The need for social dialogue in labour relations: An analysis of the process and its practice in South Africa
Social dialogue is defined by the ILO:

“To include all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy. This definition and concept of social dialogue varies from country to country and region to region”.

It sees the main goal of social dialogue as the promotion of consensus building and democratic involvement among stakeholders in the world of work.
## Forms of social dialogue

<table>
<thead>
<tr>
<th>Information sharing</th>
<th>Consultation</th>
<th>Negotiation and collective bargaining</th>
<th>Joint problem-solving</th>
<th>Joint decision-making</th>
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<td>The most basic form of workplace cooperation.</td>
<td>Information is shared and discussed, but one party retains right to make the final decision e.g. workers give comments, but management makes the decision.</td>
<td>Two or more parties engage in order to resolve an issue by making compromises and eventually reaching an agreement.</td>
<td>An interactive process involving two or more parties who seek to reach agreement over problems that exist between them by identifying the causes of their differences, generating alternative solutions to their differences and jointly agreeing viable solutions to their differences.</td>
<td>Involves discussion and interaction between managers and workers, a process which results in a binding decision.</td>
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<td>Interaction is one-way: one party gives information and the other receives it.</td>
<td>Consultation may be direct: discussions take place between the persons involved in the issue or problem under discussion, or indirect: discussions take place through representative bodies and/or committees.</td>
<td>Negotiation often results in agreement but not always.</td>
<td>Joint decision-making implies that unless agreement is reached, no decision (or action) is taken.</td>
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<td>Usually takes the form of management providing information.</td>
<td>Consultation can be formalised through joint consultative committees and similar bodies.</td>
<td>Collective bargaining: agreements are legally binding on both parties.</td>
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<td>Information may be provided by workers to managers e.g. a message in a suggestion box.</td>
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<td>Information can be conveyed quickly but has disadvantages:</td>
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<tr>
<td>• no opportunity for immediate feedback</td>
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<td>• messages can be distorted</td>
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Levels of employee participation*

* Mark Anstey. Employee participation
Levels of dialogue

Labour

Trade Union federation

Sector Unions

Shop Steward Committee

Shop Stewards

Plant

Company

Sector

National Bilateral

Tri Partite

Capital

Employer federation

Employer association

Corporate/divisional managers

Plant managers
Pre requisites for social dialogue

- Strong, independent workers' and employers' organizations with the technical capacity and the access to relevant information to participate in social dialogue
- Political will and commitment to engage in social dialogue on the part of all the parties
- Respect for the fundamental rights of freedom of association and collective bargaining
- Appropriate institutional support
Social dialogue takes into account each country’s cultural, historical, economic and political context. There is no “one size fits all” model of social dialogue that can be readily exported from one country to another.
Findings of conflict at work investigation

• The World Competitiveness Report 2012-2013 ranked South Africa 144 out of 144 countries for ‘cooperation in labour-management relations’ (Schwab, (ed) 2012).

• The average length of strikes has been increasing since 2007. While the median strike length from 1995 to 2012 has been 5 days, the average length now is 8.32 days.

• Wages and compensation are principle reasons for work stoppages and strikes.

• In 2011 the number of working days lost due to strike action/ work stoppage was significantly higher in the private sector compared to the public sector.

• Number of disputes lodged at the CCMA has increased by 25 percent over the past five years. The case workload in 2012 reached an all-time high of over 160 000 cases. This translates to over 13 000 cases per month; 3 333 cases per week or a total of 667 cases each working day. (Department of Labour, 2013). The CCMA Director  sited what she regarded as the key reasons for the increased case load:

• “The unprecedented rise in the case load points to antagonistic labour market relations, and this is worrying for stability in the labour market. The situation also indicates that the economic environment is becoming tough”.

Findings of conflict at work investigation

• Whereas workplace justice has been made more accessible and less costly for unskilled workers it has impacted on parties’ willingness to engage and seek solutions for themselves.

• Conflict management skills are either absent or underdeveloped at all levels in organisations. Conflict management had been outsourced!

• Dismissals are the largest category of disputes referred to the CCMA from the private sector. This is said to be typical of other bargaining councils with the exception of the public sector bargaining councils where allegedly promotions and transfers account for the majority of matters lodged.

• The majority of cases for poor performance and misconduct.

• Conflict has become more individualised.
The case of the missing forum

In terms of S83: Unless the **matters for consultation** are regulated by a collective agreement with the representative trade union, a workplace forum is entitled to be consulted by the employer about proposals relating to any of the following matters –

- restructuring the *workplace*, including the introduction of new technology and new work methods;
- changes in the organisation of work;
- partial or total plant closures;
- mergers and transfers of ownership in so far as they have an impact on the *employees*;
- the *dismissal* of *employees* for reasons based on *operational requirements*;
- exemptions from any *collective agreement* or any law;
- job grading;
The case of the missing forum

- criteria for merit increases or the payment of discretionary bonuses;
- education and training;
- product development plans; and
- export promotion.

Unless the matters for joint decision-making are regulated by a collective agreement with the representative trade union, an employer must consult and reach consensus with a workplace forum before implementing any proposal concerning –

- disciplinary codes and procedures;
- rules relating to the proper regulation of the workplace in so far as they apply to conduct not related to the work performance of employees;
- measures designed to protect and advance persons disadvantaged by unfair discrimination; and
- changes by the employer or by employer-appointed representatives on trusts or boards of employer-controlled schemes, to the rules regulating social benefit schemes.
s189A and the case of the missing dialogue

In terms of S189 of the labour Relations Act:

(1) When an employer contemplates dismissing one or more employees for reasons based on the employer’s operational requirements, the employer must consult-

(a) any person whom the employer is required to consult in terms of a collective agreement;
(b) if there is no collective agreement that requires consultation –

(i)  a workplace forum, if the employees likely to be affected by the proposed dismissals are employed in a workplace in respect of which there is a workplace forum; and
(ii) any registered trade union whose members are likely to be affected by the proposed dismissals;

(c) if there is no workplace forum in the workplace in which the employees likely to be affected by the proposed dismissals are employed, any registered trade union whose members are likely to be affected by the proposed dismissals; or

(d) if there is no such trade union, the employees likely to be affected by the proposed dismissals or their representatives nominated for that purpose.
Social dialogue: the case of the contract cleaning sector

• 'Decent Work' within the sector can be enhanced if all parties commit to making an honest and concerted effort to achieve this goal. Accordingly, the parties agree to establish a task team to meet and engage on (i) what has to be done, (ii) who has to do it, and, (iii) by when it will be done.

• Current mechanisms for establishing and enforcing terms and conditions of employment for application across the entire sector are not achieving the desired outcomes. In order to deal with this problem parties have agreed to establish a tripartite task team to:
  – review current collective bargaining processes;
  – identify failings within the existing process and develop a model which meets the needs of all parties;
  – review current enforcement mechanisms and identify failings of this;
  – develop a model that ensures proper enforcement and regulation including but not limited self monitoring and sector codes of good practice/minimum standards.
Social dialogue: the case of the contract cleaning sector

The parties agree that there are obstacles that stand in the way of the effective exercise of the right of employers and unions to organize and represent members, and that this inhibits social dialogue. Accordingly the parties agree to establish a task team to:

- review current restrictions imposed on unions/employers and obstacles to the effective exercise of organizational rights and explore ways in which those can be eliminated;
- identify and agree an agenda for dialogue.

The parties agree to establish a tripartite task team to:

- review the draft amendments and identify implications of these on parties
- develop strategies for compliance with those in such ways as to ensure that neither employees or employers are prejudiced.
- explore procurement opportunities and including labour clauses in accordance with ILO convention 94 and consider ratification thereof.