, not been completely put to rest and have recently been raised again in relation to the massive expansion into the area of voter education and the organisation of elections beyond the labour/management field.

These debates were characterised by heated but thorough discussion and many of them were informed by detailed and balanced papers, working through the pros and cons. That not everyone was always satisfied is probably inevitable in an evolving, growing and dynamic organisation about which the people involved cared very deeply.

## SEMINAR SPEAK AND MEDIATION MUMBLE

Discussion did not always reach elevated heights of eloquence, as these quotes, taken by Fink Haysom and Chris Albertyn from the 1990 IMSSA Annual Mediators' Conference (the heading of this Box is theirs) indicate:

I'd like to come in at this point, and it strikes me, indeed, it certainly seems to me, all things considered in this particular context, taking relevant details into account and looking at contemporary factors to the extent that one is able to do so in the normal range of prioritising, and speaking only for myself - that is without any mandate from others beyond me at this time, unacceptable though this view may at first appear to be in the context of this discussion - that, wedded as we are to our particular approach - we could be responding as creatively as one can at this juncture - although this could raise more questions than it answers.

I was going to make another point which I think I'll shelve for now, although this point is not being made in quite the same way as before. I could elaborate on this point although I won't. I, for one, accept others' perceptions and, just on another quick point, which is a component which bears repeating, although on second thoughts I'm reluctant to open a whole new debate. Very briefly I'll try to summarise what I'm saying, thought this is not a novel conclusion and because I may be echoing what others have said, in lieu of any really closing remarks, I'll leave it there. I'd value any comments on what I've said. Thank you Mr Chairman. That's all I wish to say.

Despite the debates, perhaps because of them, IMSSA moved into the 1990s in very good shape, as a recognised leader in its field, and with a reputation for professionalism, impartiality, efficiency and delivery. In many ways it was ready for the leap which was to catapult it from the medium-sized organisation of the late eighties, with a defined and limited area of operation, to the large and multi-faceted organisation which it has become in the nineties.



## 2 THE NINETIES - NEW CHALLENGES

*In the nineties we were catapulted into accelerated growth.*

### 2.1 Beyond industrial relations - the Community Conflict Resolution Service

Once the decision had been taken to get involved in the community arena, the service first began to take off when panellists and staff members like Phiroshaw Camay, Thabo Molewa, Edwin Molahlehi, Ilona Tip and Suzanne Nossel got involved, and Vincent Mntambo in the Transvaal and Jerome Ngwenya in Natal were appointed as the first Community Conflict Resolution Service Regional Directors. Mntambo and Ngwenya inherited a growing service and to them fell the responsibility of developing the wide-ranging network of contacts in communities which was a prerequisite for trust and credibility.

To implement the simple Board decision of April 1990, for IMSSA to "expand its field of operation into the field of conflict resolution beyond labour" a whole change of approach and mind-set was required. Throughout the debate on whether or not IMSSA should get involved in community conflict resolution, there was consensus that, if it did, it should not do so in a "half-baked" way and that such work should only be undertaken once it could be dealt with properly and professionally. While all mediation requires commitment from the mediator, community and political mediation is particularly demanding. Nupen was one of the first of IMSSA's mediators to move into the area, when he started chairing the Wits/Vaal Regional Dispute Resolution Committee and the Greater Soweto Dispute Resolution Committee. Talking of his experience in this field, he said:

*I thought I knew a lot about mediation. I have been back to the drawing board many times in the last weeks and am somewhat more humble as a result.*

Mediation and facilitation in community conflict situations is, he said,

*intensive, often inconvenient, at times dangerous, and susceptible to frequent setbacks in which deaths and injuries are not uncommon ... great victories are rare and what progress is achieved is nurtured and frequently reflected on.*

The parties in a community dispute are seldom clearly defined, nor is the relationship between them, or their accountability to their constituencies, at least not in the way they would be in an industrial dispute. The areas of dispute are often complex and inclusive, rather than determined by agreed-upon parameters. There are usually few, if any, established procedures for dealing with conflict and the content and ramifications of each dispute are usually very different. Community disputes in South Africa exist in an extremely unstable political environment and, while this is true too of labour disputes, there is usually a marked difference of degree between the community context and the labour context.

### **From the frontline ...**

Paul Pretorius remembers chairing a Peace Conference on the East Rand where there was a high degree of antagonism and a number of people who wanted to break the conference up. The process worked. It required a high degree of concentrated chairing skills, although its success in the end depended, as it always does, he says, on the ultimate commitment of the parties without which nothing works. At one point, however, a youth delegation which was being less than constructive, suggested that the IMSSA people surrender the chair. Their suggestion was noted, but, to the obvious approval of the house, not taken up!

Vincent Mntambo, a law lecturer who joined IMSSA as Transvaal Regional Director of the Community Conflict Resolution Service in 1992, and who has just been appointed CCRS National Projects Director, believes that the average intervention in this field takes up to four times more time than the average mediation in the field of industrial relations. He describes the work as



*Rewarding but taxing. You set it up, you do follow-up, you service committees and forums - you don't just walk in and out.*

The challenge for IMSSA was to bring to this new field of operation the same high standards of professionalism, non-partisanship and integrity that had earned it success in the field of industrial dispute resolution. While some of the skills of the one area were transferable to the other, and Mntambo is the first to admit that the new service was able to establish credibility because of the reputation of the industrial relations service, other skills were not, and new ones needed to be learned. Special training was devised, and special panels were set up in each of the regions where IMSSA operates. While there is some cross-panel membership, more and more first time panellists are serving on the Community Dispute Resolution Service panels, and, increasingly, members of these panels come from the non-governmental organisation (NGO) sector rather than the legal or academic sectors.

The Community Conflict Resolution Service was a response to unprecedented violence at a grassroots level, throughout the country. The groundwork for the service was laid first with the involvement of a small group of mediators in regional level Peace Committee work in the PWV area, and then in the work done with local Peace Committees in 1992. The participation of IMSSA staff and panellists in these committees launched the organisation into the field of community conflict resolution.

## **THE PWV PEACE COMMITTEE INTERVENTION**

From the inception of the Community Conflict Resolution Service, it was involved in the establishment and facilitation of local level structures of the National Peace Accord throughout the country.

In the PWV, IMSSA staff and panellists facilitated the establishment of 14 local peace committees. IMSSA organised a peace conference in Thokoza in April 1991, which led to a temporary cessation in political violence in a community which had experienced some 300 politically-related deaths in the previous 18 months. The truce lasted for a six-month period during which there was not one politically inspired death in Thokoza. For a year,



IMSSA managed a full-time Peace Office in Thokoza. The Co-ordinator of that Peace Office, Thabo Ndebeni, was appointed to a special task group which paved the way for the relatively successful intervention of the South African Defence Force in calming things down in Thokoza. CCRS staff members Ilona Tip and Suzanne Nossel assisted in facilitating the activities of the United Nations and other international observer teams sent to monitor the violence.

The on-the-ground work done in the setting up of the local peace committees probably reflects best the climate of the times. In terms of the National Peace Accord, the peace process is overseen by a National Peace Committee and driven by a National Peace Secretariat responsible for establishing regional and local peace committees. By January 1993, 11 regional peace committees and 54 local peace committees had been formed throughout the country.

These committees had multi-party representation, including political organisations, civic associations, local authorities, churches, business, trade unions and members of the security forces. Their role was to intervene to avert incidents of political violence and to promote the prospects of peace in the areas over which they had jurisdiction. Peace committees were able to anticipate and avert incidents of violence by opening lines of communication between key parties and, in numerous instances, such as the march on KwaMadala Hostel by residents of Boipatong following the massacre in that community, on-site mediation by peace committee officials averted imminent confrontation. Vincent Mntambo from the IMSSA Transvaal Regional Office, chairs the Vosloorus Local Peace Committee in the volatile East Rand and he believes that Vosloorus has kept out of the conflict in the area because of the work of the Peace Committee.

The peace committees also operated as forums of accountability. The police, for example, were called upon to account for progress in investigations into crimes of political violence. The committees co-ordinated relief efforts for residents driven from their homes and provided negotiation and facilitation skills training both at a regional and local level.

Ilona Tip joined IMSSA in April 1992. At that stage there were only three local peace committees. When she moved to the Elections and Balloting Project in July 1993, there were 14. Recalling those hectic months, Tip says

*There was no day, there was no night.*



A group of dedicated panellists and staff members, moved from one crisis situation to another, doing crisis intervention, between warring taxi factions, students and the police, and other groups within the communities. Tip remembers on one occasion standing between boycotting Congress of South African Students (COSAS) members and the police and wondering if she wasn't going to be lynched. On another occasion at Ratanda, there were simultaneous ANC and IFP marches - and she was standing in the middle! Nossel was once caught in cross fire and Tip says that if she had thought about what she was doing she would never have done it! "But there was an expectation that it would be done, and Suzanne and I did it." In addition she serviced the regional peace structures, preparing agendas for meetings, taking minutes, photocopying, preparing notes for the chairperson, and getting quotations on venues and food.

Tip pays tribute to panellists Phiroshaw Camay, David Storey and Edwin Molahlehi with whom she worked closely in this period and from whom, she says, she learned an enormous amount. Describing IMSSA's contribution in that period, Liz Carmichael of the Alexandra Peace Committee says:

*We had nothing. It was a year before even the peace logo with the little birds was invented. We just sailed off into the war. The back-up Ilona and Suzanne gave was amazing. Things like venues and funding - you just had to phone Ilona and she would find it, and the speed at which she worked was amazing.*

Walter Makhanya of the KwaThema Local Peace Committee which Tip chaired for some time, says that without IMSSA it would have been very difficult for them to get off the ground and bring the structure together.

*Without IMSSA as a neutral body we could not have got the structure together. The civic couldn't do it because there were cracks in the civic. But with IMSSA as a neutral body it was easy.*

For Tip, her participation in this process was an amazing experience and she believes that the local peace committees played a phenomenal role:

*The negotiating process was up there, but this was on the ground. The parties didn't talk to each other elsewhere but they were there - the IFP, the police, the ANC, the civics, everyone.*

The local peace committees continue to function, although IMSSA is less involved since, at its prompting, the Wits/Vaal Regional Peace Secretariat was formed. In April 1993, IMSSA established the Peace Line in order to enhance communication between communities and peace structures. This service linked people affected by violence to appropriate sources of relief and assistance. Although the communication centre of the Peace Line was situated in the Wits/Vaal Secretariat office, it was administered by IMSSA. Encouragingly, in the post-election period, the demand on the service dropped, and IMSSA was able to close it down at the end of June 1994.

Jerome Ngwenya did much of the pioneer community dispute resolution work in Natal, and he remembers when the African National Congress (ANC) and the Inkatha Freedom Party (IFP) first came to him and asked him to sit with them, together, and work out how they could identify the problem issues and resolve them. For him, this work was

*a very great experience. From a distance it was frightening but once you were involved you were not afraid because people looked after you. This work was more fulfilling than any other and it changed my whole perception of political conflict. More than as a bystander I understood what the conflict was really about. I learned a lot - in two years I learned what, under normal circumstances, would have taken me five to ten years. That we gained credibility so quickly was a personal milestone for me, and an IMSSA milestone.*

### **From the frontline ...**

Jerome Ngwenya was called in to mediate in a Natal town which had been divided completely in two, with one side controlled by the IFP and the other by the ANC. After the process, all no-go areas were cancelled and people crossed streets, crying and hugging one another, as they were re-united with relatives from whom they had been separated for over a year.



In 1992, a major peace conference was facilitated in the Border region, as well as a regional conference on socio-economic development. In 1993, the Transvaal hosted a Community Conflict Resolution Conference which brought together conflict resolution practitioners from around the country to share ideas, approaches and insights and to consider ways of promoting effectiveness in the field.

### **From the frontline ...**

One night Ilona Tip and Edwin Molahlehi went to a peace committee meeting in Duduza. It was cold and dark. When they got to where they expected the meeting to take place, all was still and quiet. They waited for a while, and then Tip, hearing the faint sound of music from a nearby garage, went to inquire whether anyone had news of their meeting. Opening the door, she found a garage full of nine, ten and eleven year olds, participating in a ballroom dancing class, to music from West Side Story. The teacher obligingly gave her a twirl before she went back to tell Molahlehi that they were "in the wrong place". They found the right place round the corner.

From 1992 to 1993 the number of community conflict resolution interventions in which IMSSA was involved tripled, and the first three months of 1994 saw the number of interventions tripling again over the same period in the previous year. Staff in all the regions see their work as focusing increasingly on areas such as reconstruction and development. Referring to a recent initiative to help design and facilitate a series of workshops for the Reconstruction and Development Commission in the PWV area, Transvaal staff member Indarin Govender says:

*This is an exciting programme to be involved in - it's new and allows us the opportunity to get into new areas of work, especially in development facilitation - we are on a learning curve.*

In both Natal and Johannesburg there are plans to develop a special programme for the education sector which would



develop the skills of those involved in conflict resolution. In the Transvaal, IMSSA has been involved in an initiative to resolve the seemingly endemic conflict in the taxi industry, and a group of people are now looking at how to resolve the conflict on a long-term basis, rather than fighting fires when they break out. Newly appointed Director of the CCRS National Project, Vincent Mntambo, sees a trend developing in which CCRS interventions will move from an emphasis on violence-related interventions to interventions aimed at building consensus and more co-operative relations between parties, what panellist Phiroshaw Camay calls "mediating development". With this will go a shift from conducting *ad hoc* interventions to more project-focused and long-term interventions. Regions will, for example, decide on specific projects in the areas of reconstruction and development, conflicts in the education sector or the transport industry, or police/community relations. This trend will require that staff and panellists become familiar with content issues affecting the relationships between parties. There will also be an increasing role for IMSSA in training development specialists in facilitation and mediation skills.

## SNAPSHOT

### **Midrand Local Government Negotiating Forum**

This Forum is one example of a community trying to move towards a non-racial society through a facilitated process of negotiation. Vincent Mntambo of the Transvaal office, and panellists Attie van der Merwe and Odette Geldenhuys, have been jointly chairing the Forum, mediating concerns and interests. The Forum once met for seven Saturdays in succession, with meetings lasting six or seven hours. In addition, the facilitators meet separately with interest group caucuses in the evenings in order to try and resolve deadlocks.



## SNAPSHOT

### **Community relationship building in the Eastern Cape**

In the Eastern Cape, the Community Conflict Resolution service conducted a relationship building exercise between the South African Police and the Congress of South African Students (COSAS).

The workshop established guidelines which included an agreement that parties would show mutual respect and understanding for the roles and principles of one another. The parties agreed that similar exercises needed to take place with their respective memberships, and that regular contact needed to be maintained through contact people established in each group to facilitate consultation. A consequence of these interventions was considerably improved relationships between the parties.

## SNAPSHOT

### **Mitchell's Plain hawkers**

In the Western Cape, panellist Norman Arendse facilitated negotiations which led to the formation of a Mitchell's Plain Town Centre Association and the resolution of a dispute concerning hawkers overrunning the town centre at weekends. The problem is a common one and the agreement reached by different interest groups may be duplicated elsewhere where similar problems have been experienced. Control mechanisms for hawkers were agreed upon, in the form of demarcated bays, allocated to individual hawkers and monitored by the SAP and traffic police.



## SNAPSHOT

### **University of Zululand student boycott of examinations**

The Natal Community Conflict Resolution Service was approached by the Students' Representative Council of the University of Zululand and the rectorate to intervene after the students boycotted examinations because they did not approve of the appointment of a new rector. After lengthy discussions, facilitated by Jerome Ngwenya of the Durban IMSSA office, the issue was resolved and the agreement included the following provisions: that students would pursue their objection to the rector through the courts, and that the students who boycotted the examinations (about 92% of the student body) would be given another opportunity to write examinations.

## SNAPSHOT

### **The TEC and the homelands**

In March and April 1994, prior to the national elections, when the homeland governments were crumbling, workers in Lebowa, Bophutatswana and the Ciskei made demands to the Transitional Executive Council around salary issues and for the removal of certain management structures. IMSSA was asked to mediate and sent mediators to all these regions, as well as facilitating a joint meeting of representatives of the workers in Pretoria. The threatening chaos was contained so that the elections could take place without strikes and the remaining disputes were handed over to the new provincial governments. In some instances, IMSSA has continued to be involved.



The Community Conflict Resolution Service has become an integral part of the service offered by IMSSA and for those who had doubts in the early days and who feared that it would detract from the industrial dispute resolution work, it is worth noting the words of Tony Shepherd of ACAS, one of IMSSA's early mentors:

*... the arena of community conflicts and public policy disputes which has now become an important part of the services offered by IMSSA. The fact that this was achieved without undermining the success and credibility of the work in the industrial relations field is typical of the great degree of professionalism, sensitivity and awareness that has become a hallmark of the staff, the panellists and the Board of Trustees of IMSSA.*

## 2.2 Regional growth

From the first visits by the mediators and arbitrators from the United States and the United Kingdom, IMSSA has had a regional presence, with panellists in the Transvaal, the Eastern Cape, Natal and the Western Cape. Except for the Transvaal, the organisation was initially thinly spread and relied on part-time panellists to do the work with the administration being done in Johannesburg. Nevertheless, before, for example, IMSSA opened its Cape Town office in 1993, the organisation had handled several hundred disputes there already. Opening the office, Charles Nupen said:

*The opening of an office here is a concrete affirmation of our presence rather than an arrival.*

The opening of regional offices created the potential, already being realised, for IMSSA to expand its influence and decentralise its administration, while providing a service on the spot to parties who need assistance in those areas. The first regional office was opened in Natal in 1990, under Bruce Robertson, indicating the significance of this region as the second largest industrial area in South Africa, followed by the Western Cape under Susan Hayter in March 1993, and the Eastern Cape, with Gary Koekemoer as Regional Director of the Community Conflict Resolution Service and Thembinkosi Mkalipi as Regional Director of the Industrial Dispute Resolution Service, in July 1993. In 1991, a decision was taken to separate out Transvaal from the national functions of the organisation, and a national directorate and a Transvaal region were established,

with Inthiran Moodley as the first Regional Director in the Transvaal. Currently, the Transvaal office deals with the Transvaal and the Orange Free State, the Western Cape also covers the Northern Cape, and the Eastern Cape covers a wide area including East London, the Border, the Transkei and the Ciskei. Particular concerns are common to all the regions, such as, for example, the need to engage in reconstruction and development work.



*Regional Directors: Gary Koekemoer, Susan Hayter, Bruce Robertson, Vincent Mntambo (now CCRS National Project Director) and Theminkosi Mkalipi*



*Recently appointed IDRS National Project Director Dave Douglas, previously Transvaal Director*



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In the Western Cape, the bulk of the work remains mediations and arbitrations in the industrial dispute resolution area, and, recently more than half the mediations have been in the agri-business sector, because of the application to this sector of an Agricultural Labour Relations Act. A workshop was held in the region to investigate the possibilities of appropriate dispute resolution in the agricultural sector and panellists Roger Chennells and William Kerfoot have already mediated interventions in the sector.

Experienced practitioner and panellist, Norman Arendse, believes that IMSSA in the Western Cape

*is very highly regarded by all the major stakeholders, including labour, management, the community at large, the local government, local authorities, parastatals and NGOs*

as the foremost alternative dispute resolution organisation in the region.

Since the opening of the office in Cape Town, there has been considerable enthusiasm to join the panels. There are currently 32 panellists based in the Western Cape and the region has further plans to train them in new areas of work such as the agricultural sector and local government legislation, and to help to develop expertise in the reconstruction and development area.

## THE TAFELSIG OCCUPATION

During October 1993 between 260 and 280 vacant houses in the Tafelsig area of Mitchell's Plain (a so-called coloured area) were illegally occupied by a group of people who arrived from various black African townships, and said they were not prepared to move, although they were willing and able to pay for the houses they were occupying, costing between R 28 000 and R 32 000 each.

The principal parties to the dispute were the Cape Town City Council which owns the land and built the houses, the illegal occupants represented by the Tafelsig Action Committee (TAC), the Tafelsig Ratepayers' Association (TRA) which represents the legal residents of the area and the Mitchell's Plain Management Committee which is responsible for the allocation of housing and in



this dispute represented the people to whom the houses had been allocated and who had paid deposits on them. The South African National Civic Organisation (SANCO) which took a stand on assisting the illegal occupiers, while making it clear that SANCO did not condone the illegal occupation of houses, was also involved.

A legal resident of the area said:

*I think it is unfair that people are just moving in here. People have been waiting for years for their houses and now they will come here and find other people staying in their homes.*

In response, one of the illegal occupiers said:

*We grew up in the bushes. Our parents spent their whole lives in the bush and died in the bush. It is time now that we get houses. Why do they only build houses for coloureds and not for us? Is it still apartheid?*

Western Cape panellists Norman Arendse and, later, Ian Newall, spent a great deal of time mediating in the ensuing dispute, and Arendse became Chair of the Tafelsig Working Forum which was convened under the auspices of the Regional Peace Committee. Members included the Cape Housing Action Committee (CAHAC), the Cape Town City Council, Tafelsig Residents Committee, the TAC, the Cape Provincial Administration, SANCO, the Regional Peace Committee, Mitchell's Plain Management Committee, with the Labour Party and the National Party as observers.

An agreement was brokered between the members of the Forum that the illegal seizure of houses was not to be condoned and was condemned and that in future normal legal procedure would be followed. They agreed that the Tafelsig issue would be resolved by an agreed land allocation and the peaceful movement of people to the new land. They also agreed that urgent representation be made to the National Housing Forum to resolve the issue of a joint non-racial waiting list. A technical committee, comprising representatives from all interested parties, was established by the Forum to identify sites for possible relocation and establish which families needed to move.

Arendse drafted the agreement for the parties to sign, but negotiations then broke down because of the withdrawal of the Cape Town City Council which initiated legal action against the illegal occupiers. At one stage the illegal occupiers mobbed a meeting of the City Council in Cape Town's Civic Centre, chanting "We want houses" and then staged a six hour sit-in protest.



The City Council subsequently explained that residential sites were being prepared on a nearby site for the relocation of the illegal occupiers, and that waterborne sewerage and a water standpipe would be provided, as well as an allocation of R 200 000 towards the materials for the 278 families expected to build structures. Some of the women from TAC then occupied the proposed site, riot police were called in and the situation became very tense. Before violence could erupt, however, the women moved off.

Mediator Newall tried to persuade the Action Committee that it was in their interests that the 71 families then occupying houses in Tafelsig illegally move peacefully to the site being prepared. Ultimately, he was successful and the move was carried out without incident. Since then a Committee has been formed by the community on the new site and it is currently fundraising to form a development trust. The outcome, says Western Cape IMSSA Director, Susan Hayter, was positive and constructive.

Some of IMSSA's most loyal and experienced panellists have come from the Eastern Cape, people like Roux van der Merwe, Fikile Bam and Mark Anstey. Fikile Bam remembers that initially, there were very few panellists in the area - only three in Port Elizabeth and two in East London. When the office opened, there were 22 Eastern Cape-based panellists, and there are now 27.

### **From the frontline ...**

Panellist Roux van der Merwe recalls the first mediation in Port Elizabeth. "The scene was Port Elizabeth in the early 1980s - the crucible of militant IR in SA at the time, and the site of some bitter and destructive confrontations." The issue was the dismissal of a black chargehand in a paint factory for allegedly sleeping on the job during a night shift and was characterised by interracial tensions. The dispute was on the verge of a strike which would have resulted in the dismissal of some 400 workers. Says van der Merwe:

*The parties were screaming at each other when we first met.*

Both were adamant they would not budge, but, a week later they had an agreement. All the parties were satisfied and the relationship had, in fact, been greatly strengthened by the experience. Van der Merwe comments:

*For me it showed the power of the process of mediation and my reward was that the jobs of 400 people had been saved. The Company went on to build a sound working relationship with the union - it was a win-win outcome all the way, and a good start for IMSSA in the Eastern Cape.*

The Community Conflict Resolution work in the region is still developing, under the guidance of Gary Koekemoer, and staff and panellists have been involved in police/community work and peace committee work, co-chairing local peace committees. The region is, like the Transvaal, now moving more pro-actively into work in the education sector. The motor industry in South Africa is largely located in the Eastern Cape/Border area and much of the industrial relations dispute resolution work that has been done in the area has been in this industry. Theminkosi Mkalipi, Regional Director of the Industrial Disputes Resolution Service, believes there is a role for IMSSA to play in the debate about the reconstruction of the industry and a seminar series is being planned around this. This is another region where the consequences of the amendments to the Labour Relations Act to include the agricultural sector are significant and an increasing number of interventions are expected in this area, something which Mkalipi sees as a challenge. Transkei panellist John Hlope believes that the opening of the office in the Eastern Cape has made a big difference to the service in the region, both for users and for panellists, all of whom are now better served than was possible from Durban which serviced the area previously.



### **From the frontline ...**

Fikile Bam remembers being "chucked out" of an arbitration by a fiery union organiser called Thembinkosi Mkalipi who, after calling for an adjournment, announced that the union had no confidence in the arbitrator. Mkalipi was new to arbitration and, insisting on exceeding the terms of reference by bringing in all the evils of capitalism, took offence when Bam tried to stop him from ruining his own (very good) case. This same Thembinkosi Mkalipi is now IMSSA's IDRS Regional Director in the Eastern Cape.

The Transvaal has by far the biggest group of panellists, over 100, and is the most established region both because of the long-term physical location of IMSSA in the region and because of its position as the biggest industrial area in the country. In more recent times it has also joined Natal as one of the "trouble spots" of the country, with high levels of violence, one of the reasons why the community conflict resolution work took off there. The community work falls under the Community Conflict Resolution Service Regional Director, Vincent Mntambo, (now CCRS National Project Director) and the industrial work under the Industrial Dispute Resolutions Service Regional Director Dave Douglas (now IDRS National Project Director). Both services are very busy, with 10 staff members serving the Industrial Dispute Service and six the Community Conflict Resolution Service.

Natal has the second largest group of panellists, 46, in keeping with its status as the first regional office to be established. Regional Director Bruce Robertson feels that in the past IMSSA has been able to provide the right service at the right time and that its biggest challenge in the future will be to be able to continue to do this, ensuring that capacity, skill and credibility are there as they have been in the past. In the industrial sphere, he sees the focus shifting away from collective bargaining to a whole range of collaborative type relationships around productivity, reskilling, affirmative action and constitutional issues. In the community work, he sees the focus as moving from crisis intervention to reconstruction around issues such as land, housing and education.



## SNAPSHOT

### **"Casual workers"**

In the Western Cape, recently, IMSSA conducted an arbitration over the issue of "casual workers" who had been employed by the same company for as long as 15 years but were still regarded as "casuals". The arbitrator ruled that they should be regarded as permanent workers and the case made history and created jurisprudence.

## SNAPSHOT

### **King Shaka Day**

This was a tense involvement in Natal where the Community Conflict Resolution Service was asked to intervene at the 11th hour between the Inkatha Freedom Party, the African National Congress, the Civics and the Town Council. The thrust of the dispute was whether King Shaka Day should be marked in KwaMashu township or not, given the security measures that would be required. After a lengthy intervention over two days, conducted by Jerome Ngwenya, there was agreement that the celebration would take place and that there would be a joint monitoring team, involving international observers. The celebration took place peacefully.



## SNAPSHOT

### **Police/Community Forums in the PWV**

There have been two kinds of Police/Community Forums in the PWV area - those that are an extension of the local peace committees and are formed as sub-committees chaired by an IMSSA person, and those which are set up specifically as was the Sharpeville Police/Community Forum, established in 1992 in bilateral discussions between the African National Congress and the police. It later grew to include other parties. Initially it was chaired by Vincent Mntambo of the Transvaal Regional Office who, commenting on how the relationship between the parties changed from one of hostility to one of co-operation, says:

*I was seeing South African society in transition right in front of my eyes.*

## SNAPSHOT

### **Intervening at a range of levels in Natal**

The Natal IDRS service was involved in a multifaceted intervention between Toyota and the National Union of Metalworkers of South Africa (NUMSA). The initial involvement was an attempt to mediate over a number of issues including payment for striking workers.

Although the parties did not settle at mediation, they subsequently reached agreement on terms discussed during the mediation stage. Thereafter, IMSSA conducted shop steward elections in a complex situation where elections had to be conducted for workers on a continuous production line which could not be stopped. IMSSA

arbitrators also heard certain disciplinary cases arising out of the strike. Finally, to address the high degree of mistrust generated by the intense industrial action, the parties requested that IMSSA run an RBO process for them and this was done.

There can be no doubt that the opening of regional offices has extended the impact and influence of IMSSA considerably, but, perhaps more importantly, it has made the full range of IMSSA's services available to users countrywide in an efficient and user-friendly way.

## 2.3 Groundwork for democracy - the Elections and Balloting Project

If, as Charles Nupen believes, IMSSA programmes succeed because they have champions, then Dren Nupen must be seen as the champion of the Elections and Balloting Project. From the earliest days of IMSSA, she began laying the basis which would allow the Project to come into its own from 1991 on.

In those early days, says Nupen, people were not interested in this area of work and it enjoyed something of a Cinderella status in relation to the mediation and arbitration work. It was only in 1990 that a balloting panel was established, but in the years from 1985 to 1990, IMSSA did offer a service to trade unions and companies which included conducting strike ballots, conducting auditing exercises to verify union membership in companies, conducting trade union elections, conducting pension and provident fund board elections, and conducting representation ballots to test the representivity of unions within a company.



### From the frontline ...

Staff member Kholisa Xinindlu was involved in the first big ballot when 49 000 workers, the vast majority of them illiterate, voted in an election for shop stewards. The election took place in the then homeland of Bophutatswana where union activity was prohibited. IMSSA had to run the ballot without telling the workers that they had been asked to do so by the union; instead they had to refer to "the company and workers' representatives". It was in this ballot that IMSSA pioneered the use of stickers corresponding with the number of votes each voter had. The original stickers were printed with crosses on them but this confused voters who saw the cross as a way of indicating which candidates they were **against** and wanted stickers with ticks for those whom they favoured! The use of photographs to help voters identify candidates was also pioneered in this election. Lessons learned were fed into the democratic processes of the nineties.

Over the years, the Project developed a brochure on how to prepare for a ballot for trade union organisers and a balloting manual for panellists to ensure that a uniform process is used at the different factories and regions.

### From the frontline ...

Panellist Roland Sutherland went to the Northern Transvaal to chair a trade union branch annual general meeting. A huge crowd was gathered around a stage made of eight or ten packing cases. The main business of the meeting was the election of the Branch Executive Committee. Sutherland asked to see the list of members who were entitled to vote but was told that no such thing existed, but not to worry, "the shop stewards



know everybody". When he asked how he would know how many people were entitled to vote, the Branch Secretary said:

*That's simple. Look here, this is our bank statement. We receive a certain amount of money every month and the monthly membership fee is R2, so all we have to do is divide the amount of money we received by two and that's the number of people that can come to the election*

This meant that 1800 ballot forms were needed. Three hundred had already been prepared, and, as there were no typing or copying facilities, Sutherland set people to work handwriting more, until the paper ran out and they were driven to taking posters down from the walls and tearing them up to produce the ballots. It suddenly occurred to Sutherland that he was expected to act as chair of a meeting where he was unable to communicate with the people present, by now a vast singing throng, in their own language. The Branch Secretary said not to worry, he would interpret. The ballot papers now being ready, the meeting could begin. Sutherland describes it thus:

*I sat down at the trestle table with the secretary and arranged my papers neatly in front to me. Then in my best bourgeois manner I tapped the table with my pencil and said something silly like "order gentlemen". I then learned with keen interest how the words "order gentlemen" are interpreted to a gathering of trade unionists. The secretary rose to his feet, stuck his fist in the air and shouted "Amandla". The gathered unionists gustily replied "Awetu" and the business of the meeting got off to a start.*



In time, the service came to be used for elections for civic organisations, residents' committees and political organisations. Materials on how to plan and make provision for elections at national conferences were developed, and representatives of civics and township communities were trained in how to prepare their constituencies for voting. The South African National Civic Organisation (SANCO) and its predecessors used this service of IMSSA's from quite early on, and continue to do so. The Project also organised referenda to test opinions on issues of community concern such as support for local town councillors. According to Charles Nupen,

*The significance of these community referenda is that they direct the expression of community concern into procedure and give thousands of residents, many of whom are functionally illiterate, practical experience of voting procedures.*

## SNAPSHOT

### **AECI/SACWU strike ballot**

After AECI, a large explosives company, and the South African Chemical Workers Union (SACWU) deadlocked over wages and working conditions in their annual wage negotiations in 1993, conciliation failed and a strike ballot was called by the union. IMSSA's elections project was contracted to run strike ballots at 30 AECI factories around the country over a two-week period. A co-ordinating committee was established to facilitate the strike ballot, consisting of one representative each from the company, the union and IMSSA. The committee worked out the logistics and principles of the strike ballot at a national level, and this was then fed to working committees constituted in each factory. At plant level a working committee also consisting of a representative from management, the union and an IMSSA balloteer, was constituted. The two-tier structure worked well with the grassroots informing the process and briefing the co-ordinating committee on specific problems that certain factories had. Aspects of the ballot that had to be agreed upon at all levels included



eligibility to vote, the ballot form and question, what determined a majority, the logistics of the ballot and the role of the balloting team. The elections went smoothly, balloting teams counted thousands of votes through the night and there was an overwhelming majority in favour of embarking on industrial action over the union's demands. A mediation was, however, run by panellist Thabo Molewa, concurrently with the ballot, in an attempt to settle the dispute. The mediation was successful and no industrial action took place.

The real impetus to this Project, the event that raised its profile both within the organisation and nationally, was the organisation of the elections for the African National Congress' National Executive Committee in 1991 at the ANC's first National Conference in South Africa in 35 years, after its unbanning. IMSSA put together a professional team of 20 people, devised a unique computerised counting and checking system that enabled over 100 000 votes to be counted in a matter of a few hours, and gave thousands of delegates, many of whom had never voted in their lives before, an experience of voting which was accessible and easy to understand. Bontle Mpakanyane remembers that the IMSSA team was accommodated at a very nice hotel, but, working beyond midnight, had no time to enjoy it! After that, use of the service escalated in all areas, with 70 interventions in 1992, and an increase of 89% between 1992 and 1993.

### **From the frontline ...**

Dren Nupen recalls conducting a strike ballot at a coal mine. Workers were coming off shift, cold and tired, and the IMSSA team was blocking their way, standing at tables trying to get them to vote. The frustrated workers stampeded, knocking over the tables and almost knocking over the balloteers!

In the build-up to the April 1994 elections, the experience and skills that IMSSA had developed in balloting and election work over the years placed it in a position to transfer hands-on



knowledge of training first-time voters in the South African context into a comprehensive voter education programme. In this programme, IMSSA offered skilled multi-lingual trainers, multi-lingual videos on how to vote, colourful posters and picture books detailing each step of the voting process, and training courses for direct training and train-the-trainer type training at both the shop floor and community levels.

The development of the technical and human resources necessary to mount this huge National Voter Education Programme led to the most dramatic growth of any IMSSA project in its history. The programme was highly successful, with over 3 000 training events taking place between September 1993 and March 1994, and an estimated 104 862 people being trained by IMSSA during February 1994 alone. IMSSA panellist Thabani Jali even ran the first voter education training for the IFP, in December 1993, long before the IFP had made its final decision to participate in the elections, a measure of the credibility the programme enjoyed. The Project hosted an international conference on elections in July 1993, and was represented on the Goldstone Panel of Experts to investigate and report on the issue of elections and violence. Western Cape's Norman Arendse believes that IMSSA's knowledge and expertise in the areas of voter education and conflict resolution proved invaluable to the Independent Electoral Commission and made a major contribution to a relatively peaceful and successful election.

## THE ANC LIST ELECTIONS

Towards the end of 1993, the IMSSA Elections and Balloting Project was asked to organise the elections which would determine the African National Congress' candidates for the national election which was expected to take place in April 1994. They had very little time to organise the logistics of what turned out to be an enormous exercise. The process involved the administration of four elections in all 14 ANC regions. The elections were for candidates to the national assembly, the provincial legislatures and the provincial premiers. The standard list for the national assembly, from which voters had to select 200 names, had a total of 1126 names on it! It was a highly complex process which had to be mastered by voters from the ANC's regions and branches, the vast majority of whom had never voted before.



An innovative process using stickers, corresponding to the number of votes each person had, was developed. Each voter went into a voting booth with a sheet of stickers equal to the number of votes she (or he) had. She stuck her stickers next to the candidates of her choice and knew she was through once the stickers were finished. Because there were different ballot forms, forms and stickers were colour-coded. A system of bar-coding and scanning was agreed upon to make the counting more efficient and quicker. Electoral officers had to transfer the ballot boxes from the regions to Johannesburg where they were counted centrally.

The nomination process was administered by the ANC. IMSSA supplied students to assist in putting the thousands of names received from across the country on a data base. A large number of the nominated names were eligible and because there wasn't enough time to check the spelling and gender of every candidate, some strange names appeared on the ballot forms, including Ms Bantu Holomisa, Bryce Fordels (Bruce Fordyce) and Ivy TV (Ivy Matsepe-Cassaburi)!

All the regions voted over the same weekend. The lists of nominees were only ready at the last minute, and the only available printers during the Christmas break had never faced, or imagined facing, anything like the mammoth task not only of printing the thousands of ballot forms, but also of having to prepare the stickers to accompany them. Ballot forms were still being printed while voters were already waiting patiently to vote - and the ballot forms, once printed, still had to be freighted to their various destinations. It was, says Dren Nupen who co-ordinated the operation, "nailbiting stuff"! It was in this period, between mid-December 1993 and mid-January 1994, during the preparation time, elections and counting, that some members of staff of the Project each worked 25 days overtime, with overtime being calculated from 6 p.m. each day!

Problems were experienced in the Transkei and the Northern Cape. Two boxes with ballot forms destined for Kimberley were mistakenly flown by chartered flight to Pietersburg and the couriers missed the plane to East London. Staff member Kholisa Xinindlu says that people had come from all over the Northern Cape to vote, intending to vote and then go home. When they couldn't, they sat patiently through the night. In the Transkei region, ballot forms arrived one and a half days late. The voters were still waiting, but not, says Nupen, that patiently any longer! Eastern Cape staff member Thembinkosi Mkalipi, who had worked through until 2 a.m. on the Sunday morning at Alice in the Ciskei, drove through



what remained of the night with a team, arriving in Umtata only to discover that there were no ballot papers. In addition, the Regional Conference where the voting was due to take place was still disputing the candidates' list. The ballot papers arrived at 4 p.m. but voting only began at 8 p.m. and finished at 3 a.m. the following morning.

Before voting could start at the voting stations, voters' rolls had to be compiled and accepted by the regional meetings. This was another mammoth task. Because of the delay in the arrival of the ballot forms, voters continuously changed with some leaving and sending others in their place. This was obviously not allowed as delegates were accredited by the regional structures, but, as the Independent Electoral Commission was to find out a few months later, in the interests of democracy, rules sometimes have to be broken and amended as you go along!

Nupen says it was the most extraordinary learning experience for the Project in terms of how democracy really works.

*The way in which the ANC had structured the elections was wonderful. The zones, branches and areas were represented at the regional conferences where the voting took place. It was a truly democratic election.*

Theo Heffer, who was a balloteer for the Eastern and Northern Transvaal, makes the same comment:

*It was such a democratic process and people took it so seriously and the number of spoilt papers was very low.*

He cannot speak highly enough of the "fantastic" team with which he worked, mostly from the Johannesburg office. They began the weekend at Nylstroom, left there at 2.30 a.m. on the Sunday morning, drove through to Pietersburg to set up immediately and finally finished at 4.30 a.m. on the Monday morning. Heffer remembers standing with long-serving IMSSA interpreter Seth Phamuli watching the last voter go through the process, and falling asleep on his feet!

Nupen believes that the main story to tell about the ANC list elections is that

*against all the logistical odds, democracy prevailed. It was a very special event to participate in.*

The pre-election period was a generally exciting one for IMSSA, with National Director Charles Nupen released to the Independent Electoral Commission (IEC) for six months, as one

of the eleven South African commissioners, and panellists and staff countrywide being drawn into the IEC. The involvement intensified when the Elections and Balloting Project was asked to organise the elections for the African National Congress lists from 14 regions (see Box), continued with the voter education programme and went on until the actual counting of votes.

## SNAPSHOT

### Monitoring the Count

The IMSSA Elections and Balloting Project was asked by the IEC to take responsibility for monitoring the count in the 1994 national elections. In just a few weeks the team they set up recruited, trained and deployed just under 7 000 people throughout the nine regions. In the PWV alone they had 1 080 monitors. Offices had to be set up countrywide, either in existing IEC offices or separately, and a National Operations Centre had to be established. One of the Project's staff members says:

*We had no idea how big it was. For four and a half weeks I never went home for a meal and never got home before 11 p.m. at night.*

By the second week in April the IEC had not yet informed them exactly how many counting stations there would be, nor how many monitors they would need.

Bontle Mpakanyane was given responsibility for the North West area Rustenberg sub-region, where there were 21 counting stations. For a week, she worked 20 hour days, and, although everything went smoothly, when contact was lost with one of the stations, she had to be flown by South African Defence Force helicopter to check progress there, a very strange experience, she says, for someone coming from a background of anti-apartheid struggle!

Overall, when it came to the count, the monitors were there, they were trained and "it was amazingly well organised although we were suddenly told we had to staff 50 more counting stations in Natal and the rules were changing while we counted", the IMSSA team was able to do the job.



With the April elections over, the Project is now redesigning the voter education programme to encompass upcoming local government elections and how to resolve conflict and build a culture of tolerance and acceptance where there are different perceptions of rights. There is a possibility, currently being investigated, that the lessons learned in the voter education programme here will be of use to the National Mozambican Electoral Commission as it prepares for elections later this year. The Project is also preparing for a national election for two trustees to the Eskom pension fund, a process which will involve about 48 000 members countrywide, and for a referendum of 9 000 mine workers to establish whether they wish to integrate the hostels on the mine which are currently divided on an ethnic basis. The telephone keeps ringing with requests for the balloting team to organise ballots "yesterday" in both industrial and community settings, and there are plans to expand the balloting panel to cope with the demand.

### **From the frontline ...**

Staff from the Project in both the Eastern Cape and the Transvaal have stories of instances when, while they were organising elections, the electricity failed and they were left in the dark. So that the process could continue, motor vehicles standing around were asked to shine their lights on to the voters so they could vote - two voters per light! Dren Nupen says:

*They were normal elections with no infrastructure.*

She recalls doing photocopying out of her car boot, using a dozen extension cords connected in a long line to a power point.

## **2.4 Learning for the future - the Education Project**

The Education Project has two distinct but related areas of operation - Training, under Karen Miedzinski, and Research under Marion Shaer.

IMSSA has always placed a high premium on training and education. The Director and the Board had the foresight to recognise that there was a need to develop the training function beyond a few dedicated staff and panellists with skills running training courses on an *ad hoc* basis, to something that could be a greater resource for the organisation. But, it was Miedzinski, after her appointment in 1991, who developed this understanding into the sophisticated, structured service it is today, offering not only basic and advanced panellist training, but also promoting training as a proactive intervention that can help to pre-empt industrial disputes.

There are training courses for staff and panellists in the Industrial Dispute Resolution Service and the Community Conflict Resolution Service. Training for the internal development of staff skills is relatively new and still being developed, but there is a long history of high quality panellist training, from the very first training workshops run by the mediators and arbitrators from the United Kingdom and the United States. The Training Department continues to facilitate IMSSA panellists making use of opportunities for training in those countries. Today panellist training is more carefully planned, using the methodology of Training for Learning pioneered in the organisation by Miedzinski, but it has in common with the early training the high calibre of the trainers and the quality of the product. Training for Learning makes use of adult education principles to ensure that the maximum amount of learning takes place in any intervention and is a very experiential and participatory approach.

The training function's most significant target groups are the users of the Industrial Dispute Resolution Service and the Community Conflict Resolution Service. In Industrial Dispute Resolution there is an introductory course and several more in-depth ones, looking at arbitration and mediation so that users are made aware of what is actually involved in the processes, and how best to prepare themselves for them. There is an increasing trend towards management and unions making use of the joint dispute resolution training offered by IMSSA and previously not much favoured. During 1994, most training interventions in this category have been joint ones. These joint interventions can be dispute resolution interventions in their own right, changing the parties' perceptions of one other.



## **Training as an intervention**

Miedzinski participated in one of the first joint interventions, in a conservative company in the conservative Western Transvaal. From the start, it was clear that there were alliances between the white union and management, while the black union was isolated to one side during sessions and meals. As the process continued, however, the unions began to realise that they had more in common than they had realised and began caucusing together in a way that, Miedzinski says, was very empowering. After the three-day process there had been a dramatic shift, something which both the unions and the trainers found exciting.

In community dispute resolution, options for managing conflict, communicating effectively, and preventing, managing and intervening in crisis situations are explored. In this area, courses are offered at different levels of literacy and complexity. All the courses, although pre-prepared, are adapted to suit the specific groups with which they are run. Trainers in both areas are drawn from the ranks of experienced panellists and they go through an apprenticeship process. There are currently 25 trainers and more are being trained.

According to Miedzinski, the impact of the user training is particularly noticeable in arbitrations where arbitrators say they can tell when users have gone through the training process by the way in which they know how to prepare and structure a case. Mediators are also aware that users who have gone through the training are able to take a more interest-based approach and use negotiation techniques effectively.

In general, Miedzinski believes the training process works and this is constantly tested through role plays and in-built self-evaluation exercises, as well as from what are called "ponder sheets", where participants are given the opportunity to reflect in writing on what they have learned and how they will apply it.



Certainly trainees, users and panellists, are happy with the quality of both the training and the trainers, as is reflected in the evaluation forms that are completed at the end of each intervention.

*The concepts, ideas and skills were conveyed logically and comprehensively. The content was extremely relevant and up-to-date.*

*The trainer proved to be more than the word professional in the presentation of the course.*

*I attended the course because of its reputation and I was not disappointed.*

*It is a great pleasure to be taught by people who are experts both in the field and as teachers.*

Miedzinski has plans to develop courses for training users in the agricultural sector and there have already been some requests from the sector. She is also planning to adapt materials prepared to foster a climate of tolerance in the workplace in the pre-election period to develop material aimed at helping users practice tolerance more generally in the workplace. The South African Broadcasting Corporation (SABC) has asked IMSSA to do a joint management/union training process with management and the three unions represented on its staff so that they can deal more constructively with conflict internally. This is a big project which will ensure that all levels of staff and management receive training, and Miedzinski is excited about its potential.

Use of the Training Department has grown enormously since 1991 when Miedzinski started. That year there were 20 events organised by the Department. In 1994, 160 are planned, and she is hoping to appoint more staff to assist her, Victor Mhlanga and Lungile Zondi, the Training Administrators. This growth reflects the quality of what the department offers, in terms of detailed needs analysis, meticulous preparation and an accessible and effective teaching methodology.

Originally Miedzinski's brief was both research and training, but as the training function expanded, it became necessary to appoint someone to deal with the research function. Marion Shaer has been running the Research Department for two years. According to her, the rationale behind having a Research Department is to maximise the learnings from the vast



experience which IMSSA has gained and is gaining, something that has not been done in the past. She sees it as "development research" rather than "regurgitative research", looking at trends, markets and services. The growing need for IMSSA to be competitive in what it offers means that this function will become increasingly important as the need to be constantly in touch with, and aware of, the operating context grows. Panellists too need to be informed so that they can engage with an increasingly sophisticated industrial relations environment, and an increasingly complex political one. Shaer sees part of her job as selling potential new areas of operation within the industrial and community fields to both IMSSA and the potential users and believes that this needs to be a specialist function because it is unrealistic to expect people involved in the day-to-day work to be entrepreneurs as well.

She works on some of the training courses with Miedzinski, focusing on course content as opposed to process, and picking up on developing issues that need to be incorporated. She co-ordinates the IMSSA Intern Programme which aims to educate young graduates, particularly black and female South Africans, in the skills of dispute resolution. The programme is viewed as part of IMSSA's affirmative action programme and is planned and co-ordinated by the Education Department, but situated in regional offices where senior members of staff take on a mentorship role for interns. There are currently four such interns and all are working on projects which will contribute to IMSSA being able to offer a better service.

Shaer also co-ordinates the production of IMSSA publications of which there is a growing list, including the *IMSSA Review* which keeps stakeholders informed about the interventions with which IMSSA is involved, the *IMSSA Bulletin* which gives panellists the specialist information they need, *IMSSA News*, a newsletter for panellists and staff, occasional publications such as conference proceedings, and the *Arbitration Digest*, edited by Ingrid de Villiers, which creates jurisprudence for arbitration from IMSSA's arbitration interventions. The *Digest* was originally edited by Kate O'Regan who, according to Charles Nupen, made a "seminal contribution" in her analysis, design and presentation of awards.

The impact of the Education Project on the other areas of operation of IMSSA is profound and it is this Project which enables the organisation to be constantly preparing for and anticipating the future.

## 2.5 Consolidation and innovation - the Industrial Dispute Resolution Service in the nineties



*Illustration to  
an article on  
IMSSA in  
Learn and  
Teach  
magazine,  
October 1992.*

In recent times, major shifts have taken place in industrial relations. The issues that dominate the agenda now are those of industrial and economic policy and the quest for growth. Tripartite engagements between employers, unions and the state, unthinkable until recently, are now common. Traditional bargaining issues are being augmented by bargaining over questions of industrial restructuring, productivity, human resource development, participation, job creation and employment security. Although an adversarial approach still exists, particularly among new entrants to the collective bargaining system, among more sophisticated and experienced parties, it is being replaced by a growing recognition of the strategic necessity to build consensus around industrial renewal and growth. These changes present new challenges to the IMSSA Industrial Disputes Resolution Service.

Over the years the Service, originally dependent on input from the United States and the United Kingdom, has developed its own specifically indigenous way of operating and a South African body of knowledge on which to base its practice. The expertise here now is as good as anywhere in the world, and, proportional to the size of the economy, the volume of



interventions compares favourably with other countries that have similar services. The service remains unique in South Africa and the difficult and challenging circumstances in which mediators and arbitrators work has added a particularly South African dimension to the process, as has the contribution of union and employer representatives who have participated in the Union Resource Committee and the Employer Resource Committee. Charles Nupen believes that the effort that key people from the industrial sector have put into the organisation has been tremendously important, and that someone like Andre Lamprecht of Barlow Rand epitomises this contribution. Originally a Board member, Lamprecht has, more recently, chaired the Employer Resource Committee, and he has been, says Nupen, "a constant friend to IMSSA, making himself available to give guidance and help when needed". It is this kind of support that has enabled the Industrial Dispute Resolution Service to be a responsive and effective one.

Compared to the early days, mediators work harder (you can no longer just sit it out, as Paul Pretorius described in his first mediation), and are required to be more sophisticated and to have more content knowledge, rather than just relying on the process to carry them through. The trend generally is towards more arbitrations and fewer mediations. Mediation figures fell from an all-time high of 621 in 1991, to 507 in 1992, and 464 in 1993, while arbitrations rose from 430 in 1991, to 656 in 1992 and a towering 859 in 1993 (see Snapshot - TPA/NEHAWU). This trend may be because of the greater sophistication of the parties who are often now able to do much of the negotiation themselves, going to arbitration only over outstanding issues that they have not been able to resolve. The current economic climate also limits the leeway employers have for negotiations around issues such as wages. Nevertheless, the need for mediation remains, as recent events in industry have shown, and IMSSA remains the only organisation able to offer a speedy, efficient service. As new players move into the field, from, for example, small companies and the agricultural and public sectors, this downward trend may well be reversed. In the meantime, IMSSA mediators have participated in many of the major dispute-settling interventions in the retail, engineering, auto and tyre and rubber and mining industries, and have facilitated ground-breaking agreements containing innovative clauses on job security, productivity and training.

Since 1984, IMSSA has been involved in 3 678 mediations, and 3 347 arbitrations (to July 1994, including provisional figures for 1994), a total of over 7 000 interventions.





*Transvaal IDRS Client Services staff slotting in interventions on their busy month planner.*

## SNAPSHOT

### TPA/NEHAWU

During 1992, there was a protracted and violent industrial action, involving the Transvaal Provincial Administration (TPA) which refused to re-employ some 2 000 workers, many of whom were members of the National Health and Education Workers' Union (NEHAWU), because they had allegedly committed acts of misconduct before or during a strike, or after their dismissal. As part of the settlement agreement between the parties, in which IMSSA was not involved, these cases were referred to arbitration by IMSSA's arbitrators. Over 450 cases were involved and a number of process issues which IMSSA inherited had not been thought through clearly and had to be resolved.

To equip those who were given the task of representing the parties at group arbitration cases, IMSSA arranged a four-day joint training course for TPA and NEHAWU officials. These were useful and rewarding for the participants and the trainers and they reduced the levels of tension, enabling the opposing parties to co-operate and talk comfortably to each other.

Administratively and professionally, IMSSA proved it could



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meet the challenge of major interventions involving the adjudication of literally hundreds of cases in a matter of weeks. Inthiran Moodley, IDRS Regional Director in the Transvaal at the time, pays tribute to the Client Services staff whom, he says, "did a fantastic job". The exercise was a very costly one for the parties (original estimates were around the R1 million mark), but IMSSA arbitrators agreed to minimise their fees in the process, and the intervention was, says Moodley, "a public interest effort on everyone's part."

The procedure adopted in the arbitrations was also challenging as, in order to expedite matters, arbitrators were asked to act as inquisitors in some instances, taking into account the evidence of secret witnesses who were able to show that they had good reason (usually a fear for their safety) for not wanting to give their evidence in public. In justifiable circumstances, arbitrators took evidence behind closed doors and enabled cross-examination by means of telephone link-up. The experience the arbitrators gained was enormously valuable.

## SNAPSHOT

### Commission of Inquiry

Panellist John Hlope and Thembinkosi Mkalipi of IDRS Eastern Cape helped facilitate a Commission of Inquiry established to investigate the demands from pupils of a Port Elizabeth school that the (white) principal of their school be removed because of his negative attitude towards the pupils. Parents called for the establishment of the Commission. It consisted of two representatives each from the African National Congress, the Pan-Africanist Congress, the Azanian People's Organisation and the South African National Civics Organisation and was facilitated by the National Education Co-ordinating Committee and IMSSA.

After a seven day hearing, the Commission found that there was no basis to the allegation of racism which pupils had made against the headmaster, and this finding was accepted by teachers, parents and pupils.



## **An Arb-Med**

A shop steward had been fired by his company for disobeying a serious order, but he had 20 years service and a clean record. IMSSA was asked to do an Arb-Med process. After the arbitration part of the process, panellist Felicity Steadman would have ordered his reinstatement with some sort of penalty on the basis that dismissal was too harsh. But, as is the way in an Arb-Med, this decision was not shared with the parties before they went into the mediation part of the process. In the course of the mediation, Steadman became aware that, in fact, the union did not want the job back as the dismissed employee had set up his own hawking business in the meantime. The union wanted compensation for what they regarded as an unfair dismissal. Because she was privy to the caucuses of both parties she was able to link the dismissed employee's need for a bakkie, and the employer's willingness to give compensation in kind, in particular in the form of a vehicle, and both parties went away satisfied without the need to invoke the arbitration award which would have satisfied neither.

The Relationship Building Service has also grown and developed a particularly South African character. Panellists now talk of RBIs - Relationship Building Initiatives - as opposed to RBOs - Relationships by Objectives - indicating a greater flexibility and ability to tailor interventions to suit the parties involved. Often the RBIs are shorter and cheaper than before, and this is partly because the parties themselves, many of them long-time users of IMSSA, are more sophisticated and able to deal with many of the issues themselves, leaving the RBI facilitators with much less ground to cover. Relative to the size of the economy, the relationship building processes have probably had more impact in South Africa than anywhere else in the world, and this has contributed to a more constructive approach to labour relations.



### **From the frontline ...**

Recently, panellist Dunstan Mlambo was involved in an RBO where the company involved had received death threats from their union counterparts. On the first day of the process, tension was high. Working with management on the second day, Mlambo suggested to the head of the team that, in trying to understand the union's perceptions of the situation, he might find it useful to have a beer with members of the union team and talk - which is just what happened that evening, and, from then on, Mlambo says, the process went smoothly, a transformation he finds "extraordinary".

*Parties at  
an RBO*



Another area in which IMSSA has been innovative has been in taking the Med-Arb (mediation-arbitration) process (an American import) and developing an Arb-Med (Arbitration-Mediation) process which some panellists believe is more suited to our industrial relations environment, involving, as it does, an opportunity for the arbitrator to make a decision, which s/he keeps to herself/himself unless the subsequent mediation, with its much wider terms of reference, is unsuccessful. These are adaptations which have been made to suit the particular circumstances in which arbitrators and mediators find

themselves, and they reflect the growing confidence of the practitioners themselves.

Another new service offered by IMSSA is the Accounting Disclosure Panel which now operates in all the regions and which aims to assist parties where the disclosure of company accounting information becomes a point of conflict during negotiations. Panellists with accounting and mediation experience are called in by both the union and management to determine what financial information is necessary and how best to make it available in specific circumstances. The unions, in particular, are pleased with this development and believe it should be expanded in order to increase levels of disclosure.

Although the work in this area does not get any easier, it does get increasingly challenging, and IMSSA panellists have shown themselves well able to meet the challenges.

## 2.6 IMSSA people - panellists and staff

One of IMSSA's greatest strengths has always been its ability to draw people into the organisation, both staff and panellists, who have a sense of dedication to service in the public interest. For Charles Nupen the quality of these people, and their strong attachment to IMSSA, is a source of pride. For the people themselves, their association with IMSSA is both a source of pride and, often, a passion.

Susan Hayter, Regional Co-ordinator in the Western Cape, has this to say about her work:

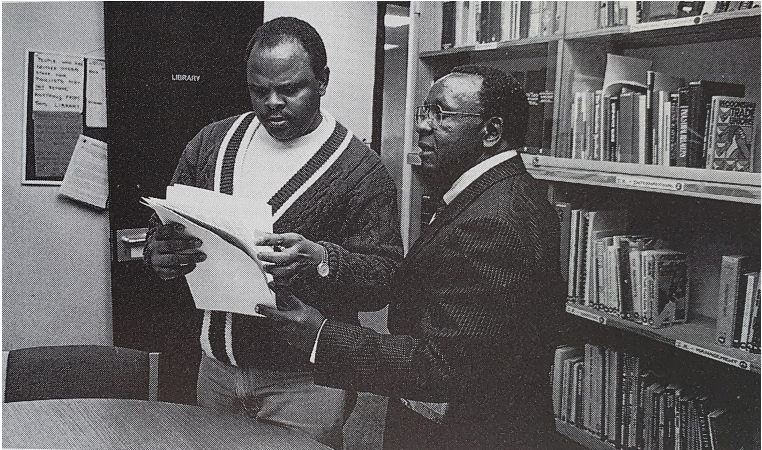
*Work ... is where I express my social and political values. Its a beneficial place to be as I am able to live my values ... I am not with a company where I can put them in a drawer. I have to have a commitment to those values to be able to do the work because it is very demanding.*

Staff turnover has been low throughout IMSSA's history, and even now that it is a big organisation, this is still the case, despite the fact that work is often stressful and always pressured. IMSSA provides a framework in which people can grow and develop. Bontle Mpakanyaane is an example of this. She herself says:

*When I started here I was a kid of 20 - now I can run*



*Interpreters  
Seth Phamuli,  
who has  
worked for  
IMSSA since  
the eighties,  
and Simon  
Morobe.*



*an election on my own. Fulfilment is the name of the game - it goes beyond commitment.*

The organisation is a demanding employer - it expects people to do the impossible and to do it well, and somehow this brings out strengths that people didn't know they had, and enables them to achieve an enormous amount. Dren Nupen says:

*We have attracted absolutely extraordinary people, workaholics who buy into the vision and have a commitment to the vision and people.*

Interestingly, although the power structures of the organisation have tended in the past to be dominated by white men, many of them with legal backgrounds, a high percentage of the staff are women who occupy frontline positions in, for example, the client services section of the Industrial Disputes Resolution Service and the Elections and Balloting Project which is led and almost entirely staffed by women.

For the panellists, involvement in IMSSA is not simply another way of earning money. Tony Shepherd from ACAS in the United Kingdom remembers the first training he did for IMSSA in 1986:

*Right from the outset I was very impressed with the attitude and dedication of these would-be mediators. Here we were putting them through a very intense three-day training, with no absolute guarantees of admission to the panel, and to a person, they enthusiastically worked*

*well beyond the finish time set down in the training programme. Their thirst for knowledge was insatiable! This attitude and dedication was always present at the subsequent mediation training that I carried out in 1988 and 1990.*

In those days there were few panellists (33 in 1987). Now there are 195. Nupen says of the panellists:

*This organisation is in the unique and very fortunate position of having a dedicated group of panellists, mostly drawn from professional strata, who relish the prospect of challenges in conflict resolution and who are prepared, often at considerable inconvenience and, on occasion, in dangerous circumstances, to get out there and do the job.*

Initially the panellists were overwhelmingly white and male and often from the legal profession. Gradually more women joined (although, for many years Felicity Steadman and Kathie Satchwell were the only two women on the arbitration panel), and then more black men and, finally, black women. Interestingly, of the four panellists who did the most interventions during 1993, two were women and one was a black man. They each did over 40 interventions. The black panellist was Thabo Molewa, from the Transvaal, who was involved in more interventions than any other panellist countrywide. (See Box)

## **THABO MOLEWA - A TRIBUTE**

Thabo Molewa was an attorney from the East Rand who had been an IMSSA panellist since 1988. He was killed on his way to Thokoza to supervise civic association elections in December 1993. He served on the Mediation Panel, the Community Conflict Resolution Panel, the RBI panel and the Balloting Panel and was IMSSA's most prolific panellist, spending 94,5 days on IMSSA work in 1993 alone. Lever arch file after lever arch file on the shelves of IMSSA's archives section, with his name on the spine of each, testify to his enormous capacity for work. At his funeral, Dave Douglas, the Transvaal Regional Director of IMSSA's Industrial Dispute Resolution Service, paid tribute to him as one of IMSSA's finest mediators.

Molewa came originally from the Northern Transvaal, and was



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known as a student activist from the South African Students' Organisation in the 1970s; as a law lecturer at Turfloop University in the mid-eighties; later in that decade, as a candidate attorney ploughing through remote rural areas; and, finally, as a dynamic mediator and peace-broker in the nineties.

Molewa had enormous energy and quite an extraordinary ability to win the confidence of parties, in an unorthodox manner. He was popular with both management and the unions. Bokkie Botha, of AECL, says this was because he was "just so good". Marcel Golding (now a member of Parliament, but previously of COSATU) comments:

*Thabo was a remarkably warm and compassionate person and he had an easy disposition when dealing with workers, he could generate confidence in the process. He was also extremely competent in brokering agreements that could be honoured.*

Paul Pretorius says Molewa's popularity showed that the parties learned that the training in, and application of, the process were what mattered, not the politics of individual panellists. Felicity Steadman who worked with Molewa on a number of occasions, says that his personal style worked with conservative white employers and that, although he often looked for short cuts to get to venues where interventions were taking place, a habit she believes cost him his life in the end, he didn't take short cuts when it came to establishing personal relations with parties. She remembers him once taking half an hour to shake the hand of every person at an intervention. She says she learned an enormous amount from him.

Molewa was forthright and outspoken and, colleagues say, his unorthodox methods sometimes made their hair stand on end, but he had, says colleague John Brand, "incredible character, personality, charm, guile, intelligence and wit - and he used them all." Vincent Mntambo, Transvaal Regional Director of IMSSA's Community Conflict Resolution Service describes it as "his own magic". Fellow panellist Phiroshaw Camay believes that the efforts of Molewa in places like Thokoza are now really beginning to bear fruit, with, for example, the recent agreement by Thokoza and Alberton on a way forward to a single municipal authority.

*This would not have happened without his formidable contribution.*

Loretta van Schalkwyk, another panellist, says:

*My most rewarding experience as a panellist was being mentored by the late Thabo Molewa and working with him in a round-the-clock wage dispute. It was a learning a minute in how he effectively mentored, forced confidence in me in seeking my views, while at the same time adroitly handling the process between the parties. I miss him.*



Panellists J D Verster, Felicity Steadman and the late Thabo Molewa

Panellists are drawn from very diverse backgrounds but they share a belief in rational and fair negotiations and processes as the preferred means of resolving conflict in a country where these have not always, or even often, been the means chosen. They believe that, in working for IMSSA, they are making a contribution towards a society where such processes can become the dominant mode of dispute resolution. In addition, they find the contact with one another, through meetings and seminars, exciting and challenging.

*Collectively the IMSSA panellists probably represent some of the best legal thinkers of our time ... Being with them is like having an injection of jet fuel.*

*The meetings when panellists get together - there is such a wealth of experience and knowledge from various disciplines - it is quite unique. You can't believe the wealth of contributions and the incredible calibre and the totally unselfish sharing of experiences.*



Although in the early days IMSSA panellists had to do a great deal to prove their own impartiality and credibility, and to advance the case for third party mediation and arbitration, the reputation of IMSSA now gives them a comfortable entry into most situations. Felicity Steadman, one of IMSSA's most used panellists, says:

*It is very satisfying. You don't have to establish credibility in a particular situation, you can move on strongly and confidently to do the job.*

Often the panellists work together in teams, something that is accompanied by a remarkable sense of trust.

*We have a lot of confidence in each other. We know we are going to do the best possible job.*

This confidence is based not only on experience, but on a faith in the quality of training that all panellists have to go through, and the high standards for selection of panellists. Credibility is IMSSA's most valued resource and it derives directly from the calibre and performance of the panellists.

Being a panellist can be difficult, even dangerous. It is always demanding and often trying. It can be boring, as arbitrators who have waited long hours in the IMSSA library for a missing witness to appear can attest! Yet, despite this, Fikile Bam can say, echoing probably what keeps most of the panellists coming back for more,

*I've enjoyed it enormously!*

## 2.7 Thinking and planning for the future

IMSSA is made up of very many interest groups - staff, management, the Board, panellists, panellists from different panels, women, blacks - all highly intelligent and articulate, and it would be strange and, indeed, unhealthy, if there were not much internal discussion, debate and disagreement. Such debates help an organisation plan for the future and, during the nineties, they have centred around issues such as internal restructuring and new ways of managing a growing organisation, affirmative action among staff and panellists, expansion into new areas, the need for financial independence, the composition of the Board, and, more recently, ways of

meeting the challenges of a changing environment which will demand both external responsiveness and internal change.

Recently, the staff structure of the organisation has been reorganised so that there is now a management team made up of Directors from the regions and the Projects which runs the organisation on a day-to-day basis. Much energy has gone into putting staff relations and conditions of employment on a professional basis, including an extensive process of developing a job grading and salary system and the institution of intensive training for people at the management level to enable them to do their jobs well. It is this kind of preparation which will help to give IMSSA the professional cutting edge it needs as it moves into its second decade.



*IMSSA's  
senior  
management  
staff*



The organisation has made a commitment to affirmative action with both its staff and its panellists. This has been done within a framework of ensuring that efficiency and excellence are maintained. IMSSA's Policy on Affirmative Action commits the organisation to playing a role in reversing the effects of discrimination by developing the skills and resources of those who have been discriminated against, and, over time, addressing the imbalances. Methods used include taking positive measures to identify black and women candidates for admission to IMSSA's panels, the Internship Programme, formal or informal tuition and twinning. For some years now, with the assistance of the British Overseas Development Agency, black mediators from IMSSA have been receiving training under the auspices of ACAS. Some panellists and Board members believe that "we are winning the battle", and that IMSSA has played an important role in the genuine empowerment of women and blacks, through giving them the opportunity to access first class training and to work with skilled and experienced mentors. Others argue that not enough is being done. Panellist Thabani Jali, for example, believes that, unless IMSSA is able to reflect within itself the democratisation of South African society, it will be unable to maintain a competitive edge and will lose stakeholders among its panellists and users.

There are, undoubtedly, differences of opinion about time frames and processes to advance affirmative action within the organisation, but progress has been made. Implementation of the policy has been identified as one of the critical issues in the development and growth of IMSSA. At the moment, the IMSSA Board is in a process of restructuring that will result in equal, if not majority, black representation. The Board has also set up a sub-committee to oversee the formulation and application of the policy. Vincent Mntambo, a member of the sub-committee, says

*There are hitches and we need a more considered, vigorous approach, hence the sub-committee.*

There is now a strong contingent of women among the organisation's senior staff members, women outnumber men on the staff as a whole, while black staff members outnumber white, but not in senior positions. Women and black panellists are being more frequently used, but white men remain, at this stage, the dominant category of panellists on almost all the panels. The dictates of the users will remain the decisive factor in determining the use of panellists, and, as part of its affirmative



action programme, IMSSA aims at increasing under-used panellists' experience, and the confidence of users in these panellists.

A debate that is ongoing in the organisation is how far from the original core of an industrial dispute resolution service the organisation should depart in the process of expansion. In the eighties and early nineties, discussion revolved around the move into community conflict resolution work. Since then it has centred around the burgeoning Elections and Balloting Project which has only recently achieved full project status. The tremendous work done by this Project, and its somewhat unbalanced relationship to the rest of the organisation, during the pre-election period have led to considerable debate about its future direction. As with the community conflict resolution work, there is some resistance to moving away from the core service, and a fear that such a move will detract from the core, but, at the same time, recognition that the Project has enhanced the reputation of IMSSA and enabled the organisation to make an even greater contribution towards creating a constructive and peaceful society. One of the challenges for IMSSA in the future will be to ensure that the organisation can expand into new areas without losing ground in its more traditional areas of expertise, and to find a way for the Projects to work closely together without competing.

The work of IMSSA would not have been possible without the faith and generosity of donors, many of whom have been loyal over the years and continue to support the work of the organisation. Steven Burkeman of one of the long-time donors, the Joseph Rowntree Charitable Trust, says:

*Nothing that has happened since those earliest days has in any way shaken our confidence in that original (very positive) judgement.*



**IMSSA owes a debt of gratitude to a range of donors,  
among them, most particularly:**

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Christelijken Nederlandse Vakverbond (CNV)  
ActieKomOver

Danish Government

The European Community

Evangelische Zentralstelle Entwicklungshilfe (EZE)

The Ford Foundation

Interfund

The International Confederation of Free Trade Unions (ICFTU)

The Joseph Rowntree Charitable Trust

The Kagiso Trust

Netherlands Government

Norwegian Government

Novib

The Olof Palme International Centre

The United States Agency for International Development (USAID)

Plus many other smaller donors whose contributions have been highly  
valued and appreciated, and which have been put to good use.

Nevertheless, as with all NGOs in South Africa at this time, IMSSA is concerned to establish its financial independence through the diversification of funding sources and through looking at options such as income retrieval. IMSSA's budget has multiplied many times since its inception, a growth commensurate with the growth of its activities, but, with a budget of around R 13 000 000, this is an enormous challenge to the organisation's fundraising and financial management capabilities. In maintaining its financial independence, IMSSA has been, and will want in the future to be, very careful not "to



go where the bucks are", and to continue to fulfil its mission of public service in the area of dispute resolution. The independence of IMSSA remains one of its most valuable commodities.

The issue of the composition of the Board is another on-going one which is still being debated. When the Board became panellist-run in the early nineties, it was intended that the contribution of users would come through the User Resource Committees. These have been useful mechanisms, although, perhaps, not as active as had originally been planned. Certainly participants in both the Union Resource Committee and the Employer Resource Committee have found the meetings that do take place useful, and union people would like greater contact and more opportunity to give input into the service. Services outside of the Industrial Dispute Resolution Service do not have such defined constituencies and do not fit into the User Resource Committee model. IMSSA is now talking about Policy Forums. In the Industrial Dispute Resolution Service, such a service would, for example, provide unions and employers' associations with the necessary opportunity to influence the direction of the third party intervention services. The Forums, generally, would allow for information sharing, policy debate and for accountability of IMSSA for the quality of its services, and would ensure that the organisation continues to be guided in its service provision by its most important stakeholders - the users.

Planning for IMSSA's future has largely been in the hand of the Strategy Committee (STRATCOM), made up of a representative grouping of the organisation's stakeholders, and set up specifically to do strategic thinking and planning for the organisation. This Committee is coming to the end of its deliberations, which have been around many of the issues discussed above, and it is envisaged that teams will be set up to ensure delivery and accountability once final decisions are taken. Areas of consensus include IMSSA continuing to work in the public interest by assisting to resolve disputes within the greater community in the most effective and affordable way, remaining a non-profit organisation, independent of the state, remaining accountable to panellists and users, and working towards financial self-sufficiency.

In addition to its traditional dispute mode interventions, new challenges have opened up for IMSSA in this time of transition. The potential now exists to interact more freely with institutions and structures within the country and those in Africa, looking for opportunities to promote the growth of conflict resolution options, particularly in the Southern African region. There is also the potential now for IMSSA to enter into a relationship with government, as an independent agent in addressing social conflict and issues of reconstruction and development, to prevent conflict and facilitate agreement. IMSSA's experience places it well in terms of helping to develop strategies for development, often in circumstances of conflicting interests where knowledge that parties have of each others' motivations and ethos is very limited. Barry Smith of Interfund, one of IMSSA's donors, says:

*Breaking down the solitudes and irreconcilables of South African society is what IMSSA is all about.*

In the labour field, collective bargaining is likely to remain an essential feature of a democratic South Africa, but IMSSA will be challenged to be innovative and to develop new forms of facilitation and arbitration to complement the more traditional ones. New markets for the traditional forms are opening up (the public sector being the most visible) and need to be tapped and served, and the role of the Research Department will be crucial in this, while at the same time it works with the Training Department to ensure that panellists have the skills they need for these, in some ways, more complex issues that are already presenting themselves. In the community field there is a need to develop innovative ways of empowering people who live their daily lives in conflict situations so that the skills become based



in the communities themselves. Here, too, the complex issues of reconstruction and development will need to be addressed, and the skills learned and experience gained by IMSSA panellists will need to be incorporated into research and training so that panellists are able to provide a responsive service that maintains its standards of excellence. In both fields there is likely to be an increasing focus on consensus building as well as the more familiar conflict resolution.

As IMSSA moves into its second decade, it will need to draw, internally, on the processes and techniques it has advocated for so long in order to resolve internal tensions and address itself, with renewed dedication, to its mission. The challenge to provide effective and neutral dispute settling mechanisms is as great as it has ever been in the past.

### **3 A DECADE OF ACHIEVEMENT AND CREDIBILITY**

IMSSA now offers a service on a scale that those involved would not have dreamed possible ten years ago. Founder Loet Douwes Dekker believes that its impact has been remarkable,

*demonstrating that conflicting and inherently different interests can work together and that people and groups can go beyond conflict to common consensus, and build relationships acknowledging interdependence while respecting independence.*

Theo Heffer, who shared Douwes Dekker's initial vision, believes that

*IMSSA is one of the success stories of South Africa - not one person's success story, but that of many people who have made an enormous contribution.*

Following the organisation's passage through the eighties and into the nineties one is struck by the very many remarkable



people who have been involved, by the literally thousands and thousands of interventions which have together produced the reputation that IMSSA enjoys today, and the accumulated impact of which has been to install dispute and conflict resolution as accepted practices in South African society.

Both Douwes Dekker and Pretorius believe that the industrial relations work prepared the ground for the fight for political rights in South Africa and that the use of democratic processes in industrial relations was, as Douwes Dekker puts it, "the crucible for the demand for, and exercise of, political citizenship". Pretorius points to the role played by leading union figures in the national negotiations and believes that the labour arena was a training ground for these future political leaders and inculcated a culture of negotiation which was to be so important in the success of the negotiation process. (In this context, a number of people remember that ANC negotiator Cyril Ramaphosa came on one of the earliest training courses for mediators.) While IMSSA cannot claim all the credit for this, it was an added impetus, and it did play a role in making mediation and negotiation almost taken-for-granted processes. Certainly IMSSA did empower the unions, at a significant time in their development, and with important economic and political consequences. Mtutuzeli Tom, of NUMSA, says:

*IMSSA played an important role in changing labour relations in this country and in the process of democratisation.*

Marcel Golding, of COSATU, believes that

*IMSSA filled an area of the system that was lacking and developed a body of experience invaluable for the future.*

From the other side of the industrial relations coin, Bokkie Botha, of AECL, says:

*Its impact has been tremendously important - it was what the name implies, an independent service of enlightened people ... under a succession of very able Directors, it developed a mediation modus operandi which touched organisations that never even went to mediation.*

Ian Russell of Mercedes Benz believes that

*IMSSA has been important over the last 10 years as the*

*quality of the process and the mediators has in many instances led to dynamic, constructive relationships between capital and labour through a variety of agreements, processes and work place interventions.*

Richard Bloch, the American arbitrator who made such a contribution to this service in the early days, says of IMSSA:

*... today it has ascended to a seat of prominence in the South African labour community that it not only deserves but that it has defined.*

There are few who would argue that IMSSA has not played a significant role in setting the parameters of dispute and conflict resolution in South Africa over the years. Panellist, Board member and past staff member and user, Inthiran Moodley, believes that IMSSA has enriched the field of dispute resolution both by enhancing the quality of the collective bargaining process and by enabling the parties to examine the quality of their relations and gain insights into ways of transcending the adversarial mode in order to be able to deal constructively with one another.

According to panellist and Board member, Norman Arendse,

*IMSSA has played an especially critical role in capacity building, in empowering organisations and the communities and constituencies they serve in terms of training and development of important and necessary skills - a vital contribution to reconstruction and development.*

Viewing it from ACAS in the United Kingdom, Tony Shepherd, another of the early trainers, says:

*IMSSA has in its first 10 years made a big and lasting contribution towards the maintenance of a peaceful industrial and community relations climate in South Africa culminating in many of its staff and panellists rightly being given responsible roles during the 1994 elections. IMSSA now offers a wide range of professional services and no doubt will have an influential role to play in South Africa as the Government starts to tackle the important task of social and economic reconstruction ... I feel very privileged to have played a small part in the development of IMSSA and I am sure that ACAS will continue to give IMSSA all the support that it so richly deserves.*



Arnold Zack, from the United States, agrees with this, and adds:

*... as a consequence of that effective model and the acceptability of IMSSA and its leadership, it has been able to exert an even greater influence outside the labour management field in resolving the greater problems facing South African society.*

Barry Smith of Interfund, from a donor point of view, has this to say:

*During its first decade, IMSSA has established a substantial body of knowledge in its field as well as a solid reputation for professionalism, responsiveness and creativity. The social and economic disparities created by apartheid, and the scarcity of resources among the impoverished majority, will persist as sources of conflict for some time to come. In the decade ahead, IMSSA is well placed to provide valuable training and resources to the NGOs and other actors in the national project of reconstruction and development.*

*Interfund is proud of its association with South Africa's premier independent conflict resolution centre and wishes IMSSA well on the occasion of its 10th anniversary.*

What is clear is that IMSSA is an organisation that evokes positive and even passionate responses. Dren Nupen says:

*The texture of the organisation is a feeling in one's bones, demanding commitment and passion.*

The final word should, however, be left to Advocate Fikile Bam, long time panellist and past Board member:

*More than being in a court of law, IMSSA has taught me what Justice is about - not about winning and scoring points, but about reaching a resolution which all parties can live with constructively.*

Prepared by Janet Shapiro  
of Nell and Shapiro  
for IMSSA  
August 1994

*Postscript*

*I had 14 days to collect the data reflected in this Review, and to write the publication. This nearly impossible task was made possible by the help of, in particular, Marion Shaer and Mercedes Pavlicevic, and by the responsiveness of all those among the staff, panellists, users and contacts who found documents for me, made time to speak with me, or responded to my written requests.*

*Janet Shapiro*



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