

Legislative backing of the SETA Learnership contracts: A myth or reality

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I thank God for the strength and ability to go through all my studies up to this level and I trust him for the strength and wisdom to continue. I would like to thank Professor Botha for encouraging me and for all the guidance. He has been an awesome mentor. To my two sons: Mufarowashe and Tawananyasha, I thank you for you for being strong for me and being so understanding that mummy had to do a lot of school work.

Table of contents

Chapter 1

Abstract.....	1
1.1 Problem Statement.....	2
1.2 Study significance and delimitation	6
1.3 Background.....	7
1.4 Regular references, terms and definitions.....	12
1.5 Chapter summary.....	14

Chapter 2 Legislative Framework

2.1 Theoretical Background.....	16
2.2 To regulate or not to regulate.....	17
2.3 The South African Case.....	20
2.4 A historical perspective.....	22
2.5 The LRA and the Constitution.....	25
2.6 The SDA and the SDLA.....	27
2.7 SETAs and Learnerships.....	31
2.8 The Skills Development Levies Act.....	32
2.9 Conclusion.....	33

Chapter 3 The learnership contract

3.1 The Manpower Training Act 56 of 1981 vs The Skills Development Act of 1998.....	35
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3.2	The SDA and Learnerships.....	37
3.3	The Learner ship agreement.....	40
3.4	The Sectoral Determination 5.....	41
3.5	Termination of the Learnership contract.....	44
3.6	Learnership Funding.....	45
3.7	Conclusion.....	46

Chapter 4 Learnership Roll-out: A game of numbers.

4.1	The Skills Development Levy Act: Tracing the 1%.....	47
4.2	The Mandatory Grant.....	49
4.3	Discretionary Grants.....	51
4.4	A Different motive.....	52
4.5	Chasing Figures.....	57
4.6	Contractual Loopholes.....	61
4.7	Contractual duties: An analysis.....	62
4.8	Learnerships and apprenticeships.....	68

Chapter 5 Recommendations and closing remarks

5.1	Introduction.....	82
5.2	Learnerships: A comparative perspective.....	84
5.3	Closing remarks.....	90

Chapter 1: Introduction

Abstract

Learnerships are a relatively new training method that the South African skills development system has adopted to address the country's shortage of skills.¹ Incorporating a number of role players and having multiple objectives, learnerships have been hailed as one of the effective ways to address unemployment by encouraging industry to participate in skills development at the same time propelling employment equity.² The provision of tax incentives and fulfilling the broad based black economic empowerment (B-BBEE) has made learnerships a viable way of getting industry involved in addressing skills shortages and also to serve as a remedy to the problem of unemployment among the previously disadvantaged citizen groups.³ The success of the learnership implementation process is guided by the legislative backing which has been created to regulate the scheme amongst the role players; namely, the learner, the SETAs and the employer.⁴ For industry funded learnerships, the employer plays a dual role as the sponsor of the programme as well the workplace provider, who should ensure that the learner is able to practically implement the theoretical knowledge they acquire in the classroom. The learnership contracts can therefore be referred to as tripartite contracts or agreements as they guide the relationship among the three main role players in the learnership programme, namely, the learner, the

¹ Theresa-Anne Davies & Fionah Farquharson 2004 "*The Learnership model of workplace training and its effective management: lessons learnt from a Southern African case study.*" Journal of Vocational Education and Training Volume 56, Number 2: 181; 182 "Since 1998, the 'learnership' model of workplace training has been promoted in South Africa as a creative vehicle for addressing high unemployment rates and a serious skills shortage. ; "However, it is important to recognise that learnerships are still an emerging field."

² Ibid

³ National Treasury Tax Learnership Tax incentive review. Page iv "The learnership tax incentive is a programme that supports skills intensity through the tax system."

⁴ Theresa-Anne Davies & Fionah Farquharson 2004: 182 "Furthermore, they exist in a highly legislated context (Skills Development Act of 1998; Learnership Regulations of April 2001)."

employer and the training provider. This research explores the legislative backing of the learnership contracts with the aim of investigating to what extent the obligations and rights created by these contracts are enforced and enforceable and the likely consequences of the lack of enforceability of the contracts. The research will explore what obligations and rights are created by the contracts in light of the challenges that have been encountered in the implementation of the learnerships, top amongst which has been a high level of learner drop outs.⁵ The challenges and effects of the enforceability or lack of thereof of the contracts are explored with a view to explore possible improvement measures which can contribute to the body of knowledge on practical implementation of the programme. Furthermore, the research looks at other systems that have implemented and are still implementing learnerships with the aim of exploring how the relationships amongst the role players have been managed in a way that has had a positive impact on the successful implementation of the scheme.

1.1 Problem statement

The inception of learnerships developed a euphoria in the skills development circles as a doubled-edged antidote to unemployment and skills shortage.⁶ Industry has also

⁵ Most of the issues raised by employers in the FP&M SETA survey were to do with learners who leave the programme. See. "The Voice of the Employer. Detailed Report of employer survey results." December 2014. Page 18. Also see Mathew J. *et al.* "*Perspectives on Learnerships: a critique of South Africa's transformation of apprenticeships. Strategy and Tactics.*" Journal of Vocational Education and Training, Volume 57, Number 4, (2005): 539. "Reasons for the scepticism over MA success, include uneven employer demand, commitment and engagement (Payne, 2002; Fuller & Unwin, 2003), that the state is more interested in the outputs (number of participants typically disaggregated by age, gender, class and economic sector) than the outcomes of these programmes (the creation of paths to high skill jobs) ..."

⁶ Ferdinand Potgieter. "*Phantom ship or Ferryboat? Understanding the mystery of learnerships and assessing the realities.*" 2003 "From evidence presented, it would appear that learnerships as a mode of delivering a learning programme for the training of educators in South Africa, offer exciting, fresh and innovative possibilities to all stakeholders and role-players in education."

embraced the scheme as a solution to meet some of the legislative compliance requirements of conducting business in South Africa.⁷ As work-based initiatives, learnerships have been regarded as the best avenue to address unemployment by providing theoretical knowledge as well as the practical experience that should, ideally, improve employability. As alluded to in some writings, the introduction of tax incentives provided an impetus for industry participation.⁸ There has been fears, however that this euphoria might have clouded objective judgment on the satisfaction that all parties derive from the learnership programmes. As Mathew, commented "this high overall level of satisfaction with the Learnerships may mask some of the underlying differences in levels of satisfaction across the different strata of the South African labour market."⁹ "The writer also notes that there have been different levels of satisfaction between learnerships for employed and those for unemployed people."¹⁰ This has been perceived as a reflection of many oversights that need to be addressed in the learnership model.¹¹

It is also noteworthy that the little literature that is available on learnerships in South Africa has mainly been authored by the proponents of the model, mainly, the SETAs and these writings have evaluated the success of learnerships on the basis of enrolment figures as well as the tax rebates statistics where learnerships were strategically used by employers to claim tax rebates.¹² Those who have lent a critical voice to the model have

⁷ The Broad-based Black Economic Empowerment Act 53 of 2003

⁸Mathew J. *et al.* "*Perspectives on Learnerships: a critique of South Africa's transformation of apprenticeships. Strategy and Tactics.*" Journal of Vocational Education and Training, Volume 57, Number 4, (2005) Cape Town, South Africa.

⁹ Mathew J. *et al.* "*Perspectives on Learnerships: a critique of South Africa's transformation of apprenticeships. Strategy and Tactics.*" Journal of Vocational Education and Training, Volume 57, Number 4, (2005) Cape Town, South Africa.:537.

¹⁰ Mathew J (2005): 537.

¹¹ Mathew J (2005). 537.

¹² "Economic Tax Analysis Chief Directorate: Learnership Tax Incentive Review." National Treasury (2016).

analysed how the model has been frowned on by the learners yet at the same time highlighting the perceived success as reported by the SETA statistics. Typical of such reports would be the conclusion by the Human Sciences Research Council Policy Brief, which purported that the SETAs have managed to meet their aggregate targets in rolling out the programmes.¹³

Noticeable in the literature also, is the near absence of the voice of the employer and to some extent, that of the learner.¹⁴ Also, noteworthy, has been the lack of a critique of the legislative backing which should ideally anchor the success of the model. Without downplaying the perceived issues that have been raised on the success of the model¹⁵, one area that has lacked exploration is also the implications of the failure by learners to complete the programme on the involved parties. Regarding the perceived value that the model has been given, a good monitoring system of the legislative relationship that exists amongst the players, could be one of the lifelines for the model, the lack of which could be an element that has sabotaged its optimum success.¹⁶

The SETAs have been given the most acclaimed role of acting as the custodians of the model. They are responsible for upholding the relationships among the stakeholders.

¹³ G. Kruss *et al.* 'Learnerships and apprenticeships: Key mechanisms for skills development and capability building in South Africa.' Page 61- 64. HSRC Policy Brief 2014

¹⁴ Mathew J. *et al.* "*Perspectives on Learnerships: a critique of South Africa's transformation of apprenticeships. Strategy and Tactics.*" Journal of Vocational Education and Training, Volume 57, Number 4, (2005):539. "Moreover, a key characteristic of studies conducted on MAs is the notion that they are conducted in a data poor environment. In particular, information on employers is particularly poor."

¹⁵ Glenda Kruss et al 2012. "Impact assessment on National Skills Development Strategy II. Developing skills and capabilities through learnership and apprenticeship pathway system. Synthesis report. Assessing the impact of learnerships and apprenticeships under NSDS II." Page ix "Official government targets set for enrolment of both employed and unemployed participants have consistently been met – and even exceeded - over the period of NSDSII."

¹⁶ Theresa-Anne Davies & Fionah Farquharson 2004 Journal of Vocational Education and Training Volume 56, Number 2 .185. "Learnerships involve partnerships and co-operation between workplace contexts to provide learners with the necessary spectrum of work experience."

Research has however shown that they have been ill-capacitated to completely shoulder this role.¹⁷

A distinction needs to be made between learnerships that are SETA funded and those that are industry-funded. The same contractual tools have been used for the two sets of models and this raises questions on how appropriate and how adequate the same implementation and monitoring tools for public and privately funded programmes can address the issues that may arise from the programmes.

In light of the issues other scholars have raised on the success and efficacy of the learnership model, this research is aimed at making a critical analysis of the legislative backing of the learnership model. An attempt will be made to explore what obligations and rights (if any) are created by the current legislative tools on all the parties involved. An attempt will also be made to identify what type of contracts the learnership contracts are and which legislative bodies are responsible for their implementation. An assumption is made that the current contracts place more responsibilities and obligations on the employer than on the learner and that the employer does not have much recourse in the event of violation of the contract. If such recourse is available, its efficacy is yet to be tested. Is there a possibility that the available recourse routes are merely moot, regarding the position of the unemployed learner? The research also endeavours to briefly explore the distinction that has been made between the learnership model and the apprenticeships model and explore if there was a need for this distinction. The legislative framework that guides the learnership model will be explored, in an attempt to highlight

¹⁷ SETAs have contributed to the challenges faced by employers who participate in the learnership programmes as they have a lot of administrative challenges according to the Learnership Tax Incentive Review. National Treasury 2016 page 23.

how it has contributed, if at all, to the challenges encountered in the model, amongst which is the issue of low completion rates. It is hoped that this research will add to the body of knowledge of the implementation of the learnership model by also exploring what has contributed to the success of the model in other countries.

It is undisputed that the learnership model has added value in the circles where it has been implemented effectively.¹⁸ The role of the employers in the implementation of industry funded learnerships cannot be undermined. Although employers can claim tax rebates on the money used to fund learnerships for unemployed and employed learners, the process is usually cumbersome and in instances where the learner does not complete the programme, the employer is not able to claim for the full amount that was spent on the learnership. Dissatisfaction with the benefits that the employer can obtain from the learnership programme has the potential of discouraging the employer from participating in the programme and as the employer plays a critical role in the success of the learnership scheme, failure to recognise their voice can be detrimental to the programme.

1.2 Study significance and delimitation

This research is meant to explore the legislative backing of the learnership contracts. The study will be limited to learnership contracts for unemployed learners which have been generally known as 18.2 learnerships.¹⁹ Although the need for the learnership model in South Africa's skills development arena cannot be disputed, studies on the success of the learnerships have been mainly statistical. There has been criticism on the work of the

¹⁸ Glenda K *et al*/2012-page xi notes that "The majority of individuals enrolled on a learnership successfully made a transition to the labour market, and was employed a few years later. They were employed in a fairly stable manner, in the formal sector, predominantly in basic and intermediate skills levels jobs."

¹⁹ Section 18.2 of Skills Development Act, 1998 (Act No 97 of 1998).

SETAs but not much has been said on the legal tools that regulate the activities of the stakeholders.²⁰

The author envisages that through an in-depth analysis of the legislative landscape that binds and regulates the operations of the stakeholders, gaps can be identified in the tools used, namely, the learnership contracts and the legislation behind them on how they affect the behaviour of all the relevant stakeholders and suggestions for improvements will be made with the hope that such improvements will assist in better implementation of the model to improve its success in South Africa.

Although reference and comparison will be made to apprenticeships, the research is not meant to focus on apprenticeships. The research is aimed at the implementation of learnerships in South Africa, however, reference will be made to foreign models which, although similar to the local model, may have been referred to by different terms.²¹

1.3 Background

South Africa, like its developing countries counterparts, has had to deal with the challenge of unemployment.²² Legislation has been developed to address the problem of

²⁰ Glenda K *et al* 2012 page 13 highlights that the SETAs have not been effective in rolling out learnerships that address the skills that are demanded by the labour market

²¹ Alison Fuller and Lorna Unwin 2010. "*Learning as Apprenticeships in the Contemporary UK Workplace: creating and managing expansive and restrictive participation.*" Journal of Education and work. Learnerships are describes in the article as "modern apprenticeships". Also see Mathew J. *et al.* "*Perspectives on Learnerships: a critique of South Africa's transformation of apprenticeships. Strategy and Tactics.*" Journal of Vocational Education and Training, Volume 57, Number 4, (2005): 538 "In countries such as The United Kingdom (UK), Australia, Norway, Germany and New Zealand (NZ), the retooled apprenticeships became known as 'Modern Apprenticeship' (Mas), whilst in South Africa (SA) they became to be known as Learnerships."

²² "Development Policy Research Unit. University of Cape Town. Human Development Indicators in the SADC Region." 2011-page 4 placed unemployment levels in the SADC region at between 30 and 40%. Also, Economic Tax Analysis Chief Directorate: "Learnership Tax Incentive Review." National Treasury 2016 page iii indicated that unemployment in South Africa was just above 26%.

unemployment by attempting to improve the skills of the unemployed people as it has emerged that the challenge of unemployment is exacerbated by a shortage of skills that are essential in the workplace. In the 2016 National Treasury Learnership Incentive Review, it was reported that unemployment in the country was at 26% and as a result government regarded skills development as an important focus area as it was envisaged that skills development would improve employability.²³ These recent reports on unemployment due to lack of skills are not a new development. Since 1998 there was an attempt to use learnerships as a double barrel solution to the problem of unemployment and skills shortage.²⁴ Mathew noted that one of the legacies of the new democratic dispensation that South Africa was ushered into in 1994 was among other ills, high levels of unemployment especially among the African populace which was exacerbated by the historical racially selective exposure to education and skills development opportunities during the apartheid era.²⁵ Despite the inroads made by government to create a conducive environment for the involvement of previously disadvantaged players in the economy, its efforts in job creation have been hampered by a serious dearth of skills among the unemployed groups.²⁶ Ultimately, South Africa has been faced with not only high levels of unemployment but also a bigger challenge in that most of the unemployed people are also unemployable as they lack the necessary skills that would enable them to be absorbed into the labour market. As quoted by Mathew, the then President of South Africa, President Mbeki envisaged a strategy by government, which would not only ensure

²³ "Economic Tax Analysis Chief Directorate, Learnership Tax Incentive Review." National treasury (September 2016) page 3.

²⁴ Davies T & Farquharson F (2004), "*The Learnership Model of workplace training and its effective Management: Lessons learnt from a Southern African case study.*" National Skills Research Agency (NASRA), South Africa. Journal of Vocational Education and Training Volume 56, Number 2, (2004).

²⁵ Mathew J *et al* (2005).

²⁶ Mathew J *et al* (2005).

inclusion of the previously disadvantaged groups but also attempt to accelerate the acquisition of skills to satisfy the labour market.²⁷ This strategy was to usher in an era of new legislative framework from which learnerships were born.

The need to ensure the accelerated acquisition of skills which would create a work-ready workforce, necessitated the prioritisation of workplace skills development and training.²⁸ Through the development of legislation and an adoption of first-world models for training, South Africa saw the inception of learnerships as a practical way of developing skills for both the employed and unemployed people.²⁹

Legislation that birthed learnerships does not offer a definition of a learnership. The Skills development act gives a vague description which seems to emanate from a lack of proper comprehension of what a learnership is, by simply stating that “apprenticeship” means a learnership in respect of a listed trade, and includes a trade-test in respect of that trade.”³⁰ There is however a difference between a learnership and an apprenticeship as will be illustrated in this study. Suffice to say at this stage that, although both learnerships and apprenticeships are structured in such a way that the workplace component is pivotal to their very existence and success, apprenticeships have been mainly used for technical trades and learnerships are used for any type of qualification.³¹ Apprentices must pass a trade test at the end of the learning programme in order to qualify.³²

²⁷ Mathew J (2005): 538.

²⁸ Mathew J (2005).

²⁹ Mathew J (2005).

³⁰ The Skills Development Act 97 of 1998 “Definitions”.

³¹ “Apprenticeships”: http://www.labour.gov.za/DOL/downloads/documents/useful-documents/skills-development-act/Apprenticeships%20pamphlet_pamphlet.pdf. Department of Labour. Accessed on 27 July 2017.

³² “Apprenticeships”: http://www.labour.gov.za/DOL/downloads/documents/useful-documents/skills-development-act/Apprenticeships%20pamphlet_pamphlet.pdf. Department of Labour. Accessed on 27 July 2017.

Those who have attempted to define a learnership have defined it as “dual vocational training model” which combines theoretical training at a training institution with “on-the-job-training” in the workplace, to achieve a recognised, national qualification.”³³ The FASSET SETA, like other SETAs describes a learnership as a “structured process for acquiring theoretical knowledge and practical skills within the workplace.”³⁴ The common thread in the definitions is the fact a learnership is a structured learning programme in which a learner acquires both theoretical knowledge and practical workplace training concurrently in order to gain a nationally recognised qualification which is registered by the South African Qualifications Authority (SAQA) and the department of labour and is quality assured by a Sector Education and Training Authority (SETA). It is envisaged that at the successful completion of the learnership, the learner would have gained both theoretical knowledge as well practical knowledge and would also have gained the skills that will allow them to be absorbed into the workplace, or at least improve their chances of employment. A learnership programme therefore provides a learner who has never been in the workplace, an entry point into the labour market and allows them to ideally gain both the practical skills and knowledge in the case of unemployed learners. Mammenthey and Du Preez reckon that learnerships generate employment. It is however important to note that the said “employment” defined in the context of a learner who is on a learnership is short-lived unless the employer decides to employ the learner at the end of the learning programme. Learnerships were not meant to become the job in themselves, but they were meant to give the learner the skills that they require to improve

³³ Mammenthey R and Du Preez R. (2010). *“Implementing efficient and Effective learnerships in the Construction Industry.”* Article 766. SA Journal of Industrial Psychology. (2010).

<http://www.sajip.co.za>. Accessed on 10 April 2017.

³⁴ “Implementing learnerships.” FASSET (2004).

their employability or assist them to progress in the industry sector they will be working. In a world characterised by rapid technological advances, the need for upskilling has become mandatory for the survival of both the worker and the industry.³⁵ Learnerships provide an opportunity to acquire these skill at a fast-paced and affordable rate as the programme can be completed in a period of 12 months and funding is available either from the government through the SETAs or from industry.

The Skills Development Act authorises SETAs to come up with learnerships as long as such learnership programmes will lead to a qualification and can also be registered with the SAQA and the Director-General.³⁶ The Act also makes it the responsibility of the SETA to register a learnership agreement between the learner, the employer and the training provider and it also sets out the responsibilities of these parties and rights of the learner.³⁷ The SETAs are therefore the custodians and the regulator of the learnership programme and the learnership contracts, respectively.

Since the inception of the learnership programmes in 1998, concerns have been raised on how the SETAs have failed to properly administer the learnership programmes. Problems raised have ranged from a high dropout rate of learners who enrol on the learnership programmes, challenges in the administration of the skills levies and tax rebates processes as well as a lack of satisfaction in the learnership programmes on the part of the employers. Mammenthey and Du Preez argue that the learnership system has failed to meet employer expectations especially in the Construction Sector.³⁸

³⁵ "Economic Tax Analysis Chief Directorate, Learnership Tax Incentive Review.", National treasury (September 2016) page 3.

³⁶ Section 16 of The Skills Development Act of 1998 and Section 1 (b) of the Skills Development Amendment Act 37 of 2008.

³⁷ Section 17 of The Skills Development Act of 1998

³⁸ Mammenthey R and Du Preez R (2010) page 1.

1.4 Regular references, terms and definitions

Abbreviation	Description
ETQA	Education and Training Quality Assurance Body
SETA	Sector Education and Training Authority
NQF	National Qualifications Framework
SAQA	South Africa Qualifications Authority
QCTO	Quality Council for Trades and Occupations
CHE	Council on Higher Education
DHET	Department of Higher Education and training
SDF	Skills Development Facilitator
ETD	Education, Training and Development
NC	National Certificate
NSB	National Standards Body
SGB	Standards Generating Body
NLRD	National Learner Recording Database
FASSET SETA	Finance and Accounting Services Sector Education and Training Authority
FP&M SETA	The Fibre Processing and Manufacturing SETA

MerSETA.	Manufacturing, Engineering and Related Services Sector Education and Training Authority.
BBEE	Broad-based Black Economic Empowerment
ILO	International Labour Organisation
SDA	The Skills Development Act
SDLA	The Skills Development Levies Act
LRA	The Labour Relation Act
NEDLAC	National Economic Development and Labour Council
LMIP	Labour Market Intelligence Partnership
NSDS	National Skills Development Strategy
HSRC	Human Sciences Research Council
SARS	South African Revenue Authority
APP	Annual Performance Plan
ATR	Annual Training Report
WSP	Work Skills Plan
SSP	Sector Skills plan

Discretionary Grant	"the money allocated within the SETA to be spent on discretionary grants and projects contemplated in regulation 3(2) (c) to 9 as read with regulation 6" ³⁹
Mandatory grants	Means funds designated as mandatory grants contemplated in regulation 4 to fund the education and training as contained in the WSP and ATR of a SETA." ⁴⁰
Co-funded learners	means the learners that are funded by both the SETA and the employer
Industry funded learners	Means learners that are funded entirely by the employer

1.5 Chapter summary

This chapter gave an overview of what the study will focus on as well as the background to the study. The problem statement has been explored and a brief mapping of how the study will progress has been given. Chapter 2 will explore the legislative framework that regulates learnerships in South Africa. Firstly, the theoretical background that informs the rationale of the learnership scheme will be given, followed by a brief history of South African labour law which sets the scene for how the learnership method of skills development came into being. A brief exploration of

³⁹ The Skills Development Act, 1998 (ACT NO. 97 OF 1998) The Sector Education and Training Authorities (SETAs) Grant Regulations Regarding Monies received by a SETA and related matters. The Department of Higher Education and Training. 3 December 2012. Definitions.

⁴⁰ The Skills Development Act, 1998 (ACT NO. 97 OF 1998) The Sector Education and Training Authorities (SETAs) Grant Regulations Regarding Monies received by a SETA and related matters. The Department of Higher Education and Training. 3 December 2012. Definitions.

the overarching legislation, the Labour Relations Act will be given and lastly the specific legislative tools that regulate learnerships, namely, the Skills development Act and the Skills development Levies act will be explored to locate the place of learnerships in these pieces of legislation. Chapter 3 gives a synopsis of the learnership contract from inception to termination. Chapter 4 explores the issues that have been identified in the legislation with regards to the way that learnerships are actually conducted on the ground. The chapter explores the financial, social and corporate challenges that the role players are confronted with. Chapter 5, attempts to address some of the challenges that are encountered in learnerships and offers suggestions on how some these challenges can be address. A brief outlook is given of how other jurisdictions have successfully implemented the learnership mode of skills development with a view to consider how, if their success stories can be adopted and adapted into the local situation.

Chapter 2: Legislative Framework

2.1 Theoretical Background

Justification for labour legislation may seem to have suffered an overkill but its relevance to the understanding of the background that informs labour law in South Africa cannot be overlooked.⁴¹ The model for Skills development in general and specifically the learnership model in South Africa is largely informed by the theoretical framework of the social justice theory of labour law. The theory seeks to protect the rights of the worker with regards to issues pertaining to collective bargain and fair labour practices.⁴² A lot of reiterations have been made in journals and commentaries and the same can also be traced in legislation, on how legislation was formed and revised and further sculptured to address social injustices. Ironically, this thread of argument can be traced in both the pre-and post-apartheid labour law narrative, although, more prominence can be identified in the post-apartheid and new Constitutional era. As Feys resonates, that the notion of a laissez faire labour market, is a myth, is a settled rhetoric, the only long-standing debate, is the extent and the model of regulation that will "serve best our social and economic needs."⁴³ It is in the backdrop of this theoretical framework that labour legislation in general and skills development legislation in particular has been developed in South Africa.

⁴¹ A van Niekerk and N Smit 3rd Edition 2015 *Law @ work* page 6. "There are two broad views on the extent to which the state should intervene in the labour market."

⁴² A van Niekerk and N Smit 3rd Edition 2015 *Law @ Work* page 7

⁴³ Tom Feys, "*Labour Standards in Southern Africa in the context of globalization: The need for a common approach.*" (1999). Page 1446-1447

2.2 To regulate or not to regulate

At the centre of the debate on the relevance of labour law is the question of whether the labour market should be regulated or not. Those that have pushed for the deregulation agenda have argued that the labour market should not suffer any external influence but should be left to self-regulate in the same manner that the goods market responds to the forces of supply and demand. They regard labour law as a foreign aspect to the labour market which destabilises the laws of supply and demand and as a hindrance to employment creation by being too protective of those that are already employed and neglecting those without jobs.⁴⁴ Brassey, in "Fixing the labour laws" vilifies labour law for over-interference with the labour market. The very title "Fixing the laws that govern the labour market" envisages a crisis which he argues has been created by labour laws which needs to be fixed by deregulation of the labour market. Proponents of the libertarian perspective as it has become to be known, the likes of whom are Brassey, have blamed labour law for the failure of the market to absorb people into the system which they claim has led to high levels of unemployment. They also claim that labour law can be largely blamed for inefficiency in the workplace. Brassey decries too much state interference.⁴⁵ The basis of Brassey's argument is that in a democratic dispensation, the antagonistic nature of the relationship between the employer and the employee has been relaxed and "workers are no longer the least advantaged class..." and hence there is no need to have strict protective measures to maintain their job security.⁴⁶ A point to note though, is that

⁴⁴ Van Niekerk and Smit page 7 (2015)

⁴⁵ Martin Brassey (2012 page 5. "*Fixing the laws that govern the labour market.*") Industrial Law Journal.

⁴⁶ Brassey (2012) page 7.

the discussion put across by deregulation proponents like Brassey is employer-employee based and it is devoid of the economic development debate which ideally should embrace the employee to also deserve a piece of the economic cake. According to Brassey, workers and employees should be allowed to determine the terms of the employment contract and this will open up the job market as those that are unemployed would be willing to take any wage from the employer no matter how low it is.⁴⁷ In conclusion, Brassey argues that "the voice of the unemployed is completely drowned out."⁴⁸ The argument put across by Brassey seems to be the advocacy of worsening the plight of those that are employed to a point where they are pushed out of the system in order to create space for the unemployed to enter the job market; more a case of the adage, "robbing Peter to pay Paul."

On the other extreme of the debate is the advocacy for regulation. What has been known to be the social justice theory pushes the regulation agenda. Viewed in a positive light, labour law is regarded as a tool that should be used in the search for the redistribution of wealth and rectifying the social imbalances that are characteristic of the industrialised age.⁴⁹ Labour law is regarded as a necessary tool in an uneven field between the employer and the employee. Labour law is viewed as the old age preventative tool that has been used to counter the "race to the bottom that only collectivisation of employees combined with protective legislation could prevent."⁵⁰ It is argued that; "the interplay between collective self-regulation and legislative intervention from the very beginning characterised labour law. The main goal always,

⁴⁷ Brassey (2012) page 13.

⁴⁸ Brassey (2012) page 18.

⁴⁹ Van Niekerk and Smit (2015) page 10.

⁵⁰ Manfred Weiss (2011), "*Re-Inventing Labour Law?*" in "*The idea of labour law*" 43 (Guy Davidov & Brian Langille eds., (2011).

has been to compensate the inequality of the bargaining power.”⁵¹ Proponents of the social justice theory recognise that the playing field between the employer and the employee has never been level and the power play that exists between the two parties needs to be regulated. It is for this reason that labour law has its roots in the need to address the power imbalances and the recognition that “labour is not a commodity.”

As observed by the International Labour organisation, one of the goals of labour law is to protect human dignity. It is noteworthy to observe that the antagonistic nature of labour law owes its legacy to a history which emanated from the need to remedy some of the social, political and economic damages of historic injustices. In the search for theories of the justification of labour law, Collins notes that the Versailles Treaty which concluded the First World War and “gave birth to the International Labour Office, (the International Labour Organisation), was not merely concerned with a cessation of war, but sought to address the causes of war that were perceived to lie in aggressive economic competition between states in an increasingly global economy.”⁵² The idea was to ensure social justice by ensuring that workers would not be subjected to intolerable conditions, a situation which would militate against the quest for world peace.⁵³ Furthermore, the quest for labour rights is said to have been meant to set standards to address social justice and also to prevent anti-competitive behaviour which could potentially emanate from a situation where other economies could exploit labour to maximise profits to the detriment of those who have a regulated labour market who cannot cut down on the cost of production by exploiting cheap

⁵¹ O Kahn-Freund, *Arbeit and Recht*, Bund Verlag, (1979).

⁵² Hugh Collins (2011), “*Theories of Rights for Labour law.*”

⁵³ Hugh Collins (2011), “*Theories of Rights for Labour law.*”

labour.⁵⁴ It is therefore argued that labour law has a dual purpose in that it is a tool to achieve social justice and also a measure to eliminate unfair competitive behaviour in the economies. In explaining the role of labour law Feys argues that “the neoclassical marketplace is a utopia “and that no market can survive without the regulation of the labour market. He argues that deregulation can potentially lead to markets’ instability which can be detrimental to the development of the economy. He also argues that eliminating discriminatory practices in the labour market will lead to economic development and create a conducive environment for economic growth.⁵⁵

2.3 The South African Case

The nature of labour law in South Africa has always had a political outlook.⁵⁶ Human dignity is a core element of the South African labour law. The development of labour law has been closely knitted to the Constitutional mandate to address past social disparities. Labour legislation has been developed to promote the spirit and purport of the Constitution. As part of the international community, South Africa has also had to develop labour laws that are in line with the ILO conventions that it has ratified. This process is not a once off process but one that needs to be continuously developed to match global trends and also continue to satisfy the demands of the international conventions. This explains the continuous improvements and revision of legal tools which if myopically viewed, may be misconstrued as a crisis situation.

⁵⁴ Hugh Collins (2011).

⁵⁵ Tom Feys (2011), *“Labour Standards in Southern Africa in the context of globalization: The need for a common approach.”*

⁵⁶ A van Niekerk and N Smit 3rd Edition (2015) *Law @ Work* page 6 “Labour law is at the heart of political, social and economic debates on the nature and extent of labour market regulation. This is particularly so in South, Africa where amendments to labour legislation form a significant part of ongoing political debate.”

Among the primary objects of the Labour Relations Act is to give "effect to and regulating the fundamental rights conferred by the labour rights clause of the Constitution and giving effect to obligations incurred by South Africa as a member state of the ILO."⁵⁷ To answer the question of what is the role of labour law in South Africa, Langille asserts that "the objective of labour law is justice in the employment, or at work, or perhaps most broadly in productive relations."⁵⁸ He goes on to argue that a laissez faire system will not achieve social justice and labour law meets this objective by "rewriting the substantive deal (mostly by statute) between workers and employers - providing for maximum hours, vacations, minimum wages, health and safety regulations, and so on. This is substantive intervention and the results are compendiously called labour standards. Labour law's second technique of responding to the perceived problem is not via the creation of substantive entitlements, but rather by way of procedural protection; in short, protecting rights to a fair bargaining process."⁵⁹

It is beyond argument that labour law plays a pivotal role in the new democratic dispensation. It is also confirmed that expecting the labour market to regulate itself is a fallacy in light of countries that are emerging from a history of social injustice and still have a long way to rectify the evils of the past. Langille notes however that "neither social justice nor improved quality of life can be established at once and therefore the focus has to be on attainment of these goals over time. However, the attainment of social justice and improved quality of life is not an empty promise or a

⁵⁷ Pillay (2004). *"The Constitutionalisation of Labour Law."*

⁵⁸ Langille (2011)

⁵⁹ Smit N (2010). *"Towards social justice: an elusive and a challenging endeavour."*

hollow aspiration either - it is a constitutional commitment, which means that it has to be pursued in compliance with constitutional obligations and requirements. Each of these observations finds support in the South African Constitution."⁶⁰ This, therefore can justify the existence of labour law and the continuous improvement thereof to meet the changing face of the workplace. It is this need to for continuous improvement that has, worthwhile to mention, has been shrouded with the constant rearing of the political head in labour which has fueled the labour law debate in South Africa as well as the global economy at large.

2.4 A historical perspective

Labour legislation reform in post-apartheid South Africa has been closely connected to Constitutional reform. As labour was one the contentious areas that required redress in the new Constitutional dispensation, existing legislation had to undergo an overhaul to address the injustices of the past. As noted by Du Toit *et al* (2015), the Labour Relations Act introduced a paradigm shift in labour as it was used as an instrument of redress in response to the stipulations of the new constitutional era.⁶¹ There was need to "reconstruct and democratise the economy" and the Labour Relations Act was instrumental in this constitutional mandate.⁶²

Du Toit *et al*, also notes that the interim Constitution was instrumental in labour law reform. Chapter 3, of the Interim Constitution which was known as the Bill of Rights stipulated some basic rights which related to labour issues which necessitated the

⁶⁰ Smit N (2010) "*Towards social justice: an elusive and a challenging endeavour*" TSAR.

⁶¹ Du Toit *et al* (2015) *Labour Relations Law* 6th Edition (LexisNexis Butterworths) page 5.

⁶² Du Toit *et al* (2015) *Labour Relations Law* 6th Edition (LexisNexis Butterworths) page 5.

formulation of labour legislation to protect these rights from encroachment by both the government and employers.⁶³ Central to the development of Skills development legislation was the freedom to engage in economic activity.⁶⁴

The ground-breaking piece of legislation that was put in place to achieve the Constitutional mandate was the Labour Relations Act 66 of 1995. Protracted negotiations between labour as represented by unions and government on the one hand and organised employers on the other hand led to the birth of the Labour Relations Act 66 of 1995 as the instrumental act which would inform the rest of the legislative tools which would then follow to address the injustices of the past and map a way forward for a somewhat harmonious relationship between labour and industry.⁶⁵ The interim Constitution raised a number of what came to be known as “labour rights” most of which pointed towards the fact that a legal framework which would address collective labour rights would also have a trickledown effect on the individual labour rights.⁶⁶ Consequently, such rights as were contained in section 27 of the constitution as “the right to fair labour practices, to form and join a trade union and employer’s organisation, to bargain collectively and to strike” were on the side of the employees, collectively, whereas employers also called for their “recourse to lock out” to be protected.⁶⁷

Instrumental in these negotiations was the work of the National Economic Development and Labour Council (NEDLAC) which resulted in the drafting of the LRA

⁶³ Du Toit *et al* (2015) page 19.

⁶⁴ Du Toit *et al* (2015) page 19.

⁶⁵ Du Toit *et al* (2015) Page 20-21.

⁶⁶ Du Toit *et al* (2015) page 19.

⁶⁷ Du Toit *et al* (2015) page 19.

and the succeeding debates which were informed by both economic and political aspects and the need for a redress to the injustices of the past.⁶⁸ Du Toit notes that, the LRA is “unquestionably the centrepiece” of labour legislation and “also, directly sought to address the failings of the previous system while also building on its strength”⁶⁹.

A crucial note to raise though is the fact that as comprehensive as the LRA was, it could not have been expansive enough to address all aspects of labour law, hence the development of other statutes, which also followed a somewhat protracted process. The LRA was therefore, to be “followed by a series of new statutes that continued the programme of reform.”⁷⁰ Amongst these pieces of legislation were: The Basic Conditions of Employment Act 75 of 1997, The Employment Equity Act 55 of 1998 and the Skills Development Act 97 of 1998 which would shortly be followed by the Skills Development Levies Act 9 of 1999.⁷¹

The order of the legislative framework was not random. Du Toit, notes that, their developments were matched in importance, by the process though which they were arrived at.⁷² Thus, the LRA provided the overarching framework of labour legislation, which would set the base for development of further legislation, whose scope would have been cumbersome to fit in one piece of legislation.

⁶⁸ Du Toit *et al* (2015) page 5.

⁶⁹ Du Toit *et al* (2015) page 5.

⁷⁰ Du Toit *et al* (2015) page 5.

⁷¹ Du Toit *et al* (2015) page 5.

⁷² Du Toit *et al* (2015) page 5.

2.5 The LRA and the Constitution

The LRA was the ground-breaking act for labour law in the new Constitutional dispensation. As the pioneering piece of legislation for labour law in the post-apartheid era, it was couched to play an over-arching role in format that addressed group rights. As Benjamin commented, the LRA was considered to be NEDLAC's most significant achievement.⁷³

The drafting of the new labour legislation was a consultative process for which purposes NEDLAC was put together. As a forum for "social dialogue and tripartite negotiations over labour market policies and legislation", NEDLAC was to see the formalisation of the intensive social dialogue that characterised the birth of the LRA.⁷⁴

The LRA was informed by the spirit of the Constitution with regards to the focus on collective workers' rights. As noted by Du Toit, a lot of emphasis is given to freedom of association and this was informed by the need to fulfil the demands of the interim Constitution as well as the stipulations of the International Labour Organisation Convention that South Africa ratified.⁷⁵

The LRA, states, as its purpose that it was to "advance economic development, social justice, labour peace and the democratisation of the workplace by fulfilling a number of primary objectives."⁷⁶

⁷³ Benjamin P (2016), page 9

⁷⁴ Benjamin P (2016), page 9.

⁷⁵ Du Toit (2015), page 29

⁷⁶ The LRA Section 1

Great emphasis is given to the creation of group labour rights⁷⁷. The Act was put in place to “promote orderly collective bargaining, particularly at sectoral level.”⁷⁸ Other scholars also note that “the organisational and associated rights contained in Section 23 (2-4) form the bedrock of a labour relations system characterised by voluntarist collective bargaining.”⁷⁹ The same scholars also observe that the court agreed with the view that the LRA was put in place to, firstly, give effect to Constitutional rights, to give effect to international treaty obligations and to promote orderly collective bargaining.⁸⁰

Du Toit notes that the labour legislation put together with the facilitation of NEDLAC was meant to operate in integration. The LRA is however singled out as the centrepiece of the labour legislation.⁸¹ This justified the need for the rest of the labour legislative tools which would complete the mandate that was set by the LRA. A point to note also is that, the advancement of economic development, social justice and the democratisation of the workplace would not have been recognisable without a skilled workforce. As Benjamin commented, “in spite of the progressive labour law framework, the country has continued to suffer from an absence of economic transformation and “in particular, rising levels of unemployment and inequality.”⁸² This report seems paradoxical to part of the purpose of the LRA which is stipulated as “sound justice and the democratisation of the workplace.” Part of the solution to this problem was the

⁷⁷ Paul Benjamin (2016, “*South African Labour Law: A twenty-year assessment.*” R4D Working paper 2016/6. page 9.

⁷⁸ Curie I & De Waal J (2005): 507

⁷⁹ Curie & De Waal J (2005) Page 507

⁸⁰ Curie & De Waal J (2005) Page 509

⁸¹ Dutoit 2015, page 5

⁸² Benjamin P (2016) in the introductory paragraph of “*South African Labour law: A Twenty year assessment.*”

formulation of a legislative framework to address the shortage of skills and also to accelerate the acquisition of skills by those who had been short-changed by the old system.

2.6 The Skills Development Act and the Skills Development Levies Act

The reform programme that was introduced by the Labour Relations Act necessitated the development of further legislation to facilitate the realisation of the purpose of the act. Among these pieces of legislation were, the Basic Conditions of Employment Act, The Employment Equity Act, the Skills development Act and the Skills Development Levies Act.⁸³ All these pieces of legislation share the common thread emanating from the LRA, which is the democratisation of labour and workplace peace.⁸⁴

The Skills Development Act 98 of 1998 was created to actualise the rights that were created by the LRA with regards to ensuring a democratic labour landscape. One of the biggest hurdle which hindered the democratic participation of all as envisaged by the LRA was the shortage of skills among the workforce. This could not have been rectified overnight, hence the provision of an “institutional framework”⁸⁵ which would create an enabling environment for skills acquisition. Skills shortage perpetrated by technological changes and new innovations in the industry is however not a new phenomenon. As Glenda K *et al* noted, the same crisis experienced in the 1970s had

⁸³ Du Toit page 5

⁸⁴ Paul Benjamin 2016. “*South Africa Labour Law: A twenty-year assessment.*” “The overall goal of these laws was to establish core worker rights, facilitate South Africa’s reintegration into the world economy and transform a labour market marked by high levels of inequality and unemployment, and low levels of skills and productivity.”

⁸⁵ Long Title. The Skills Development Act 97 of 1998.

led to the introduction of the apprenticeships programme in the 1980s.⁸⁶ With the new government, the shift however changed to not only address the problem of skills shortage but also address the discriminatory way that these skills shortages had been addressed by the apartheid system, by mainly perpetrating white supremacy by restricting certain trades and occupations to white males by allowing them to be exposed to those skills to the exclusion of their black counterparts.⁸⁷ The historical injustices coupled with technological developments created a shortage of skills of which skills were necessary for the realisation of a democratic workplace. Davies and Farquerson reckon that the new millennium developments have left a "significant proportion of the population" lacking the basic competencies and skills required to meet the new challenges."⁸⁸ The scholars also cite research statistics which reported that in 1999 only 4.2% of the total population had achieved matric level or any other post-matric education.⁸⁹ Such a level of shortage of skills is unfortunately still part of the current system since it will take time to rectify the old system. To this end, recent reports have also indicated that efforts to improve employability through skills development have remained government priority.⁹⁰

The Skills Development Act 97 of 1998 was one of the creations of NEDLAC after the rebirth of the LRA. It was put in place "to provide an institutional framework to devise and implement national, sector and workplace strategies to develop and improve the

⁸⁶ Glenda K *et al* (2012) "Impact Assessment of National Skills Development Strategy II. Developing Skills and Capabilities through the Learnership and Apprenticeship Pathway System. Synthesis Report. Assessing the impact of learnerships and apprenticeships under NSDSII". Page 2.

⁸⁷ Glenda K *et al* (2012) "Impact Assessment of National Skills Development Strategy II. Developing Skills and Capabilities through the Learnership and Apprenticeship Pathway System. Synthesis Report. Assessing the impact of learnerships and apprenticeships under NSDSII". Page 2.

⁸⁸ Davies T and Farquerson F (2004) page 182.

⁸⁹ South African Institute of Race Relations (SAIRR) (2001).

⁹⁰ Tax Incentive report (2016) page 3.

skills of the South African workforce, to integrate these strategies within the National Qualifications Framework as contemplated in the South African Qualifications Authority (SAQA) Act 58 of 1995; to provide for learnerships that lead to recognised occupational qualifications; to provide for the financing of skills development by means of a levy-financing scheme and a National Skills Fund, to provide for and regulate employment services and other matters that would be connected therewith”⁹¹

The LRA states as part of its purpose as “the advancement of economic development.” This objective was to be realised by the action plan that was set in the purpose of the Skills Development Act which states as part of its purpose as “the development of the South African workforce,”⁹² which by extension would embrace the improvement of the quality of life of the workforce, the improvement of productivity, promotion of self-employment and the delivery of social services.”⁹³

The democratisation of the workplace which was stated in the purpose of the LRA was also to tie closely with provision of a funding mechanism which was threaded into the purpose of the SDA.⁹⁴ One of the biggest outcries of the apartheid system was the educational segregation that was allowed to deliberately exclude the majority of the communities from meaningful educational development. Part of the failure to access quality education was caused by economic factors.⁹⁵ The SDA, therefore, states as part of its purpose “to increase the level of investment in education and training in the labour market and improve the return on investment.”⁹⁶ As Du Toit stated, the funding

⁹¹ The LRA purpose statement.

⁹² The SDA purpose statement.

⁹³ The Skills Development Act Section 2 (1) (a) (i-iv)

⁹⁴ The LRA and the SDA purpose.

⁹⁵ The DTI report, page 4

⁹⁶ The SDA Section 2(b).

mechanism was one of the contentious issues around the development of the SDA and this led to an agreement that culminated in the creation of a separate Act to allow for the funding scheme, namely, the Skill Development Levies Act.⁹⁷

Government has continued to advocate the participation of industry in funding skills development by also providing tax incentives for skills development as well as including skills development in the B-BBEE programme. The Skills Development Act therefore works with other complementary legislations such as those put in place by the treasury department, which has pushed for learnership incentives, or at least this was the idea, as the actual implementation has shown a somewhat disjointed system where the legislative tools don't seem to acknowledge each other's existence.⁹⁸ The DTI report also notes that government has "re-invented many of its incentives and enterprises support measures to promote Broad-Based Black economic Empowerment."

A critical part of the SDA is the inclusion of a plan to infuse skills development into the workplace. As part of its purpose, the SDA therefore envisioned to "encourage employers" to create a learning environment in the workplace and create opportunities for employment for the acquisition of new skills.⁹⁹ The Act also ties in closely with the Employment Equity Act 55 of 1998 by encouraging the employment of previously disadvantaged groups of people such as black women and persons with disabilities. By including learnerships, the SDA would spearhead skills development by a method that other developed economies have used by allowing for the participants to gain

⁹⁷ Du Toit (2015) page 37.

⁹⁸ Tax incentive page 4.

⁹⁹ Section 2 (c) of The Skills Development Act 97 of 1998.

both the skills and the experience that would allow them to be absorbed into the labour market.¹⁰⁰ The idea of the democratisation of the workplace would therefore be achieved by not only allowing new entrants into the labour market but also ensuring that the new entrants are adequately trained in order for them to make a meaningful contribution to the development of the economy.

The funding mechanism of these developments was critical to their success and the administration of the programmes have remained a debatable topic for which a good working scheme is yet to be realised. The whole system is hinged on the successful implementation of the learnership model as some scholars have reiterated, "It is important to recognise that learnerships are still an emerging field. Furthermore, they exist in a highly-legislated context."¹⁰¹

2.7 SETAs and Learnerships

The SDA establishes a framework within which learnerships should be administered. As a provision on how its purposes will be achieved, the Act states that among other things the achievement will be through the establishment of an "institutional and financial framework" which is made up of the National Skills Authority, the National Skills Fund, the Sectoral Education and training Authorities (SETAs), provincial offices and labour centres as well as Quality Council for Trades and Occupations (QCTOs), among other structures.¹⁰²

¹⁰⁰Mathew J (2005): 538.

¹⁰¹ Davies T & Farquharson F (2004): 182.

¹⁰² The Skills Development Act 97 of 1998 section 2(a).

The main role players with regards to learnerships in this framework, has been the SETAs, which the Minister was mandated to create according to the economic activities of the various industry sectors.¹⁰³ The responsibility of registering learnerships as well as the administration of the skills development levies to fund the learnerships would sit with these SETAs according to a national strategic framework that would be put together by the department of Higher Education.¹⁰⁴

2.8 The Skills Development Levies Act

The SDLA was created “to provide for the imposition of a skills development levy and the matters connected therewith.”¹⁰⁵ In order to fund the mandate set by the SDA, the SDLA put in place a compulsory levy that must be paid by designated companies and employers according to their total remuneration costs.¹⁰⁶ A stipulated percentage (currently 1% of the wage bill) must be collected from these companies and the various SETAs that were put in place are responsible for the disbursement of the money back to the various industries through the respective companies and employers in order to fund skills development through learnerships and other training and development programmes.

To set up policy and strategies on the national skills development and advise the minister and engage the SETAs and the QCTOs on skills development strategy and sector skills plans, the National Skills Authority was also put in place.¹⁰⁷

¹⁰³ SDA Section 5 (1)

¹⁰⁴ Du Toit (2015) page 37

¹⁰⁵ SDLA purpose.

¹⁰⁶ Davies T & Farquharson F (2004) page 18

¹⁰⁷ Du Toit (2015) page 37.

Although it seems like all was set for the successful implementation of a National Skills development strategy through the development of all the pieces of legislation and offices, the actual journey to the realisation of the goal of skills development mandate has not been without major challenges and loopholes. A few adjustments have been made to the legislation, the major one being the movement of the functions of the Skills Development Act and the Skills Development Levies Act from the Department of Labour to the Department of Higher Education and Training (DHET) in 2009.¹⁰⁸ Consequently, the SDA was adjusted to reflect this change.¹⁰⁹ Moreover, further changes have continued to be proposed by the National Skills Authority and other stakeholders following reports of major loopholes which have threatened the sustainability of the system in the brief life that the SETAs and the rest of the structures have existed.

A glaring omission in the SDA is that it does not make any specific reference to a fund that is set aside for the training of unemployed people as its predecessor, The Manpower development Act did.¹¹⁰

2.9 Conclusion

This chapter has given an overview of the legislative framework that regulates the implementation of learnerships as well as the structures that we set up for the administration of the learnerships. Critical in these structures, are the SETAs, which sit with the onerous task of the disbursement of the skills development levies back to industry. The SETAs' role in the administration of learnerships has also been

¹⁰⁸ Du Toit (2015) page 41.

¹⁰⁹ Du Toit (2015) page 41.

¹¹⁰The Manpower Development Act section 36 (c).

highlighted. This will be the point of departure for the challenges that the learnerships have been shrouded with due to legislative loopholes which need to be addressed if the system is to achieve the goals that it was set up for; mainly; the democratic upgrading of skills to improve employability, which in turn, would result in an enhancement of economic development.

Chapter 3: The Learnership Contract

3.1 The Manpower Training Act 56 of 1981 vs The Skills Development Act of 1998

When the new government dispensation took over, the hailed idea was to correct the injustices of the past by mainly, changing legislations.¹¹¹ In tandem with the revisions that were made to the LRA as well as the addition of new legislation, the area of skills development was also not spared from this transformation.

A look at the old skills development legislation, namely; The Manpower Training Act 56 of 1981 (to be called Manpower Act going forward), shows that skills shortage and the need to address the problem is not a phenomenon that has been peculiar to the new government contrary to the impression one may get from the writing of some of the scholars.¹¹² At least, not in its totality as it has been accepted as common knowledge that the apartheid era promoted a system of preferential skills development which was deliberately designed to exclude the majority black people from acquiring certain skills that were reserved as a special privilege for white people.

A paradoxical development in the revision of legislation though is that, unlike the LRA which had to go through a somewhat complete overhaul to suit the new democratic dispensation, the Skills Development Act's outlook is somewhat a replica of its predecessor, the Manpower Training Act in its purpose, the only major turning point

¹¹¹A van Niekerk and N Smit 3rd Edition 2015 *Law @ Work* page 12. "One of the first legislative initiatives approved by cabinet after the election of a democratic government in April 1994 was a revision of the 1956 Act."

¹¹² Mathew J *et al* (2005): 537

being that, what would seem to be essential elements have been conveniently abandoned. Section 36 (A) of the Manpower Training Act made provision for a fund for the training of unemployed learners and this provision was not carried over into the Skills Development Act. Another turning point would be that the new legislation gives more emphasis on learnerships whereas the old one paid attention to apprenticeships.

A look at the two titles of the Acts shows a somewhat mirroring effect albeit a little skewed.¹¹³ Another comparable element is the way in which both Acts provided for the imposition of a levy on employers, which would be used to feed the National Skills fund. The difference being that the old Act made provision for parliament to allocate money for the training of unemployed people.¹¹⁴ Another adjustment which features in the new Act is the establishment of SETAs which would then be responsible for the administration of the skills development levies collected by the South African Revenue Authority (SARS) and allocate part of the levies to the different industry sectors accordingly.

¹¹³ The Manpower Training Act "To provide for the promotion and regulation of the training of manpower and for that purpose to provide for the establishment of a National Training Board, a Manpower Development Fund and a Fund for the Training of Unemployed Persons; to provide for the establishment, accreditation, functions and powers of training boards; the registration of regional training centres, private training centres and industry training centres; and the imposition on certain employers of a levy in aid of training; and to provide for matters connected therewith."

The Skills Development Act "To provide an institutional framework to devise and implement national, sector and workplace strategies to develop and improve the skills of the South African workforce; to integrate those strategies within the National Qualifications Framework contemplated in the South African Qualifications Authority Act, 1995; to provide for learnerships that lead to recognised occupational qualifications; to provide for the financing of skills development by means of a levy-grant scheme and a National Skills Fund; to provide for and regulate employment services; and to provide for matters connected therewith."

¹¹⁴ Section 35 (A) of the Manpower Training Act.

Another additional element is the separation between the administration of learnerships and artisans which has created an impression that apprenticeships suffered their demise due to the new learnership system.¹¹⁵ The fact the new Act does not give much attention to apprenticeships, simply mentioning in passing that apprenticeships “means a learnership in respect of a listed trade and includes a trade-test in respect of the trade” without ever making reference to how apprenticeships, as envisaged in the old Act would be administered, has only served to strengthen the belief of the “death of the old apprenticeships”¹¹⁶. This, so much such that some scholars have come to refer learnerships as Modern apprenticeships.¹¹⁷ Other authorities have however made a distinction between learnerships and apprenticeships arguing that apprenticeships are only restricted to technical qualifications while learnerships are designed for what have become to be known as “soft skills” such as administrative and other “non-technical” qualifications.¹¹⁸ This description is however misleading and as SETAs have managed to register learnerships which result in qualifications which would be regarded as of a technical nature. For example, the MERSETA has a range of learnerships that would be seen to be of a technical nature, for example; National Certificate in Engineering Fabrication (Boilermaker).

3.2 The SDA and Learnerships

In the 2005 opening of parliament, the then President of South Africa, Mr Mbeki, reiterated that one of government’s priority would be putting in place provisions for

¹¹⁵ Van Rensburg D 2012.

¹¹⁶ DeWald van Rensburg (2012). *“Reinventing the Learnership system in South Africa.”*

¹¹⁷ Mathew J *et al* (2005): 538

¹¹⁸ DeWald van Rensburg (2012) *“Reinventing the Learnership system in South Africa.”*

what he called the “launch of an accelerated skills development programme for those areas that are critical to a more competitive economy.”¹¹⁹ As Mathew remarks, “a cornerstone to this transformation would be learnerships.”¹²⁰ Learnerships were not just a randomly developed scheme for the enhancement of skills in South Africa; their existence owes to legislative mandate as stated in the title of The Skills Development Act “the provision of learnerships that lead to recognised occupational qualifications.”¹²¹

Although the Act does not define the term “learnership”, only stating that “apprenticeships means learnerships in respect of a listed trade and includes a trade-test in respect of that trade,”¹²² a learnership has been defined commonly as “a route to a nationally recognised qualification that relates to an occupation and consists of a structured component and practical work experience.”¹²³

The Skills Development Act Learnership Regulation Schedule of 2007 defines a learnership as a “learning programme which consists of a structured learning component; the learnership includes practical work experience of a specified nature and duration.” Additionally, the learnership leads to a qualification registered by the South African Qualifications Authority and is related to an occupation and the learnership must also be “registered with the Director-General in the prescribed manner.”¹²⁴

¹¹⁹ Mathew J *et al* (2005): 538.

¹²⁰ Mathew J (2005) page 538.

¹²¹ The Skills Development Act 97 of 1998 long title.

¹²² The Skills Development Act 97 of 1998 Definitions.

¹²³ De Jager *et al* (2002) page 21.

¹²⁴ The Skills Development Act Learnership Regulation Schedule of 2007.

Section 16 of the SDA provides for the registration of learnerships by the SETAs if the learnership meets the prescribed criteria which have been set for such registration. The Learnership Regulation schedule states such criteria as that the learnership should include “a structured learning programme that includes a structured work experience component and the learnership will lead to a qualification which is registered by SAQA, or a trade or occupation or profession.” The last qualifying criteria is that the learnership must be registered with the Director-General.¹²⁵ The manner of registration is stipulated in the Learnership Regulation Schedule of 2007, Section 2 (1-5) of which stipulates the process as the completion of the prescribed form which must be signed by the relevant SETA’s executive officer. The form must then be submitted to the Director-General who will then issue a learnership number as well as certificate of registration to the SETA, after verifying that all the steps have been followed. Once a learnership programme has been registered, the SETAs can roll-out the qualification through the various training providers who are accredited to offer the qualification. Companies and other employers who wish to place their employees and also sponsor unemployed people to be enrolled on the learnership can also apply for funding from their respective SETAs or they may pay training providers on their own to conduct such training.

¹²⁵ Skills Development Act Learnership schedule section 16 (a-d).

3.3 The Learnership agreement/Contract

The learnership agreement is the contract that is signed among the parties who take part in the learnership programme. Learnerships exist in a highly legislated context.¹²⁶

The Skills Development Act, The Skills Development Levies Act, the Learnership regulation schedule, the Basic conditions of Employment Act 75 of 1997 through the Sectoral Determination 5 on learnerships all have an impact on the parties involved in the learnership agreement. The SETAs have tried to make use of these legislative pieces to put together learnership agreements which, although structured differently from one SETA to another, carry the basic precepts which set out the roles and responsibilities of the parties to a learnership as well as the rights of the learner.

In chapter 4 of the SDA, section 17 of the Act outlines the parties to the learnership agreement, namely; the employer, the learner and the training provider. It describes the agreement as one that is entered into between the learner, the employer or a group of employers and the skills development provider who must be accredited to offer the learnership programme. The Act goes on to stipulate the mandatory elements that must be included in the learnership agreement, namely, that it must state the obligations the employer to, "employ the learner for the period specified in the agreement and provide and provide the learner with specified practical work and also afford the learner, time to attend theoretical classes."¹²⁷ The learner is obliged to work for the employer and also attend classroom.¹²⁸ The skills provider is obliged to "provide

¹²⁶ Davies T and Farquharson F (2004) page 182.

¹²⁷ SDA section 17 (2) (a) (i-iii).

¹²⁸ SDA Section 17 (2) (b) (i-ii).

the education and training specified in the agreements and support specified in the agreement.

Since a learnership is a work based learning programme, the contract of employment is very central to the learnership programme. Section 18 of the Skills Development Act sets out the different employment situations under which a learner who is enrolled on a learnership can be employed for the sake of the learnership. Section 18 (1) stipulates that if the learner enrolls on a learnership while they are already employed, then their current employment contract will not be affected by the learnership agreement. Section 18 (2) sets out the conditions for an unemployed person who is enrolled on a learnership. The unemployed learner who enrolls on a learnership (what has come to be known as 18.2 learnerships), must enter into a fixed term contract of employment with the employer for the duration of the learnership (usually 12 to 18 months).

3.4 The Sectoral Determination Act No 5

Section 18(3) of the Skills development Act stipulates that the conditions of employment for a learner who enrolls on an 18.2 learnership will be determined by the Minister "on recommendation of the Employment Conditions Commission established by section 59(1) of the Basic Conditions of Employment Act." What this has culminated into is the Sectoral Determination Number 5 on Learnerships which was put in place "in terms of section 55(1) of the BCEA read together with section 18(4) of the Skills Development Act."¹²⁹ The Sectoral Determination Number 5: Learnerships, sets out the conditions of employment for an 18.2 learner. It stipulates conditions such as, how such learners must be remunerated, overtime work as well as other basic conditions

¹²⁹ The Sectoral Determination Number 5: Learnerships

of work such as maternity leave, annual leave and sick leave. A synopsis of these conditions will show that they are meant to accommodate the learner as a “regular” employee, the only point of diversion, being the issue of remuneration as well as the fact that the contract of employment is only valid for the duration of the learnership.¹³⁰

Unemployed learners who enrol on a learnership must receive an allowance (commonly known as a stipend) from the employer and the amount is also stipulated as shown in Table A on the next page.

¹³⁰ Section 200 A gives the factors that provide for the rebuttable assumption of who is an employee. The BCEA as explained by Du Toit et al Labour Relations Law 6th Edition (LexisNexis Butterworths) (2015). Page 592, however stipulates the categories that should be excluded from the definition of an employee. The court also ruled in *Mokone v Highveld Steel and Vanadium* [2005] 12 BALR 1245 (MEIBC) that trainees should not be regarded as employees but rather as vocational workers.

Table A

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4
Exit level of learnership	Credits already earned by learner	Percentage of qualified wage to be paid as allowance	Minimum allowance per week
NQF 1 or 2	0 – 120	35%	R120.00
	121 – 240	69%	R240.00
NQF 3	0 – 120	17%	R120.00
	121 – 240	40%	R226.00
	241 – 360	53%	R370.00
NQF 4	0 – 120	13%	R120.00
	121 – 240	25%	R240.00
	241 – 360	53%	R370.00
	361 – 480	56%	R540.00
NQF 5 to 8	0 – 120	8%	R120.00
	120 – 240	18%	R260.00
	240 – 360	27%	R389.00

	361 – 480	38%	R548.00
	481 – 600	49%	R700.00

Source: Sectoral determination 5: Learnerships (page 5).

3.5 Termination of the learnership agreement¹³¹

The subsistence of the learnership agreement hinges on the existence of the employment contract for 18.1 learnerships and on the fixed term contract of employment for the 18.2 learnership. For both types of learnerships, if the employment contract is terminated for any reason, it is impossible for the learnership contract to continue as by its function, a learnership is a workplace based learning intervention.

The conditions for the termination of the learnership contract which must also be explained in the learnership agreement are stated in Section 17 (4) (a-e) which starts off with a precautionary statement that, “the learnership contract may not be terminated before the expiry of the duration specified in the agreement and goes on to state that the premature termination of the contract may only take place if the learner is fairly dismissed by the employer or if such a dismissal was mutually agreed

¹³¹ Section 186 of the Labour Relations Amendment Act 6 of 2014 provides the definition of the termination of the employment. Note, however that this does not affect, termination with regards to learnerships as among other factors, the learner on a learnership cannot expect retention at the end of the learnership as their contract is determined by Section 17 (4) of the Sectoral Determination 5 which also stipulates the conditions under which the fixed term contract of employment for the sake of a learnership can be terminated prematurely.

on by the learner and the employer and if the SETA which registered the learnership agreement agrees to such a termination.

The Act also allows for the substitution of the employer's duties with regards to the provision of a workplace for the learner as long as an approved agent who can handle such a responsibility has been appointed and approved by the Director-General. ¹³²

3.6 Learnership funding

Part of the mandate of the Skills Development Act was to provide for a levy-funding scheme and a National Skills Fund to provide for the funding of Skills development.¹³³

This led to the creation of legislation to order companies to pay this skills development levy to SARS; namely the Skills Development Levies Act. According to the Act, from the 1st of April 2001, all employers were to pay a Skills development levy which consists of 1% of their payroll. This levy would apply to all companies whose annual payroll is excess of R500 000. ¹³⁴ These levies, are then distributed to the SETAs who have to administer the funds and manage the process of redistributing them back the various industries through the different companies who have to apply for access to these funds for use in their skills development programmes, mainly by rolling out learnerships.

Although the process of running a learnership is a highly legislative process, controlled by so many Acts that the participants have to adhere to, it is intriguing to notice that none of the legislation prescribes how companies can apply for the skills development

¹³² Skills Development Act, Section 17 (7) (a-d).

¹³³ Skills Development Act, Section 17 (7) (a-d). Long title.

¹³⁴ Davies T & Farquharson F (2004) page 182

levy in order to fund the skills development of both the employed and unemployed. The administration process has been left to the SETAs.

The process of accessing the skills development fund has affected the motivation behind the roll-out of learnerships, the quality of training delivered and employment levels and this has had a negative bearing on the mandate of the Skills Development Act. A prolonged analysis of these issues will be highlighted in the next chapter.

3.7 Conclusion

This chapter gave an outline of the learnership contract. Parties to the contract and their respective responsibilities were also highlighted. Termination of the learnership agreement was also discussed. A central point to the success of the learnership programme was briefly discussed and an in-depth analysis surrounding the termination of learnerships will be discussed in the next chapter. A comparison was also made between the current legislation which regulates learnership and the old legislation which regulated apprenticeships to evaluate if there are any major diversions between them.

Chapter 4: Learnership Roll-out: A game of numbers

4.1 The Skills Development Levy Act: Tracing the 1%

The Skills Development Levies Act states that every employer whose payroll exceeds R250 000 per annum must contribute 1% of their payroll towards the Skills Development Levies fund.¹³⁵ A brief investigation into the path that this 1% takes from the moment that it is paid to SARS is of importance to get a grasp of the issues that employers grapple with in their search to participate in skills development.

A starting point for the distribution of the 1% collection is provided by chapter 7 of the Skills Development Act, section 27 (2) (a) of which stipulates that part of the fund with which the National Skills Fund must be credited with is 20% of the Skills Development Levy, of which 2% will go back to SARS to cover administration costs.¹³⁶ The 80% that remains is what the SETAS must use to administer its activities and also give back to employers but not all of it is readily accessible.

The SETA Grant Regulations regarding monies received by a SETA and Related matters (to be called "SETA grant regulation" going forward), is a schedule that was put in place in 2012 in terms of Section 36 of the Skills Development Act "after consultation with the National Skills Authority" to repeal the previously similar regulation which was put in place in 2005. The predecessor of the 2012 regulation used to allocate 50% of the money that the SETAs received towards what is known as the "mandatory grant."

¹³⁵ "Guidelines on the Implementation of SETA Grant Regulations" Department of Higher Education and Training (2015) page 8.

¹³⁶ "Guidelines on the implementation of SETA Grant Regulations." Department of Higher Education and Training (2015).

In 2012, the mandatory grant was reduced to 20%.¹³⁷ This decision to reduce the mandatory grant to 20% was challenged in the BUSA case and the decision to revise the amount back to 50% has not yet been implemented, pending consultation with all the stakeholders.¹³⁸

Without digressing from the distribution issue, the "SETA grant regulation stipulates that the SETA may not use more than 10.5% of the total levies paid by the employer as allocated in the SDA received in any year to pay for its administration costs in respect of that financial year."¹³⁹ This therefore means that 10.5% goes towards the administration of the SETA in question. The remaining percentage, 49.9% goes towards discretionary grants.

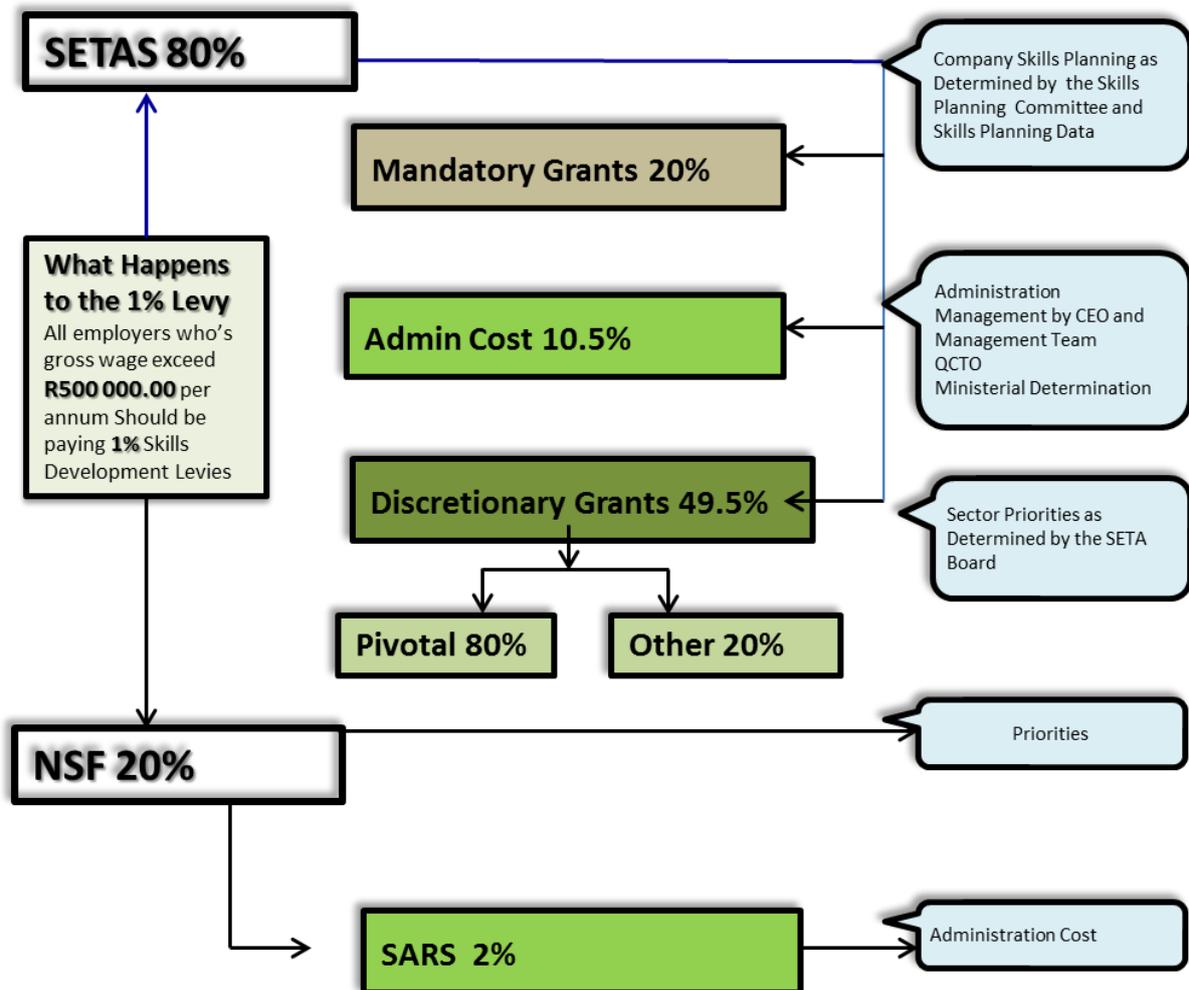
The flow chart on the next page shows the distribution of the Skills Development levy.

¹³⁷ "National Skills Strategy III Progress Report" (2015), page 9.

¹³⁸ *Business Unit South Africa v The Minister of Higher Education and Training* 2016 JDR 0004 (LC).

¹³⁹ Grant Regulation Section 2 (1).

Grant distribution



Source: Guidelines on the implementation of SETA Grant Regulations. Department of Higher Education and Training (2015) page 8.

4.2 The Mandatory Grant

The mandatory grant can be regarded as the lifeline for employers who wish to get involved in the Skills Development initiative. It is the “almost” guaranteed fund that employers have access to from the skills levy that they pay to the SETAs. If an employer abides by all the rules set by the SETAs for accessing the grant, they should be able claim the fund for the skills development plans that they would have put in

place for their employees. For the employer to have access to the mandatory grant, they must make a proper submission of their Work Skills Plan (WSP) and Annual Training Report (ATR) during the stipulated period of submission.¹⁴⁰

If the stipulations in the process to access the mandatory grant gives the impression that this is an easily accessible grant, then this is a disillusionment as the reports on the SETA's disbursement of the funds have been mainly negative. The process of complying with the regulations to access the mandatory grant have been nothing but easy, which explains why the SETAs have had perennial excess of the funds due to the fact that many employers fail to access the funds. This is in the backdrop of numerous problems that the SETAs have also suffered due to capacity and other structural oversights.¹⁴¹ This has led to widespread concerns aired in the media and parliament that the SETAs have been ineffective in enabling the employers to obtain value for their money.¹⁴² The SETAs on the other hand have had the help of other departments such as the Treasury department, in their attempt to encourage them to follow the process to access the funds and use them for learnerships. This has been done through a tax incentive which is meant to motivate companies to train so that they can have the amount they spend on learnership training deducted from their taxes. Employers however have not been too responsive as some have indicated that the tax allowance does not justify the administration, time and costs, over and above the time that is required to administer learnerships.¹⁴³ The justification for these rigorous, almost impassable processes, which have served a lot in dissuading the

¹⁴⁰ Grant Regulation Section 4.

¹⁴¹ Impact Assessment of National Development Strategy II (2012) page 5.

¹⁴² Impact Assessment of National Development Strategy II (2012).

¹⁴³ Tax incentive page 17.

employers from applying for the mandatory grant is that the compliance measures are meant to encourage employers “to provide data to the SETAs on their workforce and skills needs.”¹⁴⁴ SETAs depend on the accuracy of the data provided by companies through the WSP and ATRs to determine industries’ skills needs, information which they will use to inform their decisions on the development and registration of learning programmes for the particular industry through the development of their Skills Sector Plans.¹⁴⁵ The relationship between the SETAs and the employers with regards the mandatory grant is therefore meant to be symbiotic. Whether this is an effective way of information gathering on the part of the SETAs will depend on which side the analyst is standing on but for the employer this has certainly served as a disincentive to SETA funded learnerships.

The fact that different SETAs have different policies on the administration of their grants, the mandatory grant included, has also added to the challenges encountered by employers, which have only dissuaded them from making efforts to access the funds and where they manage to access the funds, they must grapple with other administrative challenges such as delayed payments schedules which result in delayed payments which then affects the employers’ obligations to pay training providers.¹⁴⁶

4.3 Discretionary grants

The bulk of the SETA funds, 49,5% is allocated to the discretionary grant fund and there are further stipulations on how to access these funds. A disclaimer exists in the

¹⁴⁴ Guidelines on the implementation of SETA Grant Regulations. Department of Higher Education and Training (2015).

¹⁴⁵ Guidelines on the implementation of SETA Grant Regulations. Department of Higher Education and Training (2015) page 13.

¹⁴⁶ Guidelines on the implementation of SETA Grant Regulations. Department of Higher Education and Training (2015) page 12.

very name of this fund and authorities have not been hesitant to reiterate this disclaimer; employers should note that these funds are exactly what they are stated to be, “discretionary”, which means the bucks stop with the SETAs on who can lay their hands on these funds.¹⁴⁷

The process of obtaining learnership funding from the SETAs has therefore been proved through the years to be a daunting task which can only be pursued by those who are tenacious.¹⁴⁸ Essentially what this means is that employers cannot entirely depend on the levies that they pay to their SETAs through the skills levy to sponsor learnership programmes that they need to roll out for their employees and more so for unemployed learners. At the same time, they cannot afford to do away with skills development as it has become mandatory for most companies to actively take part in the skills development initiative, since skills development improves productivity and it is also an essential legal compliance measure for conducting business in South Africa.¹⁴⁹

4.4 A Different motive

The legislative drive for skills development has not been achieved through the Skills development Act and the Skills Development Levies Act only. Other pieces of legislation were crafted to also pull in skills development. These include the Broad

¹⁴⁷ Guidelines on the implementation of SETA Grant Regulations. Department of Higher Education and Training (2015) page 13. “The purpose of the discretionary grant is for the SETA to use them to implement their SSP and to contribute to national targets. These are not grants that employers are entitled to, but a grant the SETA deploys to achieve its objectives in relation to the development of the sector.”

¹⁴⁸ Proof that employers are failing to access the funds is shown by the failure by the SETAs to fully disburse the funds as reported in the “SETA Landscape NSDS & SETAs beyond 2016” page 8. Point 2.

¹⁴⁹ Amended Code Series 000: Framework for Measuring Broad-based Black Economic Empowerment (2013) Statement 300. Paragraph 4.1.

Based Black Economic Empowerment Act 53 of 2003 and the income Tax Act 58 of 1962. Section 12H of The Income tax act provides for a skills development incentive to employers who enroll learners on learnerships and apprenticeship programmes.

In the current B-BBEE codes, skills development is a compulsory element that cannot be done away with. The subminimum requirement for skills development is 40% of the total points.¹⁵⁰ Any business entity with an annual turnover above 10 million must comply with the BB-BEE Code of Good practice, compliance of which is measured by elements which include Ownership, Supplier Development, over and above the Skills development element.¹⁵¹ The consequence of this is that, companies and employers strive to maximize their skills development element points. As one analyst observed "Even if an organization has good BB-BEE ownership credentials (51% black ownership), they will be required to score the 40% in the element of skills development as failure to do so will result in them being discounted a level.¹⁵² BB-BEE compliance is important in South Africa as companies that are non-compliant or have a low score will find it difficult to conduct business in the country.

The Tax incentive provided by section 12H of the Income tax Act is meant to encourage employers to train their employees through learnerships and apprenticeships, the training costs of which will be deducted from their taxable amount.¹⁵³ Provided that the registration requirements are met, and the learner is employed by the company for the purpose of the learnership, the section provides for

¹⁵⁰ BBEE Code of Good Practice 3.3.12.

¹⁵¹ BEE Act 3.3.

¹⁵² Neil Raymer (2015) "The Importance of Skills Development and the new BB-BEE codes" <http://www.polity.org.za/article/the-importance-of-skills-development-and-the-new-bbbee-codes-2015-04-08> accessed on 13/10/2017.

¹⁵³ Interpretation note 20 (Issue 7). Income tax act 58 OF 1962. Page 2. SARS.

a R30 000 or R50 000 (for learners with a disability) tax deduction from the employer's taxable amount in each year of assessment "in which the learnership agreement is in force."¹⁵⁴ The learnership tax review states that "the value of incentive is R30 000 on commencement of the agreement (plus R30 000 for every completed year thereafter) and R30 0000 on completion. These values increase by R20 000 if the learner is a person with a disability."¹⁵⁵

The tax incentive was also meant to ensure that employers offer industry relevant skills to their workers. This followed findings that there was a mismatch between the qualifications which were offered by the SETAs and what industry needed.¹⁵⁶ To correct this oversight, the Department of Higher Education and Training developed a system that was coined "Labour Market Intelligence Partnership" (LMIP) which required the SETAs to place the condition that companies must submit Work Skills Plan which would state the types of skills that they need and the planned training that would be implemented in order to access mandatory grants.¹⁵⁷ This was also envisaged as a way to assist government to identify and invest more into skills that industry sectors need as part of the National Skills Development Strategy and this would be achieved through the implementation of learnerships.¹⁵⁸ Originally, this scheme seems to have been designed for employed learners. An allowance was however made for the recruitment of learners who are unemployed, and legislation made a differentiation between section 18.1 and section 18.2 learners.¹⁵⁹ When

¹⁵⁴ Interpretation note 20 (Issue 7). Income tax act 58 OF 1962. 4.6 SARS.

¹⁵⁵ Learnership Tax incentive page iv.

¹⁵⁶ Learnership tax incentive page 1.

¹⁵⁷ Learnership tax incentive page 1.

¹⁵⁸ Learnership tax Incentive page 1.

¹⁵⁹ SDA Section 18.

recruiting unemployed learners on learnerships, the employer must enter into a fixed term contract of employment with the learner for the duration of the learnership period.¹⁶⁰ The employer is not obliged to employ the learner after the learnership contract has expired. The unemployed learners do not receive a salary but only an allowance.

Employers therefore have more than just the motive of skills development as contemplated by the SDA when they recruit learners on a learnership.¹⁶¹ They do it to comply with BB-BEE regulations and, if it is of any significance to their financial well-being, they also invest in the learners with the hope that they will be able to recoup some of the expenses through tax deductions.¹⁶² Ideally, they should be able to achieve all this by making use of the skills development levy that they contribute to the SETAs every year, but due to the access challenges as well as the fact that the SETAs seldom make provision for full learnership costs funding, this leaves the employers with no choice but to dig into their own pockets.¹⁶³ It is also beyond doubt that where a learner fails to hold up their learnership agreement obligations, they

¹⁶⁰ Sectoral Determination No. 5 Section 27(1) (xii).

¹⁶¹With regards to the report for skills development interventions for unemployed learners, The BankSETA in its Case Studies Booklet 2016, "Skills @ work awards: celebrating good practice in skills development" concluded that "The Employer gains from the B-BBEE points and the youth gain from the workplace experience."

¹⁶² Mathew J. *et al* (2005) "*Perspectives on learnerships: a critique of South Africa's transformation of apprenticeships.*" *Journal of Vocational Education and Training*, Volume 57. Number 4. The major reason for participation in learnerships for 75% of the employers was for tax incentives.

¹⁶³ The report on the investigation into a sectoral determination for the learnership sector – 2011 page 16-17 indicates that the SETA grant is not enough to cover both training costs and learner allowances. Also the MERSETA Grants policy paragraph 5.4.1 provides that companies can only claim up to 20% of the total levies they would have contributed to the SETA for the mandatory training. SETAs therefore make provision for unfunded learnerships which are in essence industry funded an example of the provision of which is the services SETA Guidelines for the unfunded learning intervention process. <http://www.serviceseta.org.za/documents/Guidelines%20-%20Unfunded%20Learning%20Interventions.pdf> accessed on 27/11/2017.

don't only sabotage the vision of the SDA but also place the employer in a disadvantaged position as the employer stands to lose the benefits they would have hoped for in terms of BB-BEE incentive and the tax incentive.

Although employers may harbour extra motives in rolling out unfunded learnerships, besides the skills development motive as contemplated by the Skills Development Act, their drive cannot be negatively critiqued as they would have achieved the same goal as that which legislation had contemplated. That unfunded learnerships have been not only been prevalent but also of benefit to the learner is not debatable. According to the Human Sciences Research Council paper, "Employment and learning pathways of Learnership participants in the NSDS Phase II (2004)," According to contact database, more than half of the total population (59%) of learners was unemployed when they entered the learnership"¹⁶⁴ 99% of these learners stated their expectation for entering the learnership as "to enable them access to access work or "gain employment after the completion of the learnership and to improve their career opportunities."¹⁶⁵ Unfunded learnerships have therefore served as a lifeline for most unemployed learners who would not have access to post-matric education. Employers on the other hand count on the learners to fulfil their end of the bargain so that there can mutual benefits to the scheme. The voice of the employer has shown that this mutual fulfilment of the deal by the learner has not been close to satisfactory and an analysis of the legislation which was meant to be the glue that holds the different role

¹⁶⁴ Human Sciences Research Council paper, "Employment and learning pathways of Learnership participants in the NDSS Phase II (2004) page 19.

¹⁶⁵ HSRC Report (2004). Page 83.

players together shows that it hasn't been short of loopholes that leave the employer without redress when they are disgruntled.

4.5 Chasing figures

The term "mandatory" gives a misleading impression that it is compulsory for the SETAs to pay out this grant back to the employers. This is not the case, as DHET guidelines on SETA grants explains, "the purpose of the mandatory grants is for the SETA to use them to implement their SSP and to contribute to national targets. These are not grants that employers are entitled to, but a grant the SETA deploys to achieve its objectives in relation to the development of the sector. The purpose of grant policies is not to set out as how employers can "get their money back" but rather how the SETA will achieve the implementation of the SSP and make a meaningful contribution to national targets."¹⁶⁶

Both mandatory and discretionary grants are therefore accessible to employers on the condition that they comply with the SETA rules and regulations which must be done timeously and only at a specific time during the year.¹⁶⁷ There are no uniform rules and policies on how to apply for these grants as every SETA has its own rules on the application processes, information requirements, documentation, payment structures as well as the monitoring processes which all add to the complexities of dealing with the SETAs.¹⁶⁸ If this does not serve as enough dissuasion for employers to access the levies, another factor to consider is that there is no guarantee that the SETAs will fund

¹⁶⁶ Guidelines on the implementation of SETA Grant Regulations. Department of Higher Education and Training (2015) page 13.

¹⁶⁷ Guidelines on the implementation of SETA Grant Regulations. Department of Higher Education and Training (2015) page 24. Grants applications must be done by the 30th of each year.

¹⁶⁸ SETA Landscape (2015) page 8.

all the training and development programmes that the companies would have planned for and submitted documentation to their SETAs. Evidence of this is that the SETAs have made provisions for either co-funded learnerships¹⁶⁹ or entirely industry funded learners.¹⁷⁰ Where the employers are able to access the funds, the allocations are hardly enough to cover the costs of the learnership programmes as well as stipend payments for the learners where unemployed learners are trained. The MERSETA Grant policy for example offers R41 336.59 for an NQF Level 2 learnership, R24 001 of which is meant to cover the learner stipends.¹⁷¹ Training providers learnership prices range from R35 000 to R45 000. The FP&M SETA offers R25 000 for unemployed learners.¹⁷² Concerns have been raised by some employees that the SETA funding is hardly adequate and the companies have to fund the learnerships as well as pay for the learner stipends from their own coffers.¹⁷³

Having said that, SETAs have not been without funds to sponsor learnerships, they have just been unable to disburse all of them as reported by the SETA Landscape report, "Collectively the SETAs have failed to disburse the levies collected meaning training that could have occurred, has not. For example, R2,6 billion was not committed or allocated at the end of 2014/5 financial year, and was transferred to NSF. It is acknowledged though that some SETAs have done very well."¹⁷⁴

¹⁶⁹ MERSETA Grants Policy 2017/2018. Section 2 "Definitions. Table 3 Learnership allowances.

¹⁷⁰ W&R SETA Learnership agreement "FOM_RGN_005_Learnership Agreement_V1.0.2016 W&R NEW" front page.

¹⁷¹ MERSETA Grants Policy 2017/2018 Table 3: PIVOTAL programmes in relation to funding formula (values).

¹⁷² FP&M SETA: Discretionary Grants: Project Definition Workshops 2017/2018 slide 23

¹⁷³ Impact Assessment of Learnerships, Apprenticeships and Bursaries. A Tracking and Tracing study of the impact of learnerships, apprenticeships and bursaries funded by FP&M SETA. December 2014. Page 51 -54.

¹⁷⁴ SETA Landscape. 2015 page 8.

If employers do not follow the mandatory grants application and therefore fail to access the funds, the funds are transferred to the discretionary grant reserves by the 15th of August each year.¹⁷⁵ The surplus funds from the discretionary grants are transferred to the National Skills Fund.

Over the years, the success of the SETAs has been measured mainly by the number of programmes that they roll out. As Glenda commented “One of the unintended consequences was a SETA focus on achieving numerical targets rather than on the quality or nature of skills developed.”¹⁷⁶ The 2012 Impact Assessment of National Skills development strategy II for example reported that enrollment targets for learnerships were either met or exceeded.¹⁷⁷ The SETA Landscape as quoted above however, portrayed a different picture. SETAs have however been hailed as being successful where they managed to roll out big numbers of learnerships for both employed and unemployed learners although no conclusive reports would then follow on the number of these learners who would finish the programme to certification. The NSDS III Progress report which covered the period of 2011-2016 clearly puts a disclaimer that “a comparative analysis between enrolled and certificated learners could not be conducted” due to other factors.¹⁷⁸ Moreover, the reports simply make an indication of employed versus unemployed learners, of which more unemployed learners are enrolled for learnerships than employed learners¹⁷⁹, without specifying the source of funding for these learnerships. Concerns have been raised that enrollment figures

¹⁷⁵ Grant Regulation Section 7.

¹⁷⁶ Glenda K *et al* (2012) page 4.

¹⁷⁷ Impact Assessment of National Skills development strategy II (2012) page ix.

¹⁷⁸ National Skills Development Strategy III Progress report 2011-2016. Page 13.

¹⁷⁹ National Skills Development Strategy III Progress report 2011-2016. Pages 61 (24 006 employed learners) and 64 (42 283 unemployed learners).

should not be used simply to meet numerical targets, without making an impact within the sector.¹⁸⁰

The failure to meet targets and disburse allocated grants has been one of the challenges that the SETAs have had to grapple with yet this is a tool that has been used to measure their performance. Some SETAs, due to these and other governance challenges have been put under administration and the rest are faced with the threat of being merged with other SETAs. In the past, restructuring has been done which resulted in SETAs being reduced, from 23 to 21.¹⁸¹ Employers on the other hand are pressured to roll-out learnerships due to the BB-BEE code of good practice which makes training and development a mandatory compliance element. There is therefore a scramble for learnerships on both sides, but more so on the latter which explains why there has been a high enrollment of learnerships for unemployed people, despite all the constraints that employers face in accessing SETA funds. This cannot be regarded as a negative trend, given the shortage of skills in the country and the dearth of funds for post-school education coupled with low high-school grades which prevent many learners from accessing tertiary education.

¹⁸⁰ Guidelines on the implementation of SETA Grant Regulations. Department of Higher Education and Training (2015) page 19.

¹⁸¹ National Skills Development Strategy III Progress report 2011-2016. Pages 9.

4.6 Contractual loopholes

The Sectoral determination 5 was designed for what have been generally called, 18.2 learners. That is unemployed learners on a learnership. It was put in place to regulate the conditions of employment for learners who enter into a fixed term contract of employment for the sake of a learnership since a learnership is a work-based programme. It therefore stipulates the conditions of employment for such learners with regards to working conditions, leave and remuneration among other things. In its design, the piece of legislation was designed in tune with the Basic Conditions of employment and this is the first legislative oversight that has created most of the challenges that employers and learners sit with when they embark on a learnership.

The starting point for the challenges presented from the learnership agreement emanate from the fact that unemployed learners who are enrolled on a learnership are not employees but "learners". The rights and responsibilities given to the different parties to the contract do not however seem to take cognisance of the fact that such a learner needs mentoring and a lot of guidance in the workplace as they do not come "work-ready". An analysis of the learnership agreement as well as the processes involved in rolling out a learnership will reveal that a lot of responsibilities which outweigh the benefits are placed on the employer which, if the other incentives were to be taken away, would leave many employers unwilling to get involved in learnerships. In the current lack of balance of the responsibilities, the statistics on the perceived success of the learnership model may be reflective of employers who get involved in the programme to simply reap the legal benefits that they come with,

without addressing the mandate of the Skills Development Act. That many learnerships that have been rolled out do not address business needs and that the tax incentives have had only a satisfactory take-up therefore does not come without an explanation.¹⁸² The most prevalent complaint raised by employers who roll-out learnerships has been the cost of the programmes as well as the administrative burden that they come with which have been perceived to have been exacerbated by the minimal help rendered by the SETAs.¹⁸³

4.7 Contractual duties: An analysis.

Although both, the legislation behind the learnership agreement as well as the learnership agreement itself do not make reference to the monetary and other resource aspects of running a learnership, the decision by an employer to roll-out learnerships starts with the aspect of money as well as other resource aspects consideration.¹⁸⁴ Before an employer can roll-out a learnership there are a few questions that they need to provide a response to. Firstly, they need to consider the source of funding for the learnership programme.¹⁸⁵ They also need to evaluate their workplace environment and determine if they have all the physical resources that are needed to accommodate the learners during the learnership period. This may come in the form of office space and office or plant equipment which are applicable the qualification that they would like to place the learner on. Another crucial aspect is the

¹⁸² Learnership incentive Review. (2016). Page 11.

¹⁸³ Learnership incentive Review. (2016). Page 11

¹⁸⁴ FP&M SETA Learnership implementation guide June 2013. Page 7. Explains that there are costs that the employer must be prepared to carry when they decide to roll-out a learnership. Which include training and assessment costs, administration costs as well as the coaching and the mentoring of the inexperienced learner.

¹⁸⁵ Ibid.

human resources that will be needed to enable a smooth flow of the learnership programme.¹⁸⁶ This will range from the people who will be involved in the administrative work of accessing and the management of the learnership funds as well as mentors who will guide the learners on the daily activities that they will carry out in the workplace as well as assist them in completing the workplace assessments that they will need to complete in the workplace as part of the evidence collection process which is required to complete a learnership programme. Some SETAs such as the MERSETA insist on a workplace evaluation process to assess if the workplace has all the necessary equipment as well as qualified personnel who will act as mentors to the learners who engage on a learnership.¹⁸⁷ After considering these preliminary factors, the employer needs to brace themselves with the task of transforming an unqualified, inexperienced trainee into a team member and a part of their organisation.¹⁸⁸ For unemployed learners, they should be prepared to go through this process for someone who is not guaranteed to be part of the organization once the learnership programme has terminated.

The source of funding is usually the anchoring part of the programme as, without money, the employer cannot roll-out the learnership programme. As alluded to, earlier, a learnership programme can either be SETA funded or industry funded. If the employer has faithfully complied with the process of submitting their WSPs and their ATR, they may consider trying their luck in accessing the SETA mandatory grant. This however could be a dicey exercise as it is impossible to determine upfront how much

¹⁸⁶ Ibid.

¹⁸⁷ MERSETA Workplace Approval and Registration form.

¹⁸⁸ Modiba J. Fibre processing & manufacturing sector education and training authority: Learnership Implementation Guide. (2013).

the SETA will allocate them and if this will be adequate for the number of learners they have to place on learnership programmes.¹⁸⁹ Most SETAs indicate that the disbursement of these funds is subject to availability and when available they are pegged at fixed amounts regardless of the level or type of learnership the company wants to roll out. The FP&M SETA for example offers R25 000 for a 12 months learnership¹⁹⁰ and it is therefore beyond question that this amount barely covers the tuition, let alone the stipends that unemployed learners are entitled to. If the company can conjure the courage to go through the grueling process of applying for these funds, they must also be prepared to face the challenges of delayed payments and at the very worst uncertain payment schedules. An alternative route to escape this ordeal would be to dig into their coffers and fund the programme on their own.¹⁹¹ Either way though, pain is inevitable. The one thing they cannot escape however, is the learnership administration and the continual interactions with the SETAs who should still quality assure the programme and on completion wait for an indefinite, albeit, guaranteed to be long period (it can take more than 6 months for SETAs release learner certificates and sometimes longer) to get their learners certified.

After putting to bed the financial and other resource issues, the employer has to go into the learner selection process. For employed learners, this will entail some kind of skills audit of the available workforce to determining what skills they need and also

¹⁸⁹ The MERSETA Grants policy paragraph 5.4.1 provides that companies can only claim up to 20% of the total levies they would have contributed to the SETA for the mandatory training.

¹⁹⁰ FP&M SETA: Discretionary Grants: Project Definition Workshops 2017/2018 slide 23.

¹⁹¹ Impact assessment of the learnership, apprenticeship and bursaries. A tracking and tracing study of the impact of learnerships, apprenticeships and bursaries funded by FP&M SETA. December 2014. FP&M SETA. Page 55 "We are a company that has always complied with all FPM regulations. We spend millions worth of rands every year training unemployed, youth, women and disabled people yet the FPM SETA fails to recognise our organisation. 2014 DG Grant applications were disappointing, and employees feel demotivated."

consultation with their line managers to get their support as participating in a learnership will entail time off work which may call for temporary restructuring.¹⁹² For unemployed learners, the process will entail a thorough selection and recruitment process and for big groups, this may require external consultants, bearing cognisance of the fact that the company still has to carry out its core business with minimal disruption when accommodating the learnership scheme. The employer must also seek the services of a seasoned and accredited training provider as well as set up a learnership administration team to handle all issues related to the programme such as stipend issues, attendance, assessments, progress reports to the SETAs and classroom and workplace schedules.¹⁹³ All this takes a proper planning strategy as all the parties must buy into the process to ensure success. As the experts reiterate, "careful and detailed planning from the outset will ensure that the resources and mechanisms required are identified, sourced and in place throughout the learnership."¹⁹⁴ The duties of the employer and the learner as stipulated in the learnership agreement will only commence when all this preliminary work has been completed. All the parties, namely, the employer, the training provider and the learner will then sign the learnership agreements as well as the contract of employment where unemployed learners are involved.¹⁹⁵ The employer must also ensure that the learnership agreements and the necessary documents are completed by all the parties, namely, the learner, the training provider and the employer and these legally binding documents must be

¹⁹² FP&M SETA Learnership Implementation Guide June 2013 page 8 lists some of the factors that need to be considered although this list is not exhaustive.

¹⁹³ Modiba J. 2013 page 8.

¹⁹⁴ Modiba J 2003) page 7.

¹⁹⁵ Modiba J. 2013 page 8.

submitted to the relevant SETA.¹⁹⁶ Although the training provider can assist with this process, the employer must ensure that process is properly followed and adhered to as they have the most to lose if anything falls through the cracks.

After the registration process has been complied with, the learning programme can commence and the employer must also ensure that the learner is exposed to the appropriate workplace environment, provide support and mentoring to the learner, pay them the agreed stipend amount, afford them leave, allow them time to attend classes and complete assessments that are required for competence in the programme. The learner just has to avail themselves to the employer and the training provider to access the knowledge and the skills imparted to them. The responsibilities of the employer that are listed in most SETA agreements have been formulated to comply with the stipulations of section 17(2) of the Skills Development Act and therefore the FP&M SETA Learnership Implementation Guide which seems to have borrowed a lot of notes from the Act provides a good specimen of the rights and responsibilities of the parties to the learnership contract. An analysis of the responsibilities as outlined in the guide, will however show that although the employer is allocated some rights with regards to the agreement, these come across at a closer look as responsibilities as well.¹⁹⁷ As one of the rights of the employer is that the learner is obliged to avail their labour services to the employer.¹⁹⁸ The flip side to this right for the employer however, is what is stated as a cost in the FP&M SETA Learnership guide in that, in having a learner on their premises, the employer must

¹⁹⁶ Modiba J. 2013 page 15.

¹⁹⁷ FP&M Learnership Implementation Guide page 17-20.

¹⁹⁸ Section 17 (2) (b) (i) of the Skills Development Act.

bear the cost of “using a trainee who is not yet fully productive.”¹⁹⁹ The one differentiating factor between learnership trainees and the apprenticeship or internship trainees is that the latter only get into the workplace after they have had some theoretical exposure to the kind of work they will be undertaking and the former start off at the workplace without both knowledge and skills. As some employers commented in a survey, “interns have the qualification not the skill, whereas learners do not have both the qualification and the skill.”²⁰⁰ The apprenticeship and the intern are therefore naturally likely to bring in meaningful productivity into the workplace than the learnership trainee. The employer obtains little to no benefits at all by having the learnership trainee on their workforce as such a candidate actually places a responsibility on the employers to convert them into a skilled and knowledgeable member of their workforce. For this reason, some employers have reckoned that the learnership trainee must not be subjected to the same conditions and benefits that are given to apprentices and interns. Another right that is stated as the employer’s right with regards to the learner is the learner’s compliance to the rules of the learnership programme which the employer must also assist the learner with by releasing him/her to attend classes and also monitor their attendance in both the classroom and the workplace.²⁰¹ Compliance to the learnership, by the learner, cannot be regarded as a right that the employer enjoys as the employer actually plays a policing role to ensure that the learner adheres to programme that gives him a qualification as well as experience which he can use for career advancement.

¹⁹⁹ Modiba J. 2013 page 7.

²⁰⁰ Report on the Investigation into a Sectoral Determination for the Learnership Sector-2011. Department of Labour. <http://www.labour.gov.za/DOL/downloads/documents/useful-documents/employment-equity/LEARNERSHIPS%20%20REPORT%20final%202011.doc>. Accessed on 20/10/17 page 13.

²⁰¹ Modiba J. 2013 page 18.

Moreover, if the learner does not comply with the rules of the qualification, there isn't any recourse for the employer except to terminate the employment contract of the learner which will also result in the termination of the learnership programme.²⁰² By so doing, the employer will lose the little of whatever benefit they had in terms of the labour that the learner was providing as well as the tuition and stipends already spent on the learner.

4.8 Learnerships and apprenticeships

The sectoral determination 5 which determines the conditions of a learner is also used to determine the conditions of apprenticeships. This seems to be an oversight as there is a vast difference between the two types of candidates. So vast is the difference between the two that some employers have argued that the conditions of employment of apprentices and interns are the same as those of employees unlike those of learners.²⁰³ Although this opinion may be misinformed, it is reasonable considering the fact that apprentices and interns only enter the workplace when they have completed the theoretical component of their programmes. Another differentiating factor, albeit only supposedly cosmetic, is the fact that apprenticeship programmes are longer than learnerships as they span for over 2 to 3 years.²⁰⁴ Learnership programmes on the hand normally take a year to complete.

To understand the difference between learnerships and apprenticeships and how it is an oversight to burden them both with the same legislative regulation, a brief

²⁰² Section 17 (4) (c) of the Skills Development Act.

²⁰³ Report on the Investigation into a Sectoral Determination for the Learnership Sector-2011. Department of Labour. Page 13.

²⁰⁴ Report on the Investigation into a Sectoral Determination for the Learnership Sector-2011. Department of Labour. Page 13.

backtracking into the history of apprenticeships becomes essential. Skills shortage and inequalities in the workplace is not a new phenomenon to the South African economy. As reiterated by Mathew, inequalities in the labour market became an inheritance that the new government was burdened with.²⁰⁵

The history of apprenticeships in South Africa has been tainted by the apartheid labour practices. Although learnerships and apprenticeships were meant to run concurrently, there has been, after the advent of learnerships, a negative distinction which elevated learnerships in a way that seemed to push apprenticeships into extinction due to the negative connotations that were attached to apprenticeships as a result of the apartheid connotations that the apprenticeships carried. So much are these negative associations that that when some critics make a comparison between learnerships and apprenticeships, they draw the comparisons, not with regards to the curricula differences between the programmes, but rather on the administration of the programmes, a comparison which is mainly informed by the fact that during the apartheid era, apprenticeship programmes were a privilege preserved for white males.²⁰⁶ In making a comparison between learnerships and apprenticeships, Potgieter makes reference to not only to the fact that apprenticeships were restricted to specific trades but he also goes ahead to state that "there was a clear link between apprenticeships and the former Apartheid government principle of " job reservation."²⁰⁷ The writer goes on to explain that the apprenticeship system was used to "accentuate the former government's under-investment in the country's human

²⁰⁵ Mathew J *et al* (2005) page 537.

²⁰⁶ Potgieter F (2003). "*Phantom ship or ferryboat? Understanding the mystery of learnerships and assessing the realities.*" Page 170.

²⁰⁷ Potgieter F (2003) page 171 to 172.

resources,” whereas learnerships were “designed to aid government’s investment in South Africa’s available human resources.”²⁰⁸ Such a critique is however devoid of the legislative background to skills development in South Africa as both the Skills Development Act and the Skills Development Levies Act are in direct contradiction to the fact that skills development in South Africa is state-funded. It is this myopic disdain of apprenticeships, juxtaposed with the euphoric embrace of the learnerships that has contributed to the application of the same workplace rules to participants of the two programmes. After the seeming re-embracing of the apprenticeships model, no clear distinction was ever made by legislation between the two programmes.²⁰⁹

The call for learnerships has been spurred on by technological advancements in the industry which have resulted in a shortage of skills.²¹⁰ The crisis is not a new phenomenon as the same rationale motivated the introduction of apprenticeships in the 1970s. Apprenticeships were introduced in the 1980s when the government realized that labour was not keeping up with the new technological innovations and this was having a negative impact on the economy.²¹¹ The apprenticeships scheme was regulated by the Manpower Training Act 56 of 1981. A negative connotation of the scheme however, was that, like many other models of that time, the scheme was implemented along racial lines due to the apartheid regime. When the new government took over, there was need, not only to ensure the continuation of skills development but also that this would be done in an equitable manner and new policies

²⁰⁸ Potgieter F (2003), page 172.

²⁰⁹ Glenda K *et al* (2012). “Impact Assessment of National Skills Development Strategy II. Developing Skills and Capabilities through the Learnership and Apprenticeship Pathway Systems. Synthesis Report. Assessing the impact of Learnerships and apprentices under NSDSII.” Page 4.

²¹⁰ Learnership tax incentive 2016 page iii.

²¹¹ Glenda K *et al* (2012) page 2.

were put in place to include previously disadvantaged groups and to involve industry in the funding of skills development.²¹² To keep track of these new developments, after the new legislation had been put in place, The National Skills Development Strategy was put in place. With a new funding mechanism available for skills development, learnerships were hailed as the new system that would ensure skills development, not only at multiple levels but also across the various industry sectors.²¹³ The apprenticeships system was, however, not abandoned but with the euphoria on the new system, apprenticeships lost momentum. As Van Rensburg noted, there has been a public outcry for the return of the apprenticeships system whenever the skills shortage debate is raised, yet apprenticeships were never discarded.²¹⁴ They have continued to exist and they were regulated by the Manpower Training Act until 2012 when the Act was repealed. The major decline in the apprenticeships system which came about when the learnerships system was introduced, once again led to a serious shortage of artisanal skills and to rectify this, there has been, once again, a call for the “revival” of the apprenticeships skills training.²¹⁵ Learnerships were at first thought to be a remedy to this artisanal skills shortage, due to the workplace component that they offer. It is no wonder, some scholars have yielded to the temptation of regarding learnerships as “modern apprenticeships”. There are however, differences, between the apprenticeships system and the learnership system. Glenda notes that, learnerships were meant to address “the shortcomings of the traditional apprenticeships system, particularly, the lack of structured workplace learning and to

²¹² Glenda K *et al* (2012) page 2-3.

²¹³ Glenda K *et al* (2012) page 3.

²¹⁴ Van Rensburg D (2012).

²¹⁵ Glenda K *et al* (2012) page 3.

increase access.”²¹⁶ This, however, seems paradoxical to the way the apprenticeships administration is outlined in the Manpower Training Act, as there are rules regulating the employment of apprentices, which provides evidence that apprenticeships were predominantly characterized by the involvement of the workplace. The glaring difference can be noted in that learnerships operate in all industry sectors and all at all levels, whereas apprenticeships were predominantly focused on intermediate artisanal skills.²¹⁷

The distinction between learnerships and apprenticeships becomes clearer when a closer analysis is made of how apprenticeships are structured. The Draft National Development Trade test pass rate and Quality Improvement Strategy which was put together in 2015 in line with the Skills Development Act, gives a synopsis of how apprenticeships have been conducted and it offers improvement areas to the process. This followed a growing concern on the continued diminishing popularity of the apprenticeship scheme which has further fuelled the country’s skills shortage crisis.²¹⁸ The distinctive features as highlighted in the document mainly related to the cost of running apprenticeships as well as the duration. Apprenticeships cost a lot more than learnerships, running in the range of more than R400 000 and they usually last for more than 2 years. Apprentices enroll on the programme through Technical and Vocational Education and Training (TVET) colleges, which are technical colleges which were set up specifically to offer courses of a technical nature. Although this is currently not the case, the proposal by the draft regulation is that, on enrolment into these

²¹⁶Glenda K *et al* (2012) page 3.

²¹⁷ Glenda K *et al* (2012) page 3.

²¹⁸ The Draft National Development Trade test pass rate and Quality Improvement Strategy 2015 page 5.

colleges, learners must already have had secured a workplace where they will gain experience once they have completed their “classroom theoretical and practical training.”²¹⁹ It is also proposed in the draft regulation that on enrolment, the funding for the entire programme, including workplace allowances must have been secured so that the learner does not struggle to secure a workplace after the programme, because most workplaces are reluctant to accept such learners due to the cost implications that are involved as they will have to remunerate the learner. Without the workplace experience, the learner will not be able to complete the programme.²²⁰ Currently, the dual system of the apprenticeship programme is designed in such a way that the learner spends some time at a college, learning the theoretical and practical components of the course and thereafter they have to find a workplace where they will apply what they learnt in order to gain experience and also to comply with the course requirements. Thereafter, they must write a trade test at the end and this process which is quality assured by the QCTO.²²¹ There is therefore a vast difference between the way apprenticeships and learnerships are conducted, yet as Glenda, noted “Regulation governing apprenticeships had remained in place with the introduction of learnerships but the relationship between the two was not clearly defined.”²²² It is for this reason that the Sectoral determination 5 which governs the conditions of employment of a learner has also been applied to apprentices and seemingly, rightfully so, as learnerships are defined as being inclusive of

²¹⁹ The Draft National Development Trade test pass rate and Quality Improvement Strategy 2015 page 9.

²²⁰ The Draft National Development Trade test pass rate and Quality improvement Strategy 2015 page 9.

²²¹ The Draft National Development Trade test pass rate and Quality improvement Strategy 2015 page 8-9.

²²² Glenda K *et al* (2012) (page 4).

apprenticeships in the Skills Development Act. This legislative thin line between the two programmes has left the participants of the programme, especially the employer and the learner in a dilemma on what conditions the two groups of trainees should be subjected to, with the old fashioned employees who are well-informed on how apprenticeships were conducted and appreciate what experience and expertise such trainees come with, arguing that they should be awarded better working conditions and remuneration than their counterparts, while the contemporary employers have argued that there is no difference between the two trainees and both must be subjected to the same conditions of employment.²²³ Some employers have argued that learners who are on a learnership cannot be treated in the same way as apprentices as the latter come to the workplace with neither knowledge nor skills while the former have knowledge and practical skills and all they will be wanting is the practical experience which is required to complete their qualification.

Having established the amount of work that an employer who enrolls a learner on a learnership undertakes, it becomes compelling to point out the extra benefits that the learner is entitled to while they are on the programme. The Sectoral Determination 5: Learnerships sets out, among other conditions that the employer must provide the learner with an allowance which is determined by the level of the qualification and the number of credits a learner would have accumulated during the programme. The current rates which were last revised in 2011 have not been reviewed since and there have been proposals that they should be reviewed so that they can match the current

²²³Report on the Investigation into a Sectoral Determination for the Learnership Sector-2011. Department of Labour. Page 12-13.

cost of living.²²⁴ The low stipend allocations have caused a wave of problems for employers who enroll unemployed learners. Issues raised, have ranged from learners who feel that they are being exploited (oblivious to the fact that the employer would have incurred other costs such as tuition and administration fees to get them on the programme), to employers who have had to deal with grumpy learners, some of whom end up abandoning the programme for either better opportunities or out of sheer loss of interest in the programme as what they will be looking for is a source on income and not an education programme.²²⁵

Having established that most employers battle to access the mandatory grants from the SETAs and where they manage to access them, the grants are hardly enough to cover learnership costs, the proposal to legislatively increase the learnership stipends will only place a heavier financial burden on the employers. Currently, some employers are either fully funding or supplementing the learner allowances for fear of losing learners as portrayed by comments in the FP&M survey.²²⁶ Where industry funded learnerships are involved, it is crucial to note that the tuition, administrative costs as well as stipend costs are completely shouldered by the employer. The employer must also adhere to the regulations of the Sectoral Determination in paying the learners a stipend and in order to improve learner retention, they have to pay more than the stipulated amounts. Some employers have suggested that the proposed increase

²²⁴ Report on the Investigation into a Sectoral Determination for the Learnership Sector-2011. Department of Labour. Page 15.

²²⁵ "Impact assessment of the learnership, apprenticeship and bursaries. A tracking and tracing study of the impact of learnerships, apprenticeships and bursaries funded by FP&M SETA." December 2014. FP&M SETA. Page 51-52.

²²⁶ "Contributions received from the SETA for the learnership was not enough. The company had to pay R 400 more to get them to stay." "Majority of the learners leave after a month or two, as the stipend is too little in their opinion." (FP&M SETA 2014 page 52).

should be accompanied by an increase in the mandatory grants and that there must be uniformity in the grant amounts that are paid out by the SETAs for learnerships stating that some SETAs pay as little as R21000 to R35 000 for the 12 months programme and they expect employers to be able to pay both the training provider and the learner stipends for 12 months and in some cases even extended periods from these grant payments. As a result, employers have to pay learner stipends from their payroll even in cases where they have been awarded the SETA grants.²²⁷ Concerns were also raised by employers that most of the unemployed learners who join the programme consider it as an employment opportunity and as soon as they find a more paying job, they drop out of the programme.²²⁸ This, after the employer has already incurred training and other administrative costs on the learner. The verbatim comments from the FP&M SETA report display employer frustrations which are indicative of the danger that the scheme faces at it could end up being used just a tick-box exercise by employers to comply with the skills development elements of the various pieces of legislation without their full commitment to the Skills Development Act mandate.²²⁹

²²⁷ Report on the Investigation into a Sectoral Determination for the Learnership Sector-2011. Department of Labour. Page 17.

²²⁸ Report on the Investigation into a Sectoral Determination for the Learnership Sector-2011. Department of Labour. Page 17.

²²⁹ "I believe that most learners are attracted by the stipend. Whilst the purpose of the stipend is to provide learners with the means to travel to work and to buy food, in most cases it is used to support their families." "It is great to have and adds value but is costly on the company's side in terms of budget i.e., stipend, facilitators/resources/administration etc. which outweighs the funding. Also, with 18.2 learners, after completion, they leave to find jobs in other sectors." (Impact assessment of the learnership, apprenticeship and bursaries. A tracking and tracing study of the impact of learnerships, apprenticeships and bursaries funded by FP&M SETA. December 2014. FP&M SETA. Page 53.)

Learners, however, never seem to grasp the costs and the administration work that is involved in running a learnership as they also raised concerns that the stipends do not meet their basic needs. Learners feel that they must be paid so that they can cover the expenses incurred due to their participation on the learnership programme. They do not seem to appreciate the fact that, unlike other post-matric learners in tertiary institutions, they do not have to make any financial contribution towards the programme and the employer bears the burden of placing them on an educational programme that gives them both a qualification and workplace experience which improves their employability.

In the investigation by the Employment Commission, the Department of labour argued that stipend payments, made by employers are SETA funded and therefore should not impact on the employer's ability to pay.²³⁰ This is however, not the case as the SETAs seldom pay enough to cover training and administrative costs as well as the stipends. They also seem to be unaware or inconsiderate of the fact that some learnerships are entirely industry-funded due to the red tape of accessing mandatory and discretionary grants from the SETAs. In this misconstrued position, the department also recommended that stipend amounts must be increased in order to attract learners which will ensure the success of the programme which further informs the misguided conception that learners must be rewarded for taking part in an already fully sponsored programme whose primary objective is to improve their own employability. It is perceptions like these that have fuelled a sense of entitlement in the learners

²³⁰ Report on the Investigation into a Sectoral Determination for the Learnership Sector-2011. Department of Labour. Page 18.

which employers have observed in the learners who get involved in the learnership programmes.²³¹

Besides the payment of allowances, others contractual issues that have presented a quagmire to the employer, relate to leave days that learners are also entitled to. The Sectoral Determination provides for maternity leave, annual as well as sick leave (understandably so) for learners who are on a learnership. Learners are entitled to 4 consecutive months maternity leave and the days for annual leave must be calculated according to the number of credits in the qualification, they would have accumulated.²³² Although some SETAs have reckoned that the maternity leave conditions are impractical as learnerships usually run for a period of 12 consecutive months, some SETAs have argued that the employer must make arrangements to accommodate learners who require maternity leave while they are on the learnership and ensure that they are allowed to continue with the programme after taking their leave period.²³³ This view does not take into consideration the fact that by so doing, the administration, training and the rest of the logistics for the learnership will have to be extended which only protracts the financial burden of the employer. Even if the employers have to apply for funds from the SETAs, this can only be done during specific periods which cannot be extended to allow for learners who take longer to complete the programme.²³⁴ The fact that learners are entitled to annual leave is also

²³¹ The Voice the Employer. FP&M SETA. December 2014.

²³² Report on the Investigation into a Sectoral Determination for the Learnership Sector-2011. Department of Labour. Page 22.

²³³ Report on the Investigation into a Sectoral Determination for the Learnership Sector-2011. Department of Labour. Page 22.

²³⁴ Guidelines on the implementation of SETA Grant regulations. Page24. Mandatory grant applications must be done by the 30th of April and a one-month extension period can only be granted by the Minister under special circumstances.

not practical as learnerships classes usually run according to an already set schedule which cannot be changed constantly to accommodate learners who may apply for annual leave when classes are in progress. A way to understand this would be to imagine if university students could inform their lecturers that they would not be able to attend scheduled lectures because they would be taking their annual leave days.

The contractual quagmire seems to emanate from the fact that the Sectoral Determination was crafted to mirror the Basic Conditions of Employment Act yet the subjects of the piece of legislation are not employees but learners who are still on a learning programme.²³⁵ With all these issues, the role of the SETA seems non-existent when there are contractual conflicts between the employer and the learner.²³⁶ The only remedy that the employer is afforded is to dismiss the learner which defeats the Skills Development mandate that is advocated by the Skills Development Act.²³⁷ At the recommendation of the employer and the training provider, the SETA will just have to rubber stamp the decision to terminate the learner's contract. There are no remedies for the employer where a learner pulls out of this agreement prematurely. The SETAs positive role will only feature at the point when they have to quality assure the assessment process and to certify the learners who manage to complete the programme and that too has not been without challenges.

²³⁵ Sectoral Determination No: 5 Learnerships. Sections 8-27 as compared to The Basic Conditions of Employment Act sections 10,14,20,21,22,24,25 and 26.

²³⁶ Mathew J. *et al.* "*Perspectives on Learnerships: a critique of South Africa's transformation of apprenticeships. Strategy and Tactics.*" Journal of Vocational Education and Training, Volume 57, Number 4, (2005): 548. "For employers, institutional support from the state is minimal and employers rely heavily on their own workforce to identify unemployed recruits for learnerships."

²³⁷ Sectoral Determination No: 5 Learnerships section 30 (d) allows for the fair dismissal of the learner. Section 33 provides for disputes to be presented to the CCMA, however, it is doubtful that the employer would consider this option.

The SDA envisaged a skills development scheme which would be spearheaded by the learnership scheme but as scholars have reckoned, the learnership scheme is a fairly new phenomenon that is also highly legislative.²³⁸ If the legislation that has been put in place to regulate the scheme is ill-informed of the administrative challenges that employers have to battle with and where there is myriad of legislative pieces that do not speak to each other, responsibilities that are unevenly distributed, incentives that are elusive, the scheme faces threats as the pivotal role player, namely the employer has been inundated with more frustrations than benefits. As some scholars have also noted, the scheme hinges on the collaboration of all the role-players²³⁹ and the current process doesn't seem to be providing much of this. The current situation portrays a picture, where industry has been cajoled into sponsoring the scheme through the skills development levy, they are then burdened with the research task of providing information on essential skills in the different sectors through the submission of the WSPs with the hope of accessing mandatory grants, which they are in turn not guaranteed to get and they still have to sponsor the scheme from their coffers and also deal with ungracious learners in the process of so doing. They have to adhere to legislation in their handling of these with pseudo-learners, pseudo-employees who come with an equally confusing contract which has a near absence of remedies except for abandonment. Currently, the reports from the SETAs and those who have been contracted to assess the scheme by the proponents of the scheme have painted

²³⁸ Theresa-Anne Davies & Fionah Farquarson. 2004: 182 The Learnership Model of workplace training and its effective management: lessons learnt from a Southern African case study. "However, it is important to recognise that learnerships are still an emerging field. Furthermore, they exist in a highly-legislated context (Skills Development Act of 1998; Learnership Regulation of April 2001). In addition, learnerships tend to be implemented in multiple stakeholder environments."

²³⁹ Ibid.

nothing short of a success story with booming enrolment numbers.²⁴⁰ Whether these numbers have resulted in meaningful transformation on the ground in terms of the skills development mandate and economic transformation that is propagated by the Skills Development Act and also if it has provided a panacea to industry in terms of addressing the skills shortages, remains to be verified.²⁴¹ Of concern, in the reports compiled by the proponents of the scheme, is the near-absence of the voice of the employer without whose full commitment, the scheme can be threatened with extinction.²⁴²

²⁴⁰ National Skills Development Strategy III Progress Report 2011-2013 Higher Education and training department page 61 and 64 indicated that most of the SETAs had exceeded their targets for learnership enrolments for both employed and unemployed learners.

²⁴¹ Mathew J. *et al.* (2005). *"Perspectives on Learnerships: a critique of South Africa's transformation of apprenticeships. Strategy and Tactics."* Journal of Vocational Education and Training, Volume 57, Number 4, (2005): 539. "Reasons for the scepticism over MA success, include uneven employer demand, commitment and engagement (Payne, 2002; Fuller & Unwin, 2003), that the state is more interested in the outputs (number of participants typically disaggregated by age, gender, class and economic sector) than the outcomes of these programmes (the creation of paths to high skill jobs)..."

²⁴² Except for the FP&M Impact assessment of learnerships, apprenticeships and Bursaries 2014, the department of Education reports on learnerships do not feature the voice of the employer.

Chapter 5. Conclusion and Recommendations

5.1 Introduction

The learnerships scheme in South Africa was introduced as a response to the shortage of skills and also as a solution to unemployment. Learnerships' continued existence has also been justified by industry's evolving skills needs which is a result of technology innovation. The SETAs and government have measured the success of learnerships by evaluating the success with which numerical targets have been achieved. There is however, an ever-present voice of how the SETAs have not successfully carried out their role as the custodians of the learnerships programme. The perceived resounding success might also have muffled the voices of the discontented parties in the programme, notable among these being the employer and unemployed learners. Legislation was put in place to provide for the administration as well as the financial support of the scheme. The legislative structure for the financial support of the scheme is such that, industry is supposed to sponsor the scheme through a levy-paying system from which they should draw back the funds to administer the process. The system has, however not been without challenges as many gaps in the system have left some of the parties to the scheme more burdened with responsibilities than others.

South Africa's learnership scheme has been structured in the same fashion as other developed countries who have made use of the same programme. Notable among these are the United Kingdom, Australia, Germany and France. Countries that have implemented the same programme have also faced challenges, some of which are

similar to those encountered in South Africa. Among these challenges are a lack of learner and industry commitment to the scheme as learner drop-outs. Research has been conducted to come up with improvement measures and from these a few lessons can be drawn which can add value to the success of the local scheme. Also, a comparison of the structures of the schemes in these countries can help to come up with the solutions that they can assist in building best practices. Comments and recommendations from the local participants can also assist in closing the gaps that are threatening the scheme. A common thread in the lessons drawn from the jurisdictions that have implemented learnerships and also from the local role-players is that the programme calls for collaboration among all the role players. Government should also play a pivotal role in drawing the role players together and implement policy after extensive consultation and obtaining the commitment of industry and the rest of the participants. It is notable, that where industry has taken ownership of the programme, the programme enjoys greater success than where industry has a passive role and the scheme is imposed on them.

That learnerships have existed in a highly legislative environment on South African can be supported by the existence of the various legislative tools that have been used to regulate them and supported their existence through the provision of incentives. The Skills Development Act and the Skills Development Levies Act are the two front-runners of the legislative tools within which learners exist. Being a work-based programme, the programme has also had legislation that was designed for employees, such as the Basic Conditions of employment Act playing a crucial role. Other pieces of legislation within which the scheme has existed include the Income Tax Act as well as the B-BBEE Act. Except for the SDA and the SDLA, the various pieces of legislation

which regulate and affect the existence of learnerships do not seem to have been created to work together. This silo existence of the legislative tools could have added to the lack of collaboration that has existed among the role players as the various parties have to work towards achieving their own goals which may not necessarily be important to the other role players. It has been noted for example that the SETAs have been focused on achieving numerical targets in rolling out learnerships, yet the programmes have not been effective in addressing the skills that are needed by industry. Learners on the other hand are highly concerned about earning an income as unemployment levels are high in the country and learners use the learnership programme as an employment opportunity rather than a skills development initiative.

5.2 Learnerships: A comparative perspective.

The World Bank conducted a study to review the international experience on apprenticeships.²⁴³ Although the study makes reference to apprenticeships, scholars have confirmed that learnerships in these countries been named differently from the local scheme. Studies on the scheme in countries such as the UK, Australia, Germany, France India and others have shown varying levels of success. A focus on the UK, Australia, France and Germany would provide a comparative perspective on what has led to the success of the scheme and the lessons that can be drawn.

Alison concurs that the success of the modern apprenticeships scheme in Britain rests on the existence of a close working relationship between the employers and the

²⁴³ "Towards a model apprenticeship framework: A comparative analysis of national apprenticeship systems." World bank (2013).

training provider.²⁴⁴ Modern apprenticeships were introduced to address the challenges of the post-fordist period which resulted in trends characterised by the labour migration which created a shortage of “unskilled labour due to the large movement by many workers towards the “higher level, technical, professional and managerial work.”²⁴⁵ The implementation of modern apprenticeships was at policy level as government became highly involved in “youth learning.”²⁴⁶ The British experience has however, not been without challenges as it has been threatened by lack of funding and a lack of faith in the scheme to address the skills shortages.²⁴⁷ A notable learning point from the British scheme however is the attempt to secure the commitment of all the parties to the training contract by getting them to sign a binding agreement.²⁴⁸ Also, various professional bodies are responsible for the quality assurance of the programmes and they also advise on qualifications requirements guidelines.²⁴⁹ The challenges that the scheme has encountered include commitment by employers and the learners as the employers are looking for immediate solutions

²⁴⁴ Alison Fuller & Lorna Unwin (1996): 229. *"Modern apprenticeships, processes and learning: some emerging issues."* Journal of Vocational Education and Training Vol. 48, No. 3. Vocational Education and Training associates, United Kingdom. Journal of education and work. Centre for labour Market studies, University of Leicester. UK.

²⁴⁵ Ibid: 230

²⁴⁶ Ibid: 231

²⁴⁷ David Gray & Mark Morgan (2011): 123 -124 *"Modern Apprenticeships: Filling the skills gap?"* Journal of Education and Training 50:1 123-134.

²⁴⁸ David Gray & Mark Morgan (2011): 123 -124 *"Modern Apprenticeships: Filling the skills gap?"* Journal of Education and Training 50:1 123-134. “Modern apprenticeships begin with a contractual agreement between the local TEC [Training and Enterprise Councils] (which provides the funding), the apprentice and the employer. This obliges all the parties to ensure their part in the agreement is met; the training pledge is signed by the apprentice and the employer, the latter undertaking to: employ the apprentice with the intention of continuing employment after the training; provide assistance in securing alternative employment due to redundancy; provide reasonable experience, facilitate training to achieve to achieve objectives specified in the training plan (City and Guilds of London Institute, 1996).

²⁴⁹ David Gray & Mark Morgan (2011): 126 *"Modern Apprenticeships: Filling the skills gap?"* Journal of Education and Training 50:123-134.

to their skills shortage challenges while learners are looking for easy employment opportunities.²⁵⁰ Also, the programme has been threatened by lack of funding.²⁵¹ Another strength that has been identified in the system however, is the flexibility of the system as there are various bodies to quality assure the programmes although this has also been countered by quality issues that have been raised, which the authorities have committed to work on.²⁵² David notes that the system could be improved if the government would refrain from adopting a reactive approach as there has been a focused on addressing issues of unemployment which has results in funds that could be used for skills development being channelled towards welfare programmes.²⁵³

Despite the challenges faced by the British system, a few lessons can be drawn from the implementation of the programme, top among which is a high level of industry involvement and the guidance by the professional bodies as well as the separation of responsibilities among the TECs who sponsor the programme, the professional bodies who quality assure and carry out an advisory role and the employer and the training providers who liaise on programme roll-out.

²⁵⁰ David Gray & Mark Morgan (2011): 130. "*Modern Apprenticeships: Filling the skills gap?*" Journal of Education and Training 50:1 123-134.

²⁵¹ "Towards a model apprenticeship framework: A comparative analysis of national apprenticeship systems." World bank (2013). Page 79.

²⁵² David Gray & Mark Morgan (2011): 131. "*Modern Apprenticeships: Filling the skills gap?*" Journal of Education and Training 50:1 123-134.

²⁵³ David Gray & Mark Morgan (2011): 131. "*Modern Apprenticeships: Filling the skills gap?*" Journal of Education and Training 50:1 123-134.

The Germany modern apprenticeships system has been hailed as the epitome of the modern apprenticeship system, applauded for its success.²⁵⁴ Moreover, the scheme has not been developed as an alternative to the tertiary education but it has been framed to provide pathways for further education as learners can progress to what has been known as 'Meister' level qualifications for which state-funding is available which enables learners to set up businesses in the technical fields such as plumbing and motor mechanics.²⁵⁵ As it were, unlike in the South African context, the programme is not frowned upon as an arrangement that was made for engineers or technicians who could not make it. As noted by David, the system is well-coordinated at a national level and enjoys the support of all the role-players namely, employers, trainees and trade unions as well.²⁵⁶ Germany has developed a training culture to which government and industry have committed and the product is quality training, which cannot be said about the United Kingdom or South Africa. The success of the programme in Germany, can be attributed to the fact that, the country follows a system of "compulsory education at 16, young people have the option to follow an academic or vocational route, although nearly 70% [are] following the vocational training."²⁵⁷ David argues that the challenges faced by the United Kingdom system can be attributed to what can be interpreted as a 'quick-fix' approach for which all the parties have contributed to the failure of the system. Employers are looking for and

²⁵⁴ David Gray & Mark Morgan (2011): 126. *"Modern Apprenticeships: Filling the skills gap?"* Journal of Education and Training 50:1 123-134.

²⁵⁵ David Gray & Mark Morgan (2011): 127. *"Modern Apprenticeships: Filling the skills gap?"* Journal of Education and Training 50:1 123-134.

²⁵⁶ David Gray & Mark Morgan (2011): 127. *"Modern Apprenticeships: Filling the skills gap?"* Journal of Education and Training 50:1 123-134.

²⁵⁷ David Gray & Mark Morgan (2011): 128-129. *"Modern Apprenticeships: Filling the skills gap?"* Journal of Education and Training 50:1 123-134.

they are allowed to make use of cheap labour, young people are “enticed out of education and training by the lure of short-term financial gains.”²⁵⁸ Government on the other hand is focused on addressing the challenges caused by unemployment and therefore channels funds that could have been used for youth development towards welfare programmes. The impact of all this is a disjointed skills development programme with role players who are half committed even when enticed by incentives.

With a booming economy supported by a thriving mining industry, Australia has also enjoyed a high level of success in the implementation of apprenticeships and traineeships.²⁵⁹ Some of the factors that have contributed to the success of the programme, can be identified as the availability of government funds for employers to participate in the programme and remunerate trainees well enough.²⁶⁰ Although the programmes have also faced completion challenges, the drop-out rates have not been regarded as high enough to threaten the success of the programme.²⁶¹ The success of the programme can also be attributed to the fact, that, like the Germany case, at policy level the programme was developed to provide pathways to higher education, rather than as an alternative to tertiary education. To this end, trainees can participate in the programme while they are still in secondary school and they do

²⁵⁸ David Gray & Mark Morgan (2011): 126. *“Modern Apprenticeships: Filling the skills gap?”* Journal of Education and Training 50:1 123-134.

²⁵⁹ “Towards a model apprenticeship framework: A comparative analysis of national apprenticeship systems.” World bank (2013). Page 41 and 43.

²⁶⁰ “Towards a model apprenticeship framework: A comparative analysis of national apprenticeship systems.” World bank (2013). Page 44-45, Trainees receive wages according to industrial relations agreements. Employers get funding for the programmes as well as incentives. Employers usually pay the stipulated wages to improve trainee retention.

²⁶¹ “Towards a model apprenticeship framework: A comparative analysis of national apprenticeship systems.” World bank (2013). Page 45.

the practical component on a part-time basis.²⁶² At a regulatory level, the programme is also highly legislated and enjoys the support of the role players and it has also been promoted within the education system.²⁶³ A strong support system has also been built into the programme by government's initiative to allow for other role players like the Group Training Organisations and Australian Apprenticeships centres.²⁶⁴

A research on best practices of the apprenticeship system shows that the more the collaborative efforts among the role players, the higher the success rate.²⁶⁵ The Germany case which has been branded the 'gold standard'²⁶⁶, displays a system which has enjoyed the support of the role players as well as a strong government initiative. The three-step model of best practices presented in the best practice paper incorporates "comprehensive national governance structures" and stakeholder involvement, system simplification and incentives as some of the elements in the first step in which the Australian system is said to have done well, employer assessment in the second stage and recruitment, performance management and completion focus

²⁶² "Towards a model apprenticeship framework: A comparative analysis of national apprenticeship systems." World bank (2013). Page 47.

²⁶³ "Towards a model apprenticeship framework: A comparative analysis of national apprenticeship systems." World bank (2013). Page 49-50.

²⁶⁴ "Towards a model apprenticeship framework: A comparative analysis of national apprenticeship systems." World bank (2013). Page 48-49. Group Training Organisations (GTOs), receive financial support from the government and they act as labour centres who 'lease' trainees to host companies so that the trainees can carry out the practical component of their programmes. Australian Apprenticeship centres play a marketing as well as administrative role by marketing the programmes to employers and also managing the administrative processes that come with the programme such ensuring the acquisition of funds and incentives. They also act as the liaison organisation among the role-players, namely the employer and the apprentice.

²⁶⁵ Erica Smith (2016). *"Apprenticeship management at national and company levels: Research based 'Good practice' principles."* International journal on HRD practice, policy and research 2016 volume 1: 35-52. Federation University Australia.

²⁶⁶ Erica Smith (2016). *"Apprenticeship management at national and company levels: Research based 'Good practice' principles."* International journal on HRD practice, policy and research 2016 volume 1: 35-52. Federation University Australia. Page 36.

in the last stage.²⁶⁷ The overall take home point for the best practice process is collaboration and government support. As noted by some stakeholders in the South African system, this has been one of the missing links in the South African system.²⁶⁸

5.3 Conclusion.

Learnerships have presented the lifeline to skills development in South Africa just as in other countries where there were implemented successfully. They serve a multi-pronged purpose which range from skills development, unemployment reduction and career pathways for both the youth and old people. In South Africa, the inclusion of unemployed people in the scheme was envisaged to address the skills shortages which have been exacerbated by historical injustices which ensured that the current government inherited an unevenly skilled labour force.

Legislation that has been put in place to regulate the implementation of learnerships has played a big role in making available funds for the programme as well as to regulate relations among the role players. Since the programme is relatively new, there is need to not only adopt the strategies that were used in other legislations but to also identify best practices from those who have successfully implemented the system. A good starting point in this would be to analyse, identify and address gaps

²⁶⁷ Erica Smith (2016). "*Apprenticeship management at national and company levels: Research based 'Good practice' principles.*" International journal on HRD practice, policy and research 2016 volume 1: 35-52. Federation University Australia.

²⁶⁸ MERSETA Impact Assessment study of learnerships & Apprenticeships 2008. Page 5. Mention was made that among the factors that have negatively impacted the success of the programme is the disconnection between industry and the SETAs as well as the training providers. Page 32. Some of the issues raised include. The non-existence of close relations with the employer by the SETAs and a lack of interest in skills development by employers and a lack of capacity to be involved.

in the legislative tools that regulate the scheme in order to harmonise the relations among the role players and build maximum collaboration. A training pledge (contract or agreement), which is not backed with commitment and support from the role players, especially the employer, does little to ensure the success of the programme.

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