



INDEPENDENT MEDIATION
SERVICE OF SOUTH AFRICA

The IMSSA Review

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INTRODUCTION

From fire-fighting to facilitation: IMSSA'S second decade

New forums and organisations are emerging in every sphere of South African life as it grapples with the ripple effects of the transition to a democratic order. Fundamental changes are apparent or envisaged in political, industrial, legal and social structures. IMSSA is confronted by these changes and has been challenged to assist in the move toward greater consensus and co-operation as the defining approach to decision-making in these structures. This Review attempts to highlight how IMSSA has grown and developed in response to these challenges in this, the organisation's tenth anniversary year.

The move from crisis intervention to socio-economic reconstruction and development is evident in the **CCRS** projects currently underway in the education sector, the taxi industry, the police/community sphere, and in the Township/Hostel project as described in this Review. CCRS assists to establish structures and forums which seek to transform these spheres from their experience as flash points of conflict.

The **Education Project** has run a record number of training courses in 1994. Training was conducted by a newly established panel of trainers and reached a wide spread of unions and community organisations. The research strategy for 1994 included a six-month internship programme underpinned by IMSSA's commitment to affirmative action. Interns received formal training and practical work experience, and conducted research under the guidance and support of IMSSA mentors. The interns' research involved collaboration with panellists, outside organisations and with experts in the field of dispute resolution.

South Africa's recent experience of democratic decision-making underscores a surge in interest in elections and electoral processes in political and community structures. As a result, the **Elections and Balloting Project** has been extremely busy with the elections of civic leaders, residents' committees and political office bearers to fill the gaps in leadership left by people who have taken up national and regional government positions. This project has also conducted a number of high profile strike ballots in the industrial arena during 1994. Furthermore, 1994's democratic national elections called for huge involvement from IMSSA.

Over the past year **IDRS** has found that issues of job security, productivity, flexibility, provident funds and profit sharing are receiving more attention in the industrial arena. These issues have added a new

dimension to collective bargaining and have focused the debate on the issues of worker participation and information sharing. IMSSA has offered a range of services that can accommodate these shifts in collective bargaining by making use of all dispute resolution skills available in, for example, mediation, arbitration, facilitation and relationship building.

Professor Mandlakayise Mchunu, Director of the Centre for Socio-Legal Studies at Natal University, and National Director of the Street Law Project, was elected as the new chairperson of the **IMSSA Board of Trustees** at a Board meeting in November. He replaces Paul Pretorius. Felicity Steadman, a full-time labour, community and commercial dispute resolution practitioner and educator, has replaced John Brand as vice-chairperson. Mandla's and Felicity's appointments mark the beginning of a new era of internal restructuring in IMSSA.

Following extensive consultation with IMSSA panellists, users and staff, the Board resolved to redesign IMSSA's structures. The new Board, which is panellist driven, has many new faces and meets the declared objective of representivity. The new Board met formally for the first time on 24 November 1994.

Management structures and portfolios have been adjusted to complement IMSSA's project driven services. The four projects which have been defined are the Industrial Dispute Resolution Service, the Community Conflict Resolution Service, the Education Project and the Elections and Balloting Project which have Board representation. Policy will be administered by project directors located in Johannesburg and regional directors situated in the IMSSA offices around the country. The projects and the regional offices are actively engaged in executing the many other decisions of Stratcom, each of which is designed to position IMSSA for the challenges facing the organisation.

IMSSA was awarded the **Institute of Personnel Management's Human Resources 2000 Award** that is designed to give public recognition to an organisation that has achieved excellence during the preceding year according to the IPM's National Human Resources Strategy.

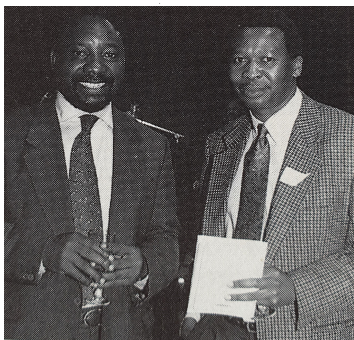
Another prestigious award presented jointly to IMSSA, the Community Dispute Resolution Trust (CDRT) and the USA's Conflict Management Initiatives (CMI) was the third annual **Mary Parker Follett Award** from the Society for Professionals in Dispute Resolution (SPIDR). This award was announced at SPIDR's annual conference in Dallas, Texas in November and is presented for fostering innovation and collaboration on a number of projects designed to create democratic problem-solving processes and structures at all levels of society, from the grass roots to political institutions.



IMSSA'S ANNIVERSARY RECEPTION AND NATIONAL CONFERENCE

IMSSA's Tenth Anniversary was celebrated with a reception held at the SABC. ANC secretary-general, Mr. Cyril Ramaphosa delivered the keynote address. He praised IMSSA for the excellent work it had done in South Africa and said that its services should be extended. He added that part of this extension should be to offer its expertise and facilities to other southern African countries.

*Keynote speaker,
ANC secretary-
general, Mr Cyril
Ramaphosa with
Vincent Mtambo,
CCRS Project
Director*



This very successful function was attended by some 350 panellists, staff, funders, users and special guests. Representatives of almost every social stratum and interest group were present. There were also representatives from the UK's Advisory Conciliation and Arbitration Service (ACAS) and the US Federal Mediation

and Conciliation Services (FMCS), people who have played a central role in training IMSSA mediators and arbitrators.

*Bashier Vally
(Panellist),
William Dichaba
(HSRC) and
Phillip Dlamini
(SAMWU
President)*





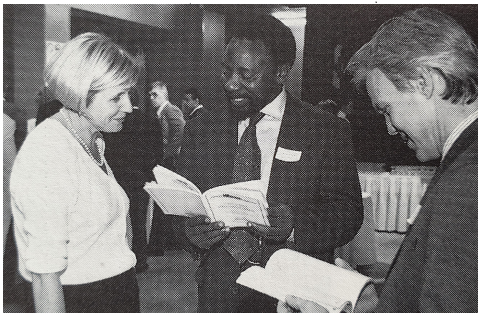
Panellists Graham Damant, Peter Harris and Mark Anstey



Charles Nupen, National Director, Dren Nupen, Elections and Balloting Project Director and Paul Pretorius, ex-chairperson of the IMSSA Board of Trustees



Interpreters Benedict Dlamini, Seth Phamudi, Innocent Moloi with Gloria Ndimandé, IMSSA staff member



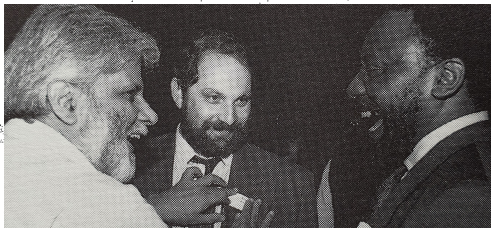
Dren Nupen, Cyril Ramaphosa and Bruce Robertson



Panellist David Storey and Ilona Tip, Elections and Balloting Training Co-ordinator



Panellists Steve Kahanovitz and Paul Benjamin with Dave Douglas, IDRS Project Director

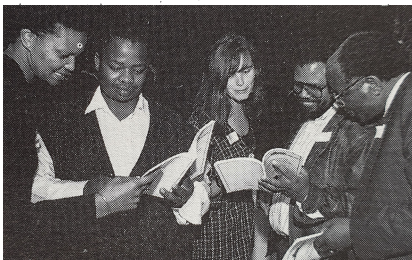


Phiroshaw Camay, Alan Fine and Cyril Ramaphosa

*Staff members
Julie Shear,
Angela Welham,
Jacqui Strydom,
Val Bond, Sue
Gerrits, Lorraine
Healy, and
Wendy Jones*



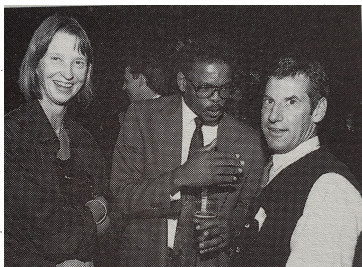
*Eastern Cape
panellists and
IMSSA staff:
Zolashe
Lallie, Malibongwe
Yokwe, Jana
Noome, Lex Mpati,
and Cecil Somyalo*



This was followed by the National Conference that took place at a Vaal riverside hotel. The rapidly changing legal, political and economic contexts in which IMSSA interventions are conducted were

addressed by various speakers.

*Funder
representatives
Inge Haldal and
John Campbell
with Ace
Magashule, ANC
deputy chair, Free
State.*

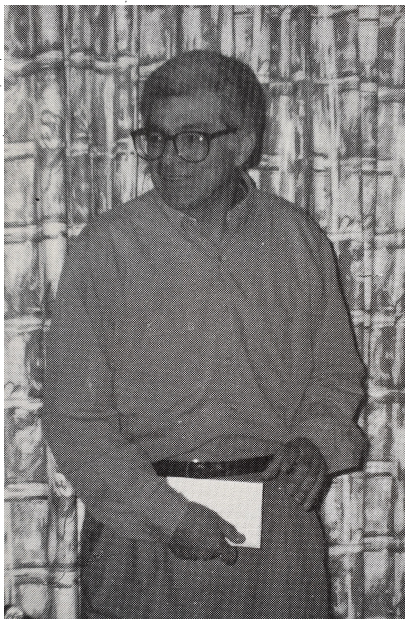


Political leaders addressed the challenges they face and explored IMSSA's potential relationship with the new state. Deputy Minister of Finance, Mr. Alec Erwin spoke on Reconstruction and

Development: Priorities and Processes, Costs and Consequences. He said that wide scale industrial restructuring would be required to fit in with the government's reconstruction and development programme (RDP). The RDP's main objective was to meet the basic needs of people previously denied benefits by government policy. Human resource development was of vital importance in meeting basic needs through the RDP.

Minister of Safety and Security, Mr. Sydney Mufamadi delivered an address titled **Conflict Prevention, Conflict Resolution and Community Policing: New Challenges for the South African Police Service**. Minister of Labour, Mr. Tito Mboweni discussed **Key Issues in Fashioning a New Labour Relations System**.

Judge Arthur Chaskalson, President of the Constitutional Court spoke on **Conflict Resolution and Constitution Making**. Advocate Dikgang Moseneke, SC spoke about **The Lessons Learned from the Independent Electoral Commission** and Ms. Dawn Mkhobo, Senior General Manager, Development and Growth, ESKOM discussed **Conflict Potential and Conflict Management: Corporations in Transition**.



Judge Arthur Chaskalson, President of the Constitutional Court



Advocate Dikgang Moseneke, SC with panellist Phiroshaw Camay

Dawn Mokhobo, Senior General Manager, ESKOM and Lungile Zondi, CCRS Training Co-ordinator

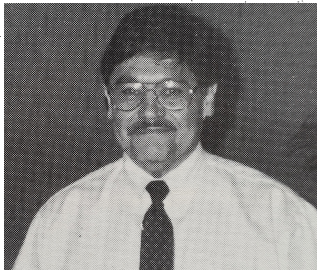


International experts in industrial dispute resolution were invited to share their experiences, views and new trends and developments in their countries. **Cross-Cultural Mediation: Conflict Resolution in Eliminating Cultural Dominance** was the theme addressed by Mr. Roberto Chene, Mental Health Consultant, Sante Fe Community College, USA.

Other international speakers, who spoke on

current international perspectives on dispute resolution were:
Mr. Richard Bloch, USA labour arbitrator;
Mr. Tom Colosi, Vice President of the American Arbitration Association;
Ms Eileen Hoffman, General Counsel, Federal Mediation and Conciliation Service, USA;

Dr Roberto Chene, Mental Health Consultant, Sante Fe Community College, USA



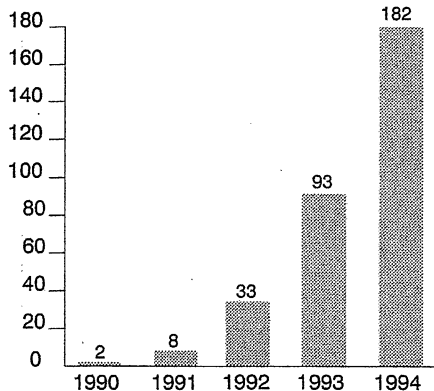
Mr. Tony Shepherd, Principal Industrial Relations Officer, Advisory Conciliation and Arbitration Service, UK;
Mr. Arnold Zack, President, National Academy of Arbitrators, USA; and Mr Dick Salem, founder and co-ordinator of Conflict Management Initiatives.

Vincent Mntambo, Cyril Ramaphosa, Charles Nupen and Arnold Zack, President, National Academy of Arbitrators, USA



COMMUNITY CONFLICT RESOLUTION

**Table 1: CCRS NATIONAL STATISTICS
1990 - 1994**



Since IMSSA expanded into the area of community and political conflict resolution in 1990, it has been involved in some 318 interventions. The number of CCRS interventions has grown enormously each year, from two interventions in 1990 to 182 in 1994 (see table 1). CCRS conducts an average of 15 interventions a month nationally. These interventions can take anything from one day to months of ongoing involvement.

The challenge to develop innovative ways of basing dispute resolution skills within communities has entailed a shift from reactive crisis intervention to sustainable, consensus-building initiatives. The emphasis has changed to the development of long-term, proactive and structured initiatives, in many cases as joint ventures with other organisations.

Through a strong relationship with structures set up under the National Peace Accord, IMSSA panellists and staff have accumulated extensive knowledge and experience in all stages and aspects of multi-party community dispute resolution. The integrative nature of this association has allowed IMSSA further

co-operative engagement with other organisations, especially other NGOs. Joint ventures have benefited from the increased synergy achieved by combining the experience and expertise of different organisations.

Midrand Development Forum

CRS was approached in October 1993 to facilitate the establishment of the Midrand Development Forum. The group of 40 organisations which are involved includes civics, ratepayers' and residents' associations, local authorities, and other interest groups. The forum participants agreed on a founding document that set out the aims, objectives, structures and form of a community based development organisation.

The development forum will be a Section 21 company with directors and shareholders selected by the three communities of Greater Midrand, being Ivory Park, Rabie Ridge and Midrand. The development company will be a vehicle for development facilitation and implementation in the area. The company will be driven by working groups in the area of job creation, agriculture, physical planning, arts and culture, housing, health and welfare, education, transport, and security.

North/West Province Strategic Planning

The boundaries between industrial, political and community conflicts are often blurred. Many disputes can not be addressed in isolation. An example of one such initiative with features appropriate for both IDRS and CCRS is the North/West Government intervention. Adam Kahane and Vincent Mntambo were asked by the North/West Premier, Popo Molefe, to facilitate a process that would give rise to effective strategic management teams within the provincial cabinet.

This has been a ground breaking exercise that has combined strategic planning with effective conflict resolution mechanisms. A series of workshops have been held for some 45 senior provincial officials over a period of two months where specific plans were drawn up for the various ministries on strategic planning for provincial governance and administration. The process is now at the second stage, that of monitoring the development of those plans.

Gauteng Police/Community Forums established

CCRS is serving on a Facilitation Committee of the Gauteng Community/Police Project. This joint venture is contributing towards building constructive relations with a host of NGOs. The Policing Research Project drew up a programme for establishing Community/Police Forums at all 183 police stations in the Gauteng province.

NGOs were then invited to discuss their potential role in setting up these forums. CCRS submitted a proposal to this forum documenting the part IMSSA could play within this project given previous experiences in the Sharpsville Police/Community Forum.

A research committee and a facilitation committee were formed. The research committee consists of members of NGOs, the Human Science Research Council and the police. Members of the facilitation team, with extensive experience in conflict management, monitoring and community policing, were drawn from organisations like Lawyers for Human Rights, Peace Action, the Wilgespruit Fellowship Centre, IMSSA's CCRS and the Wits-Vaal Peace Secretariat.

This team had the task of planning workshops to ensure a systematic approach to the establishment of Community/Police Forums and of training facilitators and fieldworkers. Some 55 people have already been trained in facilitation, chairing, dispute resolution and problem-solving in a course designed by IMSSA.

Area co-ordinators were appointed in six Gauteng sub-regions to work closely with the facilitators and fieldworkers. The six sub-regions are the Vaal, East Rand, Soweto, West Rand, Johannesburg/North Rand/Midrand and Pretoria/Verwoerdburg. The sub-divisions were created to ensure that the process reaches all local communities. The strength of the process will be measured by its ability to involve local structures and by the extent to which it is adopted by the Gauteng communities.



IMSSA's role in the RDP

Jana Noome, a 1994 intern based in the Port Elizabeth IMSSA office, explored some of the challenges presented by the RDP as part of her research project.

The RDP aims to transform society to "take the leading role and responsibility for [its] own development in the process of restructuring SA" (RDP Challenges: Information Brochure issued by the Minister without portfolio, 21/09/1994:01). Furthermore, it "reflects a commitment to grassroots, bottom-up development which is owned and driven by communities and their representative organisations". This raises concerns as to the way in which different interest and power groups prevalent in the same communities will affect the functioning of such a vision. The RDP expects the establishment of local RDP forums to represent and mediate between these interests.

Another challenge that the RDP raises is the establishment of a partnership (social compact) between government, business, trade unions and civil society. According to Baskin ("Unpacking the Social Compact", Mulberry Series: Olive Information Service, April 1994), social compacts are facilitated agreements between stakeholders. They are not simply statements of intent, but are detailed documents outlining terms and conditions of development (the rules of the game). The social compact's underlying premise is conflict management and the creation of joint ventures. Its defining feature is that it is a process; potential conflicts are identified and the mechanisms to resolve them are agreed upon. Who facilitates this process, who is experienced and skilled to identify potential conflicts and suggest mechanisms to resolve them? Who can provide conflict resolution skills training to sustain these forums? These questions raise exciting challenges for IMSSA.

IMSSA has already become involved in preliminary work around implementing the RDP in the Gauteng region. Through constant contact with the RDP Commission in the Gauteng region, CCRS was invited to facilitate group discussions at a workshop of ANC Alliance partners and SANCO. The RDP Commission is keen to involve CCRS directly in planning the remaining six workshops, and the envisaged conference that would incorporate the resolutions of the six workshops. This conference is expected to influence the regional white paper on the RDP. The Commission also approached CCRS to be part of an interim core group with the task of setting up a consultative mechanism for the province around the RDP and of designing an appropriate structure for the proposed Local Planning Forums. This proposal has been ratified by other important stakeholders in the province, such as SANCO and COSATU.



The Hostel Project

The Hostel Project was started in September 1993. The aim was to address the simmering tension and ongoing conflict that exists between the township residents and hostel inmates. The initial challenge for project convenor Solly Sefako was to gain an understanding of the sources of conflict and the levels of mistrust between these parties and to establish structured ongoing negotiations procedures through which conflict could be handled.

A dilemma common to community dispute intervention is that there is usually no recognised point to indicate when a third party should intervene. Often the intervener's function is not clearly defined nor mutually accepted beforehand. This results in the initial stage of the intervention being frustratingly slow.

Initial access to the hostel residents was facilitated by involvement in the Greater Johannesburg Peace Initiative, a forum composed of hostel representatives from Johannesburg and Soweto, the National Hostel Residents' Association (NAHORA) and hostel Indunas. It was more complicated to identify township community leaders involved in the dispute. Unlike the clearly defined constituencies and leadership structure found in hostels, the township leadership structure was fragmented in places and absent in others.

The major difficulties were to determine the number of parties or interest groups, and establish their representivity, interests and legitimacy. Once various leaders had been identified and approached, meetings with their Executive Committees were set up to initiate discussions. Each of these bodies needed time to consult their constituencies. Follow-up meetings were continuously organised to maintain the momentum.

Actual dispute resolution began two months after the inception of the project. The first meeting took place in Jabulani Hostel between the township and hostel residents. A number of issues were resolved at this meeting. A similar meeting followed in Dube. Differences and misconceptions were aired and discussed. What was soon apparent to those involved in this project was that contentious issues existed at multiple levels and had the capacity to shift and proliferate.

Disputes that surfaced tended to be just the latest manifestations of the complex historical conflict. Credibility,



gained from previous breakthroughs began to smooth the way toward diffusing potentially explosive situations. As this process of dispute resolution gained credibility and legitimacy, less extensive consultation was needed with each successive contact and intervention.

The need for training to develop communication skills, leadership skills and conflict resolution skills was identified at meetings held with NAHORA. A training needs assessment was conducted with the parties and a comprehensive training programme was created by IMSSA. Courses have already been conducted for West Rand hostels. It is hoped that this programme will reach leaders and representatives of hostels nation-wide.

National Education Project

CCRS is currently involved in a national education project. This joint venture with the Community Based Development Programme (CBDP) and the Community Dispute Resolution Trust (CDRT) aims to develop a programme for conflict intervention in schools. This programme will include management training and organisational development skills. Pilot work has been conducted in Gazankulu, in the Eastern Cape and in Kwazulu/Natal.

This structural intervention aims to establish institutionalised processes within the education sector that will deal with disputes as they arise. This type of intervention is premised on the belief that it is necessary to have in place a common framework of guidelines, developed with the parties involved, before resorting to neutral third party intervention. Accepted dispute resolution systems are designed to cater for the specific needs of all the parties involved in those areas.

There has also been much CCRS involvement in the education sector in the Eastern Cape. IMSSA has been involved in the training of student groups, mediations and commissions of enquiry. These interventions dealt with issues of college management, appropriation of funds, and examination results. CCRS-Eastern Cape has recently introduced the use of RBIs in the education sector, with a course designed to address the lack of basic skills and understanding of conflict resolution and negotiation. The first application of the RBI was with the Parents-Teachers-Students Association (PTSA) of a school which recently went through a protracted, but successfully resolved, mediation.



Gauteng Regional Taxi Peace Initiative

The Gauteng Regional Taxi Peace Initiative is an example of a structural intervention that is concerned with establishing a conflict resolution mechanism within the taxi industry on a permanent basis. This joint initiative involves the CCRS, the Wits/Vaal Peace Secretariat and other relevant organisations. At present a Steering Committee has been set up. One workshop has been held involving approximately 30 facilitators and mediators from Gauteng in exploring the possibilities of linking this regional initiative with a national initiative.

The need is great as taxi wars explode on a sporadic basis countrywide. A recent example was that involving the Hilltop Taxi Rank. A dispute has been simmering between Randburg taxi associations for seven years. The Randburg Taxi Liaison Committee approached the Goldstone Commission which referred the problem to IMSSA. IMSSA agreed to mediate between the taxi associations.

Cross Cultural Mediation Workshop

CCRS hosted very successful workshops in Cape Town and Johannesburg which addressed eliminating racism and issues of cultural dominance. Roberto Chene, Programme Facilitator of the Interculture Community Leadership Project at Santa Fe Community College in the USA, conducted the workshops. These were attended by culturally diverse groups of people from IMSSA and a range of NGOs.

Roberto uses a non-assimilation model in assisting people to move from positions of cultural dominance or submission to intercultural relations based on notions of equality. He equips people with the skills needed to deal with the conflict which inevitably accompanies this process. Participants were made to confront their own prejudices and found this to be a very positive experience.

New CCRS Panelists

The following new CCRS panelists have been trained:

GUATENG, EASTERN & NORTHERN TVL, NORTH/WEST & FREE STATE

LYNETTE DREYER
AUBREY LEKWANE
SELBY MBATHA
PATRICK NDOU
ROGER OXLEE
ALF STADLER

CLAIRE HOCK
KATHLEEN MATOLO
KGOMOTSO MOROKA
HANS NGOBENI
THAKA SEKOBA
BASHIER VALLY

MAMELO KOMANE
VUSI MASINGA
CHARLES NDABENI
ISAAC NTSHOE
MAHLAPE SELLO
TONY WOLFSON

WESTERN & NORTHERN CAPE

AUBREY BEUKES
KATE SAVAGE

AYACHA BONGA
BEN SCHOEMAN

STO JAXA
GCISA TSIPA-SIPOYO

KWAZULU/NATAL

ERIC APPLEGREEN
CHARMAINE MNTAMBORE

JABULANI MABASO
JOICE NCGONGO

LEONARD MABASO
MOGOTSI NGCOBO

EASTERN CAPE

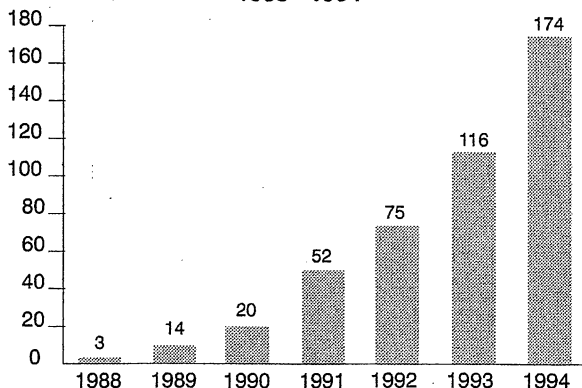
GAVIN BRADSHAW
ROB MIDGLEY
MALIBONGWE YOKWE

NALEDI BURWANA
NCEDISO ROSEVELDT

LYNETTE GREEN
SHENA RUTH

EDUCATION

**Table 2: TRAINING NATIONAL STATISTICS
1988 - 1994**



IMSSA Training

Since IMSSA began training in 1988 when three courses were held, the number of training events has risen each year. A total of 454 training events have been held over the last seven years (see table 2). The Training Project organised an average of 15 courses a month country-wide, each course lasting between one and four days.

One hundred and seventy four training courses have been conducted in 1994 by a newly established panel of trainers. Panel members are all experienced mediators and arbitrators who have been trained to run IMSSA courses using the training for learning methodology. The IMSSA training courses are directed at building capacity and self-reliance in conflict management among unions and employers, peace structures, community and political organisations, other NGOs and state structures (training courses offered by IMSSA are listed on page 62).

IMSSA reaches a wide spread of unions through training. The majority of requests this year has been for joint management and union training in negotiation and mediation skills and



arbitration processes. The Training Department and CCRS work closely together in the preparation of community dispute resolution training programmes and courses. Courses are offered at different levels of literacy and complexity, and are adapted to suit the specific groups with which they are run.

The education sector is one such area of new involvement. Again, as with unions, IMSSA's reach is wide, from the South African Democratic Teachers' Union, the Giyani Teacher Training College and the Soweto Education Community College to school principals. Other new areas of involvement are the agricultural sector and the Hostel Project (see page 13). Training in the agricultural sector has already begun and examples of this include the Land Agricultural Policy Centre, the Natal Agricultural Union, and various groups of farmers.

There has also been a steady increase in the number of requests nation-wide for training "peace organisations". One example is the Regional Peace Committee training. The Community Based Development Programme is a new programme where community leaders receive training in leadership and management skills and dispute resolution skills from IMSSA. A group of Day Care Mothers attended one such course. Training has also been undertaken for the Gauteng Police/Community forums (see page 11) and for the police union, POPCRU.

Relationship Building through Joint Training

In terms of a negotiated agreement that followed acrimonious industrial action, the line management and shop steward committee underwent IMSSA's dispute resolutions skills training. This training was to form part of a skills development programme to enable these parties to deal with conflict in an appropriate way.

Tensions were very high when training began. Participants, sitting in distinct and separate groups, felt that they had been coerced into attending the course. Trust between the participants was low and suspicion was high. There was a marked lack of willingness to participate in the course. The presence of a union official and the industrial relations manager helped to shift this perception.

The issue of languages was raised by the union official during

the introductory part of the training. Most of the managers spoke Afrikaans as a first language. The shop stewards on the other hand spoke Northern Sotho, Zulu or Tsonga. The facilitator indicated that they could speak in whatever language they felt comfortable and that he would do his best to ensure that everyone understood what was said. Mother tongue communication contributed quite profoundly to the building of trust between the trainer and the participants, and amongst the two groups of participants in the long run.

The issue of literacy presented the next challenge. Again, the trainer had to devise innovative ways of overcoming this obstacle. One training activity required that the participants work individually and then in pairs. Because of the low level of trust and the disparate skill and literacy levels, this activity was not appropriate.

Participants worked in larger, self-selected groups which appeared to provide an environment of security when sensitive issues were discussed. This strategy seemed to work well. The goal of the programme had shifted slightly from that of straightforward skills training to a process more akin to relationship building.

The group dynamics changed the following day when the shop stewards and management lunched together as a mixed group, unlike the day before when they ate in separate shifts. Seating in the class changed over time and participants began to engage in conversation outside the formal workshop discussions. Working in pairs was then reintroduced as people's attitudes and understanding had shifted.

There was also a new appreciation of how damaging unmanaged conflict could be. Specific attitudinal problems and suggested methods of resolving these were addressed in a positive and constructive way. By the end of the course it was possible to set joint working groups to tackle specific issues.

Labour Department Training

In 1990, Tony Shepherd from the British Advisory Conciliation and Arbitration Service (ACAS), held discussions with the then South African Department of Manpower about the role IMSSA could play in training conciliation chairpersons in dispute resolution skills. Conciliation boards are particularly significant



given that some 10 000 labour disputes are heard annually by these chairpersons.

At that time there was a perception that conciliation boards were a waste of time. Whilst all disputes have to be processed through an industrial council or conciliation board before referral to the Industrial Court for a final determination, not many disputes appeared to be resolved at the conciliation board stage. The Industrial Court was swamped and had a tremendous backlog of cases to be heard.

In 1992, a series of national training events was conducted by IMSSA for conciliation board chairpersons in the Department of Manpower. Training focused on negotiation and mediation skills and was presented by Tony Shepherd and Chris Albertyn. This training proved to be an eye-opener for many of the participants who had believed that they had a very limited role under the Labour Relations Act. Through training they were convinced that the Act empowered them to settle disputes.

Earlier this year, IMSSA trainers, Ian Newall, Claire Hock and Roger Chennells, together with Tony, again conducted training for the Department of Labour. On this occasion, five courses were conducted around the country, two in Johannesburg and one each in Durban, Cape Town and Pretoria. Eighteen of the 70 people trained had been on the previous course held two years before and had come for refresher training. Again, most of the participants were involved in chairing conciliation boards.

The dispute resolution course focused on areas such as conflict management, joint problem-solving, types of negotiation and communication skills. The participative structure of the course was very well received and some commented that they were unaware of the creative ability of people in their department that was brought out by the participative training style. Returnees to the course reported more job satisfaction now than they had in 1992. This was partly due to the change of emphasis within the Labour Department which now encourages mediation.

Tony believes that parties attending conciliation boards now get a better deal. While the system is still misused by those who view conciliation boards merely as a stepping stone to the Industrial Court, there appears to be a change in the performance of these boards. Tony found the trainees to be extremely positive about their roles as mediators.



Panellist Training

The broadening focus in industrial relations beyond distributive bargaining to a whole range of collaborative issues, and the diversity of employment situations and new developments in industrial relations, require that IMSSA interveners have broad-based and wide-ranging skills. IMSSA has adapted and updated panellist training courses to meet these changing demands.

Process skills and content training courses are organised and conducted on a regional basis. Topics covered in content training seminars held in 1994 included: **The Assumptions and Implications of Job Grading; Local and Regional Government Restructuring; Development and Planning Disputes; Intervening in the Agricultural Sector; Industrial Restructuring; and Disputes Systems Design.**

Process skills training included an **Advanced Jurisprudence Training** workshop for arbitrators. A workshop was also held for Relationship Building panellists where interveners' needs were identified and work was done to establish how important areas such as value sharing and strategic planning skills could be incorporated into the training process.

SNAPSHOTS

SAACI Conference

Congratulations to Vincent Mntambo on his election as SAACI President for 1994/1995.

Karen Miedzinski presented a paper that she had co-authored with Tony Wolfson titled **Training in the Context of Development Disputes** at the South African Association of Conflict Interveners conference. Background research and consultations have given IMSSA insight into the prospects of development dispute resolution. Meetings with other organisations working in the area are ongoing and a strategy for collaboration is being developed.



Training in Oslo

During the month of August this year, Charles Nupen and Vincent Mntambo visited Holland, Germany, Sweden and Norway. There, they reported on IMSSA activities. They also presented a paper and participated in a workshop at a Conflict Resolution seminar held in Oslo. This seminar was part of an initiative to establish a Conflict Resolution centre there.

National Director visits Jordan

Charles Nupen presented a paper in Oman, Jordan in September at the invitation of the Washington-based National Democratic Institute (NDI). The NDI is concerned with electoral issues and the promotion of democracy.

SPIDR Award

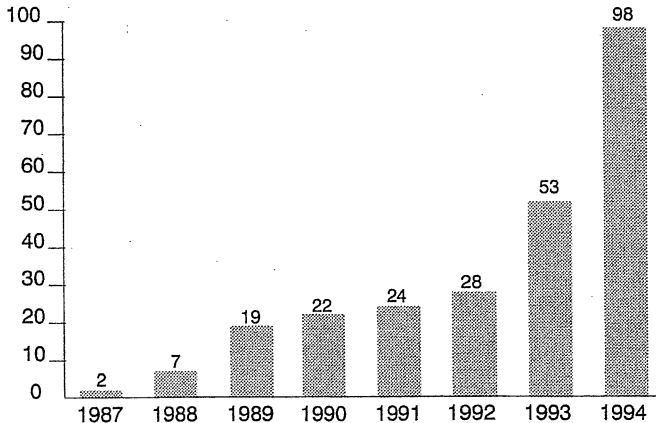
Susan Hayter, Western and Northern Cape Regional Director, and Dave Douglas, National IDRS Project Director, recently attended the annual conference of the Society for Professionals in Dispute Resolution (SPIDR), held in Dallas, Texas. The Mary Parker Follett Award for innovation, creativity, diversity, risk-taking and involvement was presented jointly to IMSSA, the Community Dispute Resolution Trust and the Conflict Management Initiatives (USA).

IMSSA Staff Training

Staff training courses entitled **Presenting the Public Image** and **Telephone Techniques** were conducted for IMSSA staff. IMSSA managers underwent a series of management training modules during the year.

ELECTIONS AND BALLOTING

**Table 3: ELECTIONS & BALLOTING TRAINING
NATIONAL STATISTICS
1987 - 1994**



IMSSA is experiencing a greater utilisation of democratic voting systems as is reflected in the record number of ballots and elections conducted in 1994. The Elections and Balloting team were involved in two elections in 1987 when this project began. This figure has increased significantly each year to 98 events in 1994 when an average of eight elections or ballots were held each month, and took anything between two days to a week to conduct. This project has conducted a total of 253 elections and ballots during the last eight years. The 1994 figure represents an 85 percent increase in events over last year (see table 3).

Elections were conducted for, amongst others, the ANC Regional Executive Committees country wide, the Klerksdorp Local Government Negotiating Forum and SANCO national and regional office bearers. Numerous union verification exercises have been held to determine union memberships and union majorities in companies. Balloteers have found that they are often called on to use voter education or mediation skills during elections.

The Elections and Balloting staff have found that their work has simplified since the national elections. People are now familiar with the voting process and the concept of democracy. However, problems do arise for IMSSA's electoral staff in areas where there was no voter education training.

To address this, time is taken to explain the nomination procedure and mini voter education campaigns are conducted when the need arises. When nominations were taken from the floor in a recent campaign, Nelson Mandela's name was nominated on several occasions. It was explained that this particular election was for local representatives and that the national elections would follow at a later date. This however did not prevent three aged people from accusing IMSSA of a plot to withhold Nelson Mandela's name from the ballot form.

The Elections and Balloting Project has developed innovative election procedures to deal with high levels of illiteracy and innumeracy whilst ensuring a democratic election process. For example, the use of photographs enables illiterate people to identify the candidate of their choice, while providing the correct number of stickers with crosses in them helps in dealing with innumeracy problems. Posters and a video explain the procedures and demonstrate the voting process.

Three recent elections illustrate the difficulties faced by the IMSSA facilitators. The first involved the election of regional office bearers for a union. There were logistical difficulties regarding venues, times of commencement and infrastructural assistance. For example, there were no photocopying facilities. Ballot forms could not be printed after completion of the nomination process so IMSSA staff devised an ingenious system of voting. Nominated candidates were listed under each executive position on a blackboard. Each voter was handed sufficient blank pieces of paper depending on the number of positions being contested. The voters were then required to write down the candidate of their choice for each of the positions being voted for. The office bearers were duly elected.

On another occasion, an election of local civic office bearers provided the first opportunity for this community to use a secret ballot process for its community elections. Previously, office bearers had been elected by a show of hands or by popularity contests. IMSSA electoral staff had to conduct voter education regarding the nomination and voting processes before the actual voting. There was no infrastructure nor any resources available. Nominations were conducted over one weekend and

the voting continued the following weekend. As the community was predominantly illiterate, IMSSA staff used photographs for the ballot papers. During the first day of the election, community leaders requested that IMSSA stop the process for a couple of hours to allow members of the community to attend a funeral. After the funeral, the elections were resumed and successfully completed.

On the third occasion, IMSSA was requested to conduct elections at night because the electorate was not available to nominate candidates and vote during the day. The first evening of the nomination process, the IMSSA team arrived with a group of Israeli election observers. The process of nomination was complicated and fraught with tensions as there was conflict between the various political parties. The nomination process was conducted over two nights, starting in the early evening and ending around one o'clock the next morning. Photographs were taken of the candidates and the ballot papers were prepared in Johannesburg.

The voting process started on the third night, adjourned at two o'clock the following day, to continue on into the weekend. A voting register was compiled by IMSSA, but as the election was held over several nights, the voting population was never the same. The register had to be continually updated and revised. Due to a lack of resources and infrastructure, a truck was brought into the hall and the lights and loudspeaker were attached to the battery. When the lights and loudhailer started fading, the truck's engine would be revved to recharge the battery. This truck was also used for seating and as a place for babies to sleep. Again, the election process was successfully completed.

ESKOM Pension Fund Board of Trustees

The Elections and Balloting Project was requested to conduct elections for the ESKOM Pension Fund Board of Trustees. This exercise involved two nation-wide elections. A postal vote was held for some 12 000 pensioners who returned their votes in reply paid envelopes to IMSSA for counting. A shop floor vote, held for about 42 000 employees, took five days to complete.

A working committee, comprising representatives from the Pension Fund, the unions and IMSSA, was involved in extensive pre-election planning. Meetings were also held with company



representatives to decide on logistics. Two weeks before the voting took place, IMSSA staffed a nomination table at the company headquarters for five days to accept hand delivered nomination forms. Information sheets in four languages were sent to all potential voters. Nomination and election process manuals were also compiled for the company.

IMSSA briefed 124 electoral officers and staff and co-ordinated the functioning of 162 voting stations. Transport and accommodation arrangements, ballot papers, ballot boxes, booths and stationery required for each station had to be organised. This was complicated as some teams had to move from one voting station to another during the day. Caravans were used as road-side voting stations to reach teams of ESKOM construction site workers. Voters were able to cast their votes even in the remotest parts of the country.

The voting register was computerised. In remote areas and on construction sites where no computer terminals were available, the register was taken manually and fed into the computer system later in the day. The ballot counting was the next enormous task that again required a great deal of administration and time.

Voter Education

In all, 2 372 voter education courses have been conducted since this service began to service the national elections in July 1993. A recent lull in voter training is temporary as this project prepares for the upcoming local government elections.

The national elections' voter education programme has been tailored for local government election education and includes the themes of building a culture of tolerance, acceptance of democratic principles, and individual responsibilities in civil society. While this programme, called **Educating for Democracy and Electoral Staff Training**, has the specific aim of preparing for the local government elections, its more general aim is to educate civil society about democratic principles and practice and indicate how democracy can be promoted and preserved.

The final IMSSA voter training statistics from the national elections have been compiled and the findings published in a booklet. This analysis assessed the reach of the programme and evaluated its efficacy. This information should prove valuable in preparing for the next round of elections.

NUMSA strike ballot

IMSSA was approached to monitor the strike ballot for the motor industry. This major undertaking involved some 24 000 voters. The different logistics required for each motor company proved an interesting challenge for IMSSA's staff. This event necessitated the co-ordination and participation of all the IMSSA regions as balloting took place countrywide. This strike ballot involved nine companies, with some 17 plants each with between 50 and 4 000 eligible voters. Pre-ballot meetings were arranged at each plant. Electoral teams, comprising 160 electoral staff, were appointed and briefed. Administrative staff worked continuously for three days to prepare for this ballot which then took place over a further three days. A total of 20 822 votes were cast of which 109 were spoilt ballots.

Public Servants' Association strike ballot

IMSSA recently conducted a postal strike ballot for the Public Servants' Association (PSA) following the rejection by the PSA of the government's offer on its wage demands. About 80 000 members, those not in essential services, were balloted in early November. This is the largest strike ballot undertaken by the Elections and Balloting Project to date. The PSA hopes to have clarity on their position by early December. In terms of the Public Service Labour Relations Act the government must be given one month's notice of the intention to strike.

Mozambican Voter Education

Dren Nupen and Ilona Tip visited Maputo earlier this year where they facilitated a meeting with Mozambican NGOs. Discussion revolved around revising the IMSSA voter education programme for Mozambican needs. They also met with United Nations representatives and the Mozambican National Electoral Commission. As a result of these meetings, IMSSA's Voter Education video was used in the run up to Mozambique's recent national elections.



Training of new Electoral Staff

The Elections and Balloting Project developed a training course for electoral staff to increase the size and representation of the existing balloting panel. This training was conducted recently.

Local Government Elections

The Elections and Balloting Project convened a workshop on the draft regulations governing the local government elections to be held late in 1995. Andrew Boraine from the Institute of Local Government in Cape Town was the guest speaker. IMSSA voter education trainers, staff and regional co-ordinators from Matla Trust attended the workshop. This joint involvement between NGOs represents yet another example of increased synergy from collaboration.

New Balloteers Trained

The following new balloteers have been trained:

GAUTENG, EASTERN & NORTHERN TVL, NORTH/WEST & FREE STATE

REUBEN DENG
MABO MOSUPYE
KAIZER THIBEDI

ELLEMFRANCES
BONTLEMPAKANYANE

KWAZULU/NATAL

NOMONDE GOBODE

RAY ZUNGU

WESTERN & NORTHERN CAPE

NOMBABO CUBA
NIKELWATEMGINFENE

NOMONDE MGUMANE

EASTERN CAPE

KATHRYN BUTT
PORTIA MNDI

ZOLASHELALLIE

THE SEAL OF APPROVAL

By Ian Newall

One cold and rainy night I was driving home after a community meeting in Fish Hoek in the Southern Cape Peninsula. My feet were frozen after a long meeting in a cold municipal hall. The Western Cape was reeling from the effects of one of the worst storms this century. Massive oil pollution had occurred along the Cape West coast. Our television screens were filled with images of huge grey seas, blackened beaches and oil-soaked penguins being airlifted to the Sancob rehabilitation centre.

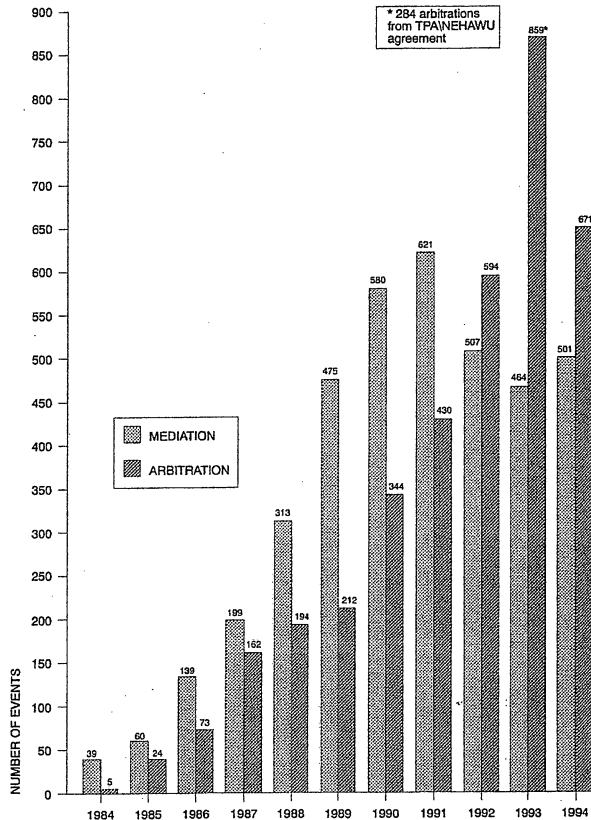
The windscreen wipers slapped monotonously as I drove into the fishing village of Kalk Bay and turned to take the mountain side road of Boyes Drive. My headlights picked out a sack in the road. Then the sack moved. I slowed down and leaned forward, peering through the rain. It was a young seal. I stopped the car and took a closer look. It was slightly oiled but uninjured. Miraculously, it had crossed the main road.

A local fisherman appeared out of the darkness. He explained that seals are known to bite if threatened and suggested that we should not try to pick it up but should rather get it into a box and take it to the Kalk Bay Harbour Master who would arrange its rehabilitation. The rain was starting to penetrate our clothing and there was no box in sight. Then I remembered. The following day I was to conduct a strike ballot and the IMSSA ballot box was in the boot of my car. The seal was duly persuaded into the ballot box and driven in style to the Kalk Bay Harbour Master's office.

The next day I conducted the strike ballot - ironically at a fishing company. The ballot went smoothly but my credibility suffered when I tried to explain to union and management representatives why some ballot papers were sprinkled with sea sand and bits of seaweed.

INDUSTRIAL DISPUTE RESOLUTION

**Table 4: 10 YEAR CUMULATIVE STATISTICS
MEDIATIONS & ARBITRATIONS**



The number of industrial interventions conducted by IMSSA over the past ten years is indicated in table 4. IMSSA has intervened in over 7 650 industrial disputes since the inception of this service. Mediations account for 3 889 interventions, arbitrations for 3 630, facilitations for 52 and RBIs for 87 interventions. The socio-political context within which IMSSA operates has influenced these statistics. For example, during 1985 and 1986, widespread political unrest had consequences for third

party intervention. A militant, politicised workforce pushed shop stewards and trade union officials to adopt a harder, less compromising line. IMSSA's work was also directly affected by rigid controls imposed under a state of emergency. A number of mediations and arbitrations were cancelled because many trade union leaders were in hiding or in detention (IMSSA Review no. 4, 1985; IMSSA Review no. 5, 1986).

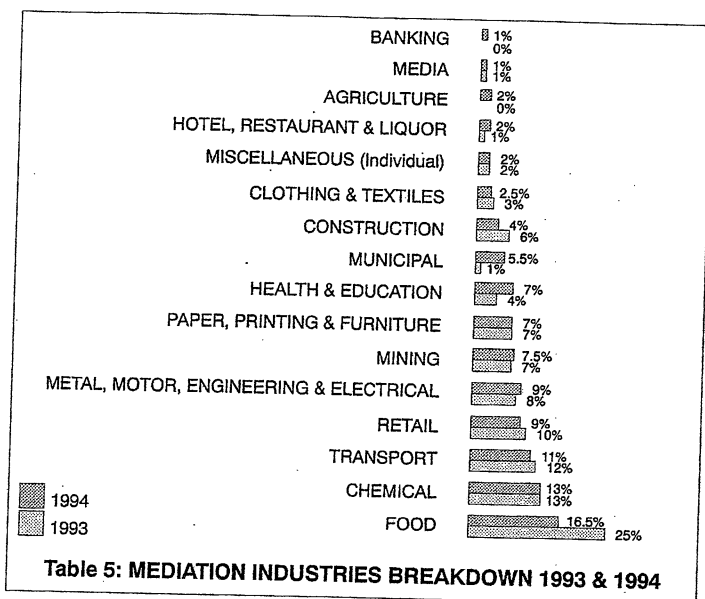
By 1989, the demand for mediation and arbitration had risen enormously. This could be attributed to the growth in unionisation which meant that a wider range of parties resorted to third party dispute resolution. Moreover, the attitude of the major trade union federations to the amended Labour Relations Act meant that parties turned with greater frequency to independent third party assistance to resolve disputes. There were, for example, an increasing number of recognition agreements which required that conflicts of right be adjudicated through private arbitration under the auspices of IMSSA and that IMSSA would serve as the source of mediators (IMSSA Review no. 8, 1989).

By early 1990, six years of experience in the field of third party intervention had crystallised mediators' understanding of their role. This role was one that not only moved the parties from the point of conflict to settlement but also one which facilitated the building and strengthening of industrial relationships. While parties had developed greater skill in collective bargaining and in using mediation, the practice of "positional bargaining", where parties bargained according to predetermined inflexible strategies, was still prevalent (IMSSA Review no. 9, 1990).

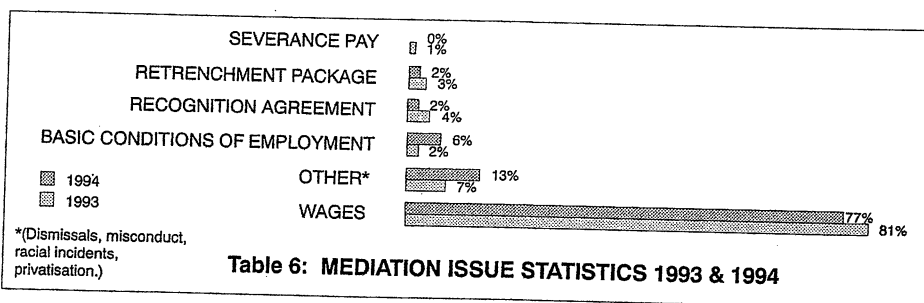
Recent statistics indicate that parties are still turning to third party intervention to resolve industrial disputes. IMSSA was involved in over 1 300 industrial interventions in 1994. An average of 42 mediations and 56 arbitrations were held each month.

Mediations

The demand for mediations has fluctuated since 1990 but the number of mediations is increasing again (see table 4). In 1993, 60 percent of the mediations conducted by IMSSA occurred in the retail, transport, chemical and food sectors. This trend has persisted in 1994 (see table 5). The majority of mediations occurred again in the food industry although the 1994 figure of 16.5 percent is significantly less than the 1993 figure, when 25 percent of all IMSSA mediations occurred in the food industry.



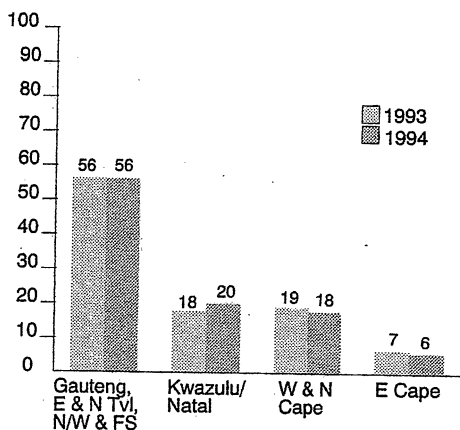
The vast majority of mediations over the ten years of IMSSA's involvement have occurred over wages and substantive conditions of employment. Table 6 indicates that this trend is still evident although the number of mediations which revolved around wages in 1994 has decreased. The 13 percent listed as OTHER comprises issues such as dismissals, misconduct, racial incidents and privatisation.



*(Dismissals, misconduct, racial incidents, privatisation.)

IMSSA's experience has been that most substantive collective bargaining occurs between June and November. As a consequence, these have always tended to be the busiest months for the organisation. This was particularly the case in 1994 because a number of annual negotiations that would normally have occurred in the first four months of the year were postponed until after the national elections in April.

**Table 7: MEDIATION REGIONAL BREAKDOWN
1993 & 1994**



The percentage breakdown across the regions has remained fairly stable over time. However the number of interventions that occurred in Kwazulu/Natal has increased by 38 percent to a total of 108 mediations in 1994 compared with the 1993 total of 78. The Eastern Cape has conducted 58 mediations since the Port Elizabeth office was established in July 1993, and 184 mediations have taken place in the Western Cape since the Cape Town office was established in March 1993.

Pick 'n Pay / SACCAWU Mediation

The Pick 'n Pay/ South African Commercial and Catering Allied Workers' Union (SACCAWU) strike was the first major industrial action to occur after the new government took office in May. The dispute and subsequent mediation received a significant amount of media coverage for this and the following reasons. Two Government Ministers and the State President were involved in the dispute at various stages. It was the first occasion in IMSSA's experience that the Minister of Labour, after consultation with the parties, appointed a mediator in terms of Section 44 (5) of the Labour Relations Act.

A week after the nation-wide legal strike began, hundreds of strikers were arrested when the industrial action turned violent. Labour Minister Tito Mboweni intervened by meeting with the management and union leaders at the company's headquarters.

This was followed by Minister of Safety and Security Sidney Mufamadi announcing a short-term directive to guide police during labour disputes.

According to the press, this directive stated that court orders granted to employers were to be enforced by the police only after commanding officers had satisfied themselves that all the parties involved in the dispute were fully informed about the details contained in the court order. The directive stated that if a police commander believed that any party was in contempt of a court order, negotiations were to be held to seek compliance with the order. Only if these negotiations failed would arrests be made, and all efforts would be made to avoid force.

President Mandela met with COSATU general secretary Sam Shilowa to discuss strikes, including this particular dispute. Sam Shilowa then met the company's management for an informal discussion to set parameters for the resumption of negotiations.

After the second week of striking, the two parties agreed to mediation. A statement by the Labour Ministry said Minister Tito Mboweni had viewed the strike with growing concern and had recommended mediation. Mboweni's recommendation was accepted by both parties. Mboweni then appointed IMSSA National Director Charles Nupen as mediator. Although legally entitled to intervene in terms of the Labour Relations Act, this action by the Minister was considered highly unusual and was the first such appointment in IMSSA's experience.

A meeting convened to discuss the role of police in labour disputes was attended by company and union representatives, Minister of Safety and Security Sydney Mufamadi, COSATU general secretary Sam Shilowa, police officers and Charles Nupen. The parties mandated Charles Nupen to draft an agreement on picketing.

This agreement facilitated strikers' ability to picket effectively and matched this with a set of responsibilities regarding constructive behaviour. The agreement, approved by a drafting committee, ultimately failed to secure endorsement, and the mediation proceeded to address substantive issues. The mediator used the process of single text mediation which is used when neither party feels comfortable to make the first tangible move to try and affect settlement. The mediator then takes responsibility for developing a proposal. In this instance a set of proposals was developed. Neither party has to defend the proposals, neither can the proposals be attacked, because

they are not of the parties' making. The proposals are in effect ideas with which the parties can work.

What was proposed in that single text agreement was a set of task forces to address a range of issues other than money. The parties then resolved the substantive issues and agreed to a set of task forces to address discreet issues, including job security, flexibility and mobility of labour.

Petronet Mediation

Bruce Robertson and Garth Jenkin mediated a dispute between Petronet and 13 key skilled staff. This strike, in support of wage demands, had the potential to disrupt the supply of petrol throughout Petronet pipelines countrywide. Although the mediation was not immediately successful, the strike was resolved on terms similar to those canvassed during the mediation phase. IMSSA is currently discussing with the parties the possibility of a relationship building initiative for management and this group of key staff.



New Mediators Trained

The following new mediators have been trained:

GAUTENG, EASTERN & NORTHERN TVL, NORTH/WEST & FREE STATE

BARBARA ADAIR
PATRICK DEALE
KAREN FULTON
FAITH MACDONALD
LAVERY MODISE
TEFO RADITAPOLE
SHAMIMA SALEY
ALISTAIR SMITH
JOHN VAN BREDA

NAJWAH ALLIE-ENDRIES
REUBEN DENG
IMRAAN HAFEEGEE
KAREN MIEDZINSKI
MARK PHILLIPS
MAHAMMED RAJAH
MARION SHAER
ZUKI TSHIQI

KWAZULU/NATAL

SANDILE NGCOBO
MANDISA POSWA
TEMBA SISHI

DHAYA PILLAY
GEOFF SCHREINER
CRAIG TANNER

WESTERN & NORTHERN CAPE

NOBAMBO CUBA
SUSAN HAYTER
USHA JIVAN
KAMLESH KER
BEN SCHOEMAN

WINNIE EVERET
FRANK HORWITZ
MTHUTHUZELI KAYE
STEFAN RAUBENHEIMER
ADELE WILDSCHUT

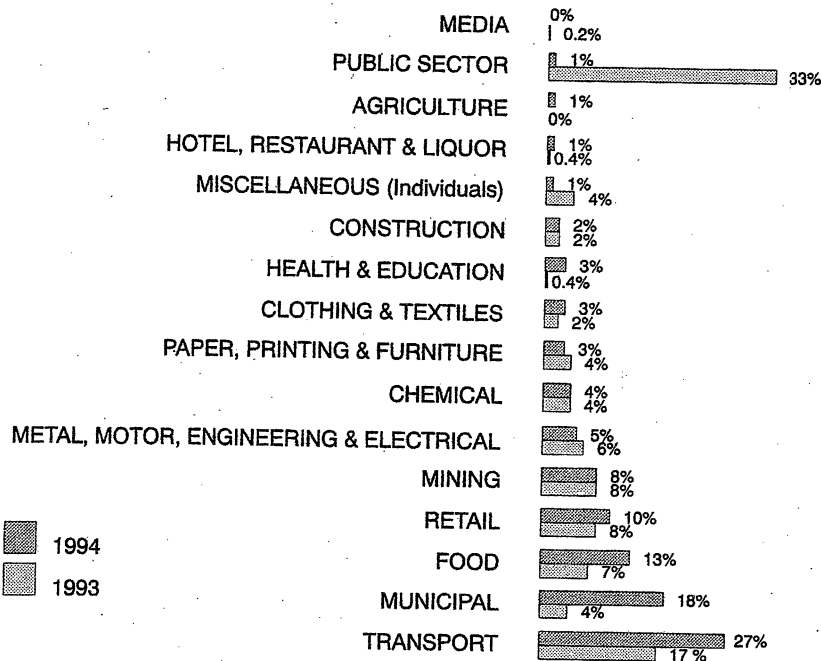
EASTERN CAPE

ZOLASHE LALLIE

THEMBINKOSI MKALIPI

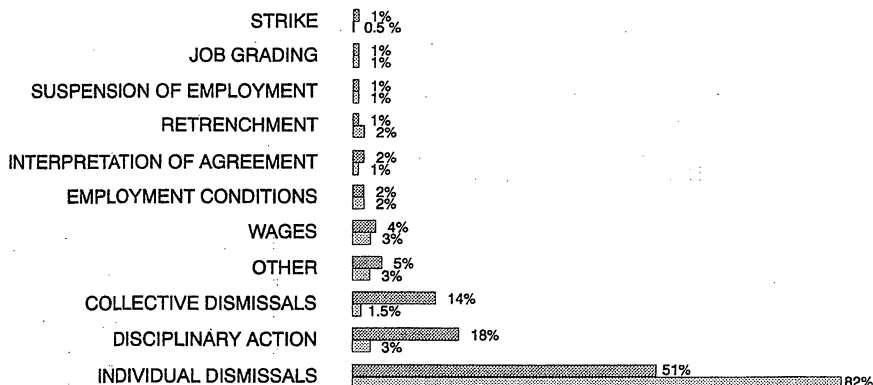
ARBITRATIONS

**Table 8: ARBITRATION INDUSTRIES BREAKDOWN
1993 & 1994**



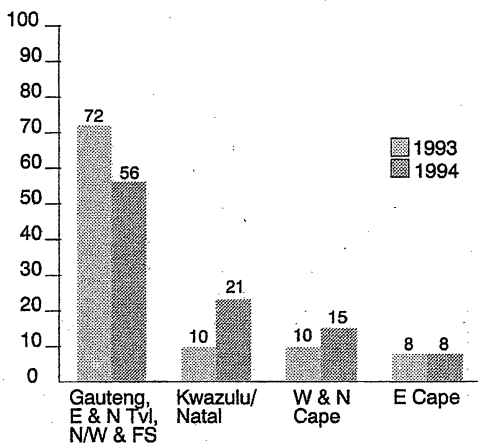
The Nineties have seen an increasing use of arbitrations (see table 4). The majority of interventions in 1994 occurred in the municipal, transport and food sectors. These sectors together accounted for 58 percent of all arbitrations. These figures represent a very different spread from that found in 1993 when most arbitrations occurred in the public sector (33 percent) due to the TPA/NEHAWU agreement, followed by 17 percent in the transport sector (see table 8). However, IMSSA's involvement in the public sector and with parastatals accounts for a combined total of 22 percent of arbitrations in 1994.

Table 9: ARBITRATION ISSUE STATISTICS 1993 & 1994



Issues brought to arbitration have traditionally involved individual disputes of right, including disciplinary action and dismissals, but there were also collective disputes of right and collective disputes of interest. Sixty-five percent of the cases brought to arbitration in 1994 involved individual or collective dismissals. This was followed by disciplinary issues which accounted for 18 percent of cases arbitrated by IMSSA panellists. This trend is different from that found last year when individual dismissals accounted for 82 percent of all arbitrations in 1993 (see table 9). The category OTHER included issues such as grievances, demotion, sick leave, clarification of an award, and the determination of bargaining units. Many of the over 3 000 industrial arbitration awards delivered by IMSSA arbitrators can be found in the *Arbitration Digest*.

**Table 10: ARBITRATION REGIONAL BREAKDOWN
1993 & 1994**



The regional breakdown in the percentage of arbitrations conducted in 1994 indicate a very different distribution from that found in 1993. The regions account for 44 percent of all arbitrations held in 1994, compared with 28 percent of the 1993 total. Kwazulu/Natal showed a 60 percent increase, a total of 139 interventions, over the 1993 figure of 87 for this region. One hundred and sixty eight arbitrations have been organised by the Western and Northern Cape office since it was established in March 1993 and the Eastern Cape office has conducted 87 arbitrations since its inception in July 1993.

The History of the Arbitration Digest

By Ingrid de Villiers

Volume One of IMSSA's *Arbitration Digest*, in loose-leaf form, was first published by the Labour Law Unit in 1990 under the editorship of Catherine O'Regan. Two supplements to the volume were published in 1991 and 1992. Together with the original volume, these updates provide subscribers with concise summaries of IMSSA's more important arbitration awards from 1985 to mid-1992.

Reacting to feedback from those involved in the arbitration process - arbitrators, trade union officials, industrial relations practitioners and lawyers - IMSSA's executive committee decided to change the format and publish awards in full, subject

to editing where necessary, twice a year in book form comparable to other journals in the labour relations field, namely the *Industrial Law Journal* and the *Labour Law Digest*. Each volume, comprising three parts covering four months' awards, is fully indexed in relation to content, parties and arbitrator. The arrangement of the new digest will follow that established by Catherine O'Regan and the Labour Law Unit in that awards have been arranged in ten chapters according to subject matter. The Subject Index will refer users to awards which cover topics other than those identified by the chapter heading.

The most difficult task in compiling the digest is deciding which awards are most worthy of publication. Every award is different, not only in relation to the issues in dispute but also in the way the different arbitrators assess the evidence and make their findings on particular issues. Awards are discarded, firstly, because one or both parties withhold their permission for publication. In making the selection from what is left, the editors focus primarily on the needs of users by providing a selection of awards from as many different arbitrators as possible (which will hopefully assist them in their choice of arbitrator for future disputes) and publishing awards dealing with the same issue as decided by different arbitrators, and by selecting awards which provide useful information on a particular topic. An attempt is also made to select those awards which develop arbitral jurisprudence on a particular issue.

Rainbow Chicken / FAWU intervention

A major national dispute between Rainbow Chicken and the Food and Allied Workers' Union (FAWU) was referred to advisory arbitration through IMSSA. Kwazulu/Natal Regional Director, Bruce Robertson arbitrated. This wage arbitration was not final and binding. The intention was that the parties, on receiving the award, would go back to negotiations in an attempt to finalise the matter.

In terms of their procedures, if the matter remains unresolved, it would then be referred to a conciliation board chaired by an IMSSA mediator. This occurred and Inthiran Moodley was appointed as mediator. This process did not result in a settlement of the dispute and a high profile strike resulted. Media reports of this industrial action documented incidents of alleged sabotage, intimidation and violence. The matter was ultimately settled on terms similar to those proposed by the arbitrator and as discussed during the mediation phase.

Shoprite - Checkers/SACCAWU intervention

The Shoprite-Checkers/SACCAWU dispute was unusual in that a grievance procedure and a disciplinary procedure were instituted simultaneously. The wildcat strike that followed was long, protracted and bitter. The entire dispute was submitted to mediation. Bash Vally was appointed as mediator and straight mediation was attempted, but the parties were unable to settle. The workers were seeking to convert the unprocedural strike into a procedural one. This went as far as a conciliation board. They were on the verge of a strike ballot when the parties agreed to some form of third party facilitation after intervention by the Labour Minister.

The company wanted advisory arbitration which has all the elements of an ordinary arbitration where evidence is led, but the arbitration award is only a recommendation. The union was opting for conciliation, that is a form of mediation where essentially the conciliator makes recommendations to the parties if the parties are unable to agree.

Without defining the process, IMSSA was approached to appoint two arbitrators, Ingrid de Villiers and Inthiran Moodley, to be involved in an exercise to attempt to resolve the dispute. Both the company and the union were committed to the amicable resolution of the matter and requested that the interveners map out a process whereby the parties could try to rebuild their relationship.

The intervention took place with the arbitrators unclear as to what process they were to use. They used a number of techniques, ranging from straight mediation to making recommendations in a more robust way than would be used in ordinary mediation. The interveners also drew on arbitration experience to assist the parties to grapple with appropriate terms of reference for various issues. According to the arbitrators, the remarkable part of this intervention was the extent to which the parties committed themselves to wanting to settle the issue. Both sides made enormous compromises.

The intervention took seven days. On most days they were engaged solidly from early in the mornings to the early hours of the next mornings. One of the most significant features of the agreement finally reached was that management agreed that there would be no dismissals for the illegal strike nor for acts of misconduct during the strike. The parties finally agreed on the maximum penalty that could be imposed.



Public Sector Involvement for IMSSA.

The public sector has employment relations and working conditions quite distinct from the traditional industrial relations arena. Dispute settlement machinery, outlined in the Public Service Labour Relations Act (PSLRA), 1993, reflects the unique requirements of the public service. With the merging of the various public services under a new constitutional dispensation, it is expected that the number of public service personnel will increase to approximately 1, 2 million people.

In August 1993, a new framework for labour relations, the PSLRA was legislated. This meant that for the first time in their history, public sector employees had access to institutionalised bargaining, the statutory regulation of strikes, statutory dispute resolution procedures and unfair labour practice suits in the Industrial Courts.

The PSLRA provides for the establishment of a Public Service Bargaining Council with a chamber at central level and a chamber for each public service department. The Act also provides for the settlement of disputes that may arise in the bargaining chambers. There are numerous sections of the PSLRA that specifically require or permit third party intervention to resolve disputes. Third party intervention has been identified in terms of the Act for the following purposes:

- The recognition of an employee organisation;
- Admission to chambers of recognised employee organisations;
- Access to information;
- Dispute settlement between admitted parties in chambers;
- Negotiable matters and matters of mutual interest;
- Interpretation of agreements;
- Dispute settlement for workers in non-essential services;
- Dispute settlement for workers in essential services.

The IMSSA arbitration panel has been accepted to serve for all central and departmental Chamber disputes. Work is underway with a technical committee which is determining both the public sector's needs and where IMSSA can be of service. It is anticipated that the complexity and technicality of the legislation will generate a large number of disputes. This will offer IMSSA the opportunity for further involvement in this sector.

IMSSA has, in the past, been involved in public sector intervention. For example, a settlement agreement reached between the Transvaal Provincial Administration (TPA) and the National Health and Education Workers' Union (NEHAWU), which followed lengthy and violent industrial action in 1992, stipulated that all cases arising out of this action be referred to arbitration by IMSSA arbitrators. This intervention involved hundreds of cases (see IMSSA Review no. 14, 1993). At present, IMSSA is working together with the TPA and NEHAWU in designing dispute systems for provincial hospitals (see page 45).

SNAPSHOTS

Central Witwatersrand Metro Council

IMSSA arbitrators Fikile Bam and Paul Pretorius were asked to determine the number and boundaries of municipal substructures which will make up the area of the Central Witwatersrand Transitional Metropolitan Council (TMC) after negotiations for the TMC deadlocked over the issue. Old council boundaries were replaced with seven new municipalities. The results were submitted to the Gauteng Premier for ratification. The arbitrators' decision on the new municipal boundaries was followed by the establishment of a Transitional Metropolitan Council for the region. The new boundaries remain binding until local government negotiations in 1995.

Western Cape Metro Forum

Also to do with the process of political transition, IMSSA Western Cape panellist, Geraldine Coy, was asked to mediate a crisis that arose at the Western Cape Metropolitan Forum. This intervention was related to the October deadline for the establishment of the transitional local government structures. Mediation was requested to put the parties back into negotiations which were threatened with deadlock at that time. The mediator, assisted by David Schmidt of the Institute for Democracy in South Africa (IDASA), introduced a process whereby the parties considered their own party's strengths and shortcomings as well as those of the other parties. These perceptions were then shared in a plenary session. This process enabled the parties to continue negotiations.



Accounting Disclosure Panel

A recent Accounting Disclosure was used in negotiations between a printing union and a publishing company around the issue of relocating the printing of a newspaper to another city. The Accounting Disclosure Panel assists parties where the disclosure of company accounting information is a point of conflict at the negotiation, mediation or arbitration stage. Panel members who are either academics or independent professional accountants, do not give a ruling on particular wage increases, nor will they comment on whether a wage offer or wage demand is reasonable.

New Arbitrators Trained

The following new arbitrators have been trained:

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MICHAEL MARCUS
RUSSEL MOLETSANE

DAVID DOUGLAS
PUKE MASERUMULE
ROY MTHOMBENI

GORDON HAY
VINCENT MNTAMBO

WESTERN & NORTHERN CAPE

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BASHWAGLAY

LEANNE DE LA HUNT
CECILE WILLIAMS

EVANCE KALULA

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JOHN HLOPHE
DENISE RUDOLPH

ANTON MYBURGH
RAYN WADE

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CAROL LOUW

TEMBA SISHI

PAT STONE

Sugar Industrial Council - Dispute Design

Kwazulu/Natal IMSSA panellist, Alan Rycroft, recently helped parties to the Sugar Industrial Council redesign their industrial council dispute procedures to create different mechanisms for different disputes and effectively restructure the entire dispute machinery. This joint intervention involved all employers and unions party to the council.

Subsequent to that, Alan has assisted the parties to implement the new agreement and has also conducted training courses for representatives of the parties to maximise their use of the new systems and structures created.

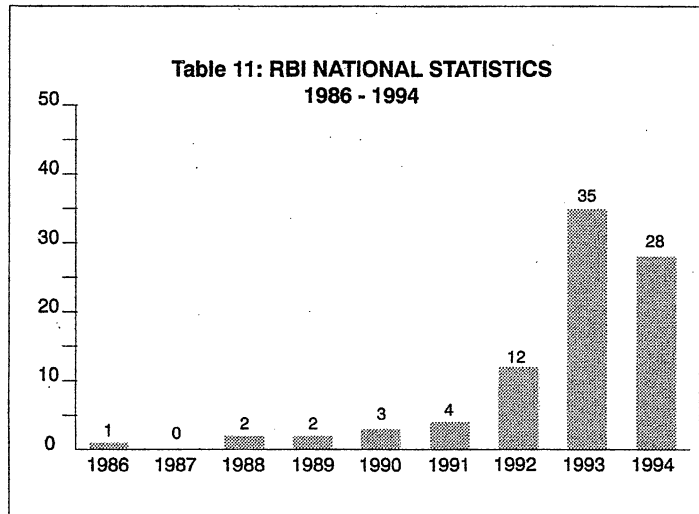
Designing Dispute Systems for Provincial Hospitals

Hospitals have been the sites of intense conflict over the last five years. Transvaal Provincial Administration (TPA) officials and representatives from a forum of unions and employee bodies have been involved in a pilot project together with IMSSA to resolve a wide range of disputes. The aim of the project is to resolve crises as they arise and then to move beyond crisis management and to design dispute settling systems to facilitate improved long-term relationships.

This project requires the blurring of the boundaries between the roles of mediator, arbitrator, and facilitator. IMSSA interveners have had to mediate and intervene in a variety of disputes throughout the fact-finding component of this exercise. IMSSA's participation in this area is very new and involves Natalspruit, Thembisa, Leratong, Garankuwa, Baragwanath, and Kalafong hospitals. It has the potential to be extended to all TPA hospitals.

Parties confident in the use of basic mediation and arbitration are tending to think more creatively about using hybrid interventions to identify or develop mechanisms appropriate to the circumstances of particular disputes. A range of facilitation approaches are used in the design of party owned and party driven alternatives to and variations on the Relationship By Objectives (RBO) theme. Dispute systems are being designed to incorporate elements of mediation, arbitration, fact-finding and facilitation appropriate to each intervention.

The product of this process is a comprehensive dispute handling system that covers dispute prevention processes, consensus oriented processes, and processes that accommodate rights and power disputes. The overriding aim is to change traditional adversarial relations characterised by frequent bouts of industrial conflict to relations characterised more by consensus decision-making based on greater worker participation and increased consultation. Innovative agreements have emerged from the increased synergy created by fusing these modes of intervention.



Relationship by Objective Facilitator's Manual

By Felicity Steadman

IMSSA has been offering the RBO intervention to parties since early 1986, when Ken Evans and Don Power came out from the United States to run a pilot Relationships by Objectives (RBO) project for IMSSA. There have been major developments in Relationship Building initiatives offered by IMSSA. Relationship Building has evolved into a system that is woven into the fabric of the enterprise. Follow-up interventions are conducted which focus on issues and flash points raised at earlier interventions. In addition, planned programmes that incorporate added services such as training, strategic planning and dispute systems can be designed to ensure that the momentum of the initial RB intervention is maintained.

It became clear, given these developments and the increased demand for RBOs in the Nineties, that the many different facilitators conducting the processes needed a manual to guide their work. Such a manual has at last been completed and will soon be available to Relationship Building Initiative (RBI) panellists in IMSSA.

The manual is a practical guide to the process beginning at the pre-RBO stage, followed by the RBO process itself and concluding with the post-RBO follow-up. Each step in the process is set out and carefully discussed with practical ideas based on the experience of facilitators. Felicity Steadman has also drawn on the work of Loet Douwes-Dekker and Mark Anstey, both of whom have much to offer IMSSA panellists in the area of Relationship Building.

The RBO manual is intended to provide panellists with a guide for RBO processes only and not for other types of RBIs. While it is tempting at times to concertina the RBO process into fewer days by cutting it here and there, panellists are advised against this. Experience shows that the four/five day RBO process is a successful one and that it should not be corrupted. IMSSA has staff and panellists who are expert at process design and panellists are urged to seek their advice before designing other RBIs.

INTERNSHIP PROGRAMME

1994 INTERN REPORT

The research strategy for 1994 included an internship programme as part of IMSSA's affirmative action policy. Senior members of staff acted as mentors who supported, guided and monitored the four interns through the six-month programme. The mentorship scheme exposed interns to a wide range of IMSSA activities and events.

The programme was designed and co-ordinated centrally by Marion Shaer and Sue King. This allowed for uniform standards to be set and evaluated. Each region or project which had interns then devised working programmes for their interns. The programme included formal training courses, on-the-job experience, exposure to experts in the field of dispute resolution, and a research project.



Research was undertaken in the areas of community conflict resolution and relationship building initiatives. The research projects involved a great deal of collaboration with IMSSA panellists, people from academic institutions and other NGOs. The research findings were presented at a function held recently at the IMSSA head office.

The benefits of this programme were enormous for the interns, their mentors and for IMSSA staff involved in this programme. A great deal of reciprocal learning took place. As a result of this success, the 1995 internship programme is to be enlarged to give a greater number of young people exposure to the skills that IMSSA has to offer. Two six-month programmes will be organised to accommodate some twelve interns.

INTERN PROJECTS

A critical evaluation of RBO interventions

By Attwell Kokeletso Magogodi

The aim of this project was to evaluate the strengths and weaknesses of the RBO process and to make recommendations for the future. This review was considered important for IMSSA as it allowed for a critical analysis of the RBO process as it is currently being used. Various methods of data collection were used. These were: interviews, observations, focus group meetings, panellist reports and mailed questionnaires. The research subjects were RBO users (company employees and union members) and panellists.

The research findings suggest that users and panellists feel that there is a need to restructure the RBO to involve users in the process design and diagnosis; to make it a more systematic, long-term process; and to improve the administrative support of the process. It is proposed that IMSSA's IDRS policy unit consider other systems of dispute resolution that could be incorporated into the RBO process. Many new ideas have emerged from this research which could address the shortcomings that were identified. An improved RBO would fortify the professional service that IMSSA offers.

Intervening in the Education Sector: an information video on Alternative Dispute Resolution Services.

By Kamogelo Wilderson

The idea of a video aimed at the educational sector came from a concern about the numerous past conflicts and the potential future conflicts within this sector. The video, **HANDLING CONFLICTS**, hopes to inform audiences about the various conflict resolution options available through alternative dispute resolution. The video will assist CCRS to introduce its services to the education sector. The video is aimed at raising awareness about the appropriateness of using different processes to resolve particular disputes. It also informs the audience of the role of IMSSA in the field of dispute resolution.

A steering committee was formed to assist in the conceptualisation and content development of the video. A technical advisory group reviewed the video script. Various video directors were interviewed to select a director given budgetary constraints and the need to work closely with the steering committee and the video co-ordinator.

The video will be used by CCRS to present its proposed projects for the education sector to the Gauteng MEC for education. The SABC will also be approached to screen the video on an educational programme. The video will be made available to all IMSSA offices and will be sold to service users and other interested parties. This video has the potential of being used far beyond its present and immediate scope. Thanks to staff who participated in the video production.

Potential disputes in the employment relationship during local government restructuring in the Western Cape

By Muzi Dlamini

The concept of transitional process in local government gives rise to mixed reactions amongst stakeholders. Major achievements have been reached at the political level. It appears however, that there is a sense of job insecurity and uncertainty at the level of employment relations. Research was conducted which focused on potential disputes that might

arise as a result of restructuring the local government in the Western Cape Metropolitan area with particular reference to employer/employee relations.

The problem areas which were explored were those of: affirmative action; job evaluation and job grading within the municipality; staffing; bargaining levels; legislation; and education and training. Research data was collected by means of a questionnaire. The results of this survey point to potential solutions to this problem and indicate IMSSA's possible role in this area.

The relevance and effectiveness of IMSSA's CCRS function in the Eastern Cape and its future scope and potential.

By Jana Noome

The subject of study was chosen due to the need to evaluate CCRS given the changing context in which CCRS must deliver its services in the Eastern Cape. The research methodology included a literature review and analysis of questionnaires sent to panellists and users in the East Cape. The aims of the study were to assess the context in which CCRS is expected to function, to evaluate the perceptions of the relevance and effectiveness of the services it provides (in the view of its panellists, users and staff), and thereby to assess its future scope and potential.

Forty questionnaires were distributed and twenty were returned. Responses were quite positive and very honest. Most respondents rated CCRS highly for its reaction to service requests, friendliness, trilingualism, impartiality, independence from political parties, commitment to the Eastern Cape, credibility and effectiveness. IMSSA's interventions were felt to have improved relations between parties. However, criticisms were that IMSSA is understaffed, that it neglects the rural areas, discriminates against Afrikaans-speakers, and neglects the youth.

Five areas which IMSSA should address were identified. These were:

- increasing involvement in the education sector (schools, technikons, universities, youth organisations);

- increasing staff-capacity and representivity, and establishing offices in the rural areas;
- expanding services to rural areas, churches and organisational development;
- effective marketing of services and panellists;
- training of panellists, organisational development training, and training in rural areas.

The research results may be consolidated into three key areas: building the capacity of IMSSA; marketing and networking of IMSSA in the region; and improving and developing its services. Importantly, a thorough regional needs analysis must be done, but this requires a degree of regional autonomy from IMSSA nationally to effectively service the region's specific context and needs.

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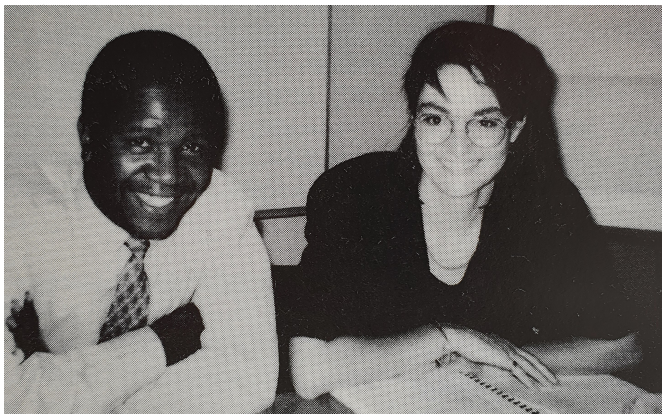
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Industrial Dispute Resolution

Appropriate Dispute Resolution (1-day)

Creates an awareness of the various options available to people for resolving disputes. It also investigates the most appropriate ways of resolving disputes effectively

Arbitration Training (4-days)

Explains arbitration and teaches participants how to decide whether or not to use it, and how to prepare and present cases at arbitration. This includes assessing the merits of a case, taking statements, leading witnesses, cross examining, and presenting opening and closing arguments. It also deals with the law as it applies to arbitration.

Negotiation/Mediation Training (3-days)

Develops an awareness of the relationship between the way parties in the industrial relationship negotiate and the outcomes of their negotiation. The course focuses on the different approaches to managing conflict and negotiating and when they might be used to best effect. It also explores various options for dealing with deadlock and using mediation to prevent or resolve disputes.

Joint Dispute Resolution Training (2 to 3-days)

This programme is designed to provide union and management with an understanding of the different options available to them for jointly resolving disputes, as well as providing them with the skills to do so more effectively.

Conflict Management and Dispute Resolution : Creating a climate of tolerance (3-days)

This course is similar to the above but also focuses on how to deal with political differences in the workplace. It specifically examines different ways of managing conflict; effective communication skills; problem-solving and mediation; and ways of preventing, managing and intervening in crisis situations on the shop-floor.

Community Dispute Resolution

Effective Dispute Resolution (3-days)

Explores the various options available to community and political groups for managing conflict. It examines negotiation, mediation and facilitation in the context of the power realities which operate in South African society. There are two versions of this course - one assuming a higher level of literacy, the other a lower level.

Conflict Management and Crisis Intervention (3-days)

The objectives of this programme are: to explore various options for managing conflict; to learn more effective ways of communicating; to examine ways of preventing, managing and intervening in crisis situations; and to explore problem-solving and mediation as processes for resolving disputes. This course is aimed at "peace workers" with a lower literacy level.

Crisis Intervention and Dispute Resolution (3-days)

This programme is aimed at third-party interveners with a higher level of literacy. The aims of the course are: to explore various options for managing conflict; to explore chairing, mediation and facilitation as processes for resolving disputes; to examine ways of preventing, managing and intervening in crisis situations; and to provide participants with an understanding of the link between approaches chosen and potential outcomes.

Conflict Management Skills Programme (2-days)

This programme is aimed at mass-based organisations. By the end of the programme participants will: understand what conflict is and how it develops; understand the different ways of handling conflict and how to decide which to use; have practised how to handle conflict effectively. IMSSA will also train trainers from the organisation in order to train members in conflict management skills. This programme is called the Conflict Management Skills Trainers' Programme.

Leading Meetings (2-days)

This course is aimed at mass-based organisations to improve the manner in which they conduct meetings. By the end of the two days participants will: have agreed what an effective meeting should be like; understand a range of ways of making decisions and the role of the leader in making decisions; have developed leadership skills that can be used in meetings.

VENUE FOR COURSES:

We run courses in Johannesburg, Durban, Cape Town, Port Elizabeth and surrounding areas. IMSSA has its own training facilities in each of the above centres.

COSTS:

IMSSA operates a sliding scale of fees for community, union and management groups. Details on request.

NUMBER OF PARTICIPANTS:

Courses are run for a maximum of 12 and a minimum of 10 participants.

WHO TO CONTACT:

For more information or to arrange courses, please contact the regional office in your area or the following people in the Education Department: Karen Miedzinski, National Education Project Director or Victor Mhlanga, Training Administrator at Tel:(011) 482-2390 Fax:(011) 726-6846

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