



## REPORT

Meeting: Task Team on Prevention of Re-Employment of Former Educators Dismissed or Deemed Dismissed for Misconduct or Deemed Resigned

Date: 27 March 2019

Time: 13H30

Venue: ELRC Building  
261 West Avenue  
CENTURION

### 1. OPENING AND WELCOME

The Task Team meeting commenced at 10H25 with a welcome from Ms N O Foca, as facilitator in the absence of the Chairperson.

### 2. ATTENDANCE AND APOLOGIES

#### 2.1 Present

Mr S Faker	Department of Basic Education
Ms M Mogale	Department of Basic Education
Ms L Munday	Department of Basic Education
Mr M Mahlangu	Department of Basic Education
Mr A W Kutumela	Department of Basic Education
Mr T Maponya	Department of Basic Education
Ms K Frank	SADTU
Mr M Galorale	SADTU
Mr C Scorgie	CTU-ATU

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Ms J Nair	CTU-ATU
Ms E Raubenheimer	CTU-ATU
Ms N O Foca	ELRC
Mr F Moloisi	ELRC
Mr M Milne	ELRC

## 2.2 Apologies

Mr D Lerm	Chairperson
Mr S Thwala	SADTU
Mr S Mogapi	SADTU

## 3. CONFIRMATION OF THE AGENDA

### Decision 1:

The agenda was unanimously adopted.

## 4. REPORT OF THE PREVIOUS MEETING

### 4.1. 21 February 2019

### Decision 2:

The Report of the Task Team meeting held on 21 February 2019 was unanimously adopted.

## 5. PREVENTION OF RE-EMPLOYMENT OF FORMER EDUCATORS DISMISSED OR DEEMED DISMISSED FOR MISCONDUCT OR DEEMED RESIGNED

5.1. CTU-ATU indicated that they had not made a submission yet.

5.2. SADTU indicated the following:

5.2.1. That they had looked at what was prevailing in the public service in order to do a comparison on what was proposed by the Employer and concluded that it was not out of line with the public service.

5.2.2. That they were satisfied with the contents of the document as it was in line with the public service regulations.

5.3. CTU-ATU indicated the following:

5.3.1. That the reason they requested to make inputs was because they were not sure that the periods set for certain categories of misconducts should be the same for teachers.

- 5.3.2. That the other issue that needed to be dealt with was the reviewal of the definition of corporal punishment.
  - 5.3.3. That the Grogen's definition of corporal punishment that was being used was broad and does damage as some teachers are charged under Section 17 and dismissed for only touching/correcting a learner.
- 5.4. The Employer indicated the following:
- 5.4.1. Agreed that there was no definition for corporal punishment under Section 17 and Section 18 of the EEA.
  - 5.4.2. That the critical to the document was that they were trying to align the current sanctions to that of the public service.
  - 5.4.3. That what CTU-ATU was recommending was to amend the EEA in terms of Section 17 and Section 18 which was a separate issue.
  - 5.4.4. That the definition for corporal punishment could be put onto the agenda as a separate item.
  - 5.4.5. Proposed that a proposal on corporal punishment and assault be worked on in terms of amendments to the EEA as a separate issue.
  - 5.4.6. That the purpose of the document was to give a guideline to the Provincial Education Departments on how long to keep a person out of service e.g. a person that has absconded, in some provincial departments it is 4 year and in others it is 6 months.
  - 5.4.7. Requested to separate the two issues by proceeding in terms of the draft document and then work on amending the EEA in terms of looking at Section 10 of the South African Schools Act that mentions corporal punishment because in the EEA there is no mentions of corporal punishment, the only reference is made to assault in Section 18 and grievous bodily harm in Section 17.
- 5.5. CTU-ATU indicated the following:
- 5.5.1. That Mr Kutumela had a broader knowledge of the legislation which was dealt with.
  - 5.5.2. Proposed that the Employer provide ideas / definitions with regards to the definition of corporal punishment i.e. Section 17 and Sections 18 of the EEA and Section 10 of SASA, in order for labour to interact and make final submissions.
- 5.6. The Employer responded that they would provide such to labour parties the following week.
- 5.7. SADTU enquired whether thought was given how to deal with to those employees appointed in terms of the Public Service Act whom learners at schools are exposed to who have violated such learners.
- 5.8. The Employer responded as follows:
- 5.8.1. That he had already written to the Minister of the DPSA indicating that there were people that were working with children that were not necessarily educators employed in terms of the EEA thus regulations were required on such.

- 5.8.2. That he had submitted the proposed protocol to the DPSA to look at something similar to create a similar provision.
- 5.9. The General Secretary indicated that it was necessary to allow the CTU-ATU space to make their submissions after furnishing them with the information they had requested from the Employer and give them until 13 April 2019 to submit their inputs.
- 5.10. SADTU enquired how should the matter be concluded whilst awaiting response from the DPSA because the document should be inclusive of how those people should be dealt with.
- 5.11. The Employer indicated the following:
- 5.11.1. That it meant a new section in the document needed to be included on corporal punishment which would be a challenge as there is no such thing as corporal punishment.
  - 5.11.2. That their understanding was that CTU-ATU wanted to make an amendment to the EEA.
  - 5.11.3. That the draft document dealt with the current sanctions which was the reason why the two issues needed to be separated whereby the issue of corporal punishment should be dealt with separately.
  - 5.11.4. That the draft document was a guideline on how long to keep a person out of service
  - 5.11.5. that is why he asked that the two issues be separated whereby we deal with the corporal punishment issue separately.
  - 5.11.6. That the draft document was a guideline on how long to keep the person out of service who were dismissed for misconduct.
- 5.12. The General Secretary indicated the following:
- 5.12.1. That the request for information emanated from the fact that CTU-ATU wanted time to make their inputs not that the issue of corporal punishment must be addressed in the same document.
  - 5.12.2. That the issue by SADTU pertained to how to deal with those that are not employed in terms of the EEA working at schools if the document is being finalised.
  - 5.12.3. That her understanding was that the Minister of Basic Education did not have the competency to regulate employees that are employed in terms of the Public Service Act, hence the DBE's submission written to the DPSA disclosing the regulations that would be applicable to those that are employed in terms of the EEA and requesting the DPSA to consider developing something in line to what was applicable to the EEA covered employees.
  - 5.12.4. That these processes should run separately but what the task team should take comfort in was that something has been done elsewhere as the regulations that were covering those that are in schools but employed in terms of the Public Service Act could only be gazetted by the Minister of DPSA.

- 5.13. SADTU expressed concern that at operational level there is an overlap where the principals of schools appointed in terms of the EEA had jurisdiction to deal with those persons appointed in terms of the Public Services Act.
- 5.14. CTU-ATU indicated that the issue was no straight forward thus required discussion around those issues.
- 5.15. The Employer indicated the following:
- 5.15.1. That the DBE cannot promulgate those regulations on behalf the DPSA therefore as soon as the Minister of the DPSA publishes those regulations they would refer to schools etc. and the DBE would then apply those regulations.
  - 5.15.2. That he would include the relevant legislation when defining corporal punishment, grievous bodily harm and common assault.
- 5.16. The General Secretary indicated the following:
- 5.16.1. That the task team was agreeing to keep an eye on developments from the DPSA's side.
  - 5.16.2. Suggested that the DBE draw up a SOP for schools taking the two regulations into one document.
  - 5.16.3. That the understanding was that the two processes had to run its own course.
  - 5.16.4. That the task team had agreed to the time frames for CTU-ATU to submit their inputs by 13 April 2019.
  - 5.16.5. Enquired whether the task team needed to reconvene after receiving CTU-ATU's submission.
- 5.17. The Employer indicated that it was not necessary to reconvene but if there were substantial changes then the task team could reconvene and if there were minor changes a teleconference could be held.
- 5.18. The General Secretary indicated the following:
- 5.18.1. Requested that information should be shared with task team members via the Secretariat so that there was a record of such.
  - 5.18.2. Requested that CTU-ATU forward their submission through the Secretariat to share with the Employer and SADTU.

**Decision 3:**

- 1) The Employer to provide CTU-ATU with information with regards to the definition of corporal punishment i.e. Section 17 and Sections 18 of the EEA and Section 10 of SASA, in order for labour to interact and make final submissions.
- 2) CTU-ATU to submit their inputs by 13 April 2018.
- 3) The Employer and CTU-ATU to forward information / submissions through the Secretariat to circulate to task team members.

## 6. PROTOCOL DOCUMENT BETWEEN SACE AND THE EMPLOYERS ON MANAGING EDUCATORS' CONDUCT

6.1. CTU-ATU indicated that they had not made a submission on the matter.

6.2. SADTU indicated the following:

- 6.2.1. Expressed concern that in the discussions at the Bargaining meeting where they had requested time to look at the document, they were of the view that not much was disclosed when the Employer tabled the draft document for consultation because the draft document was in circulation for consultation with other stakeholders.
- 6.2.2. That the dates for formalisation did not fall within the period that they had requested, and the timelines were not disclosed by the Employer.
- 6.2.3. Expressed concern that the Employer was in the process of finalising the document with the submissions made by the other stakeholders without proper consultation with labour.

6.3. The Employer indicated the following:

- 6.3.1. That in the Bargaining meeting they had indicated that the stakeholders that they had consulted was the Department of Social Development, Department of Justice, SACE, the National Consultative Forum for School Governing Bodies.
- 6.3.2. That they understood that employee parties would make further submissions by 2 April 2019.
- 6.3.3. That in the Bargaining meeting they had alerted Council on the issue that the Association of School Governing Bodies had raised on the technical legal issues where they would not necessarily have the authority to sign the protocol on behalf of the schools because the schools themselves were juristic persons and they were simply an association.
- 6.3.4. That SGBs are looking at the DBE advising them how to approach the requirements of the Children's Act as well as the requirements of the Criminals Law and Sexual Offences Act which the DBE was in the process of doing.
- 6.3.5. That the Protocol was a document that brought together pertinent aspects of the law into one document so that it was applied.
- 6.3.6. That HEDCOM would be briefed on the progress made and they had indicated that their social partners had requested more time to look into this matter.

6.4. SADTU indicated that they do not think that such information was shared at the Bargaining meeting as it has come to their attention that the document was in its final stages of being finalised.

6.5. The General Secretary indicated the following:

- 6.5.1. That the Employer had indicated that they were not expecting labour to make their inputs today as there was an agreement that inputs by labour would be submitted on 2 April 2019.

- 6.5.2. That the task team noted the concern expressed by SADTU that information was not disclosed at the Bargaining meeting.
  - 6.5.3. Enquired how the discussion should be taken forward considering the explanation by Employer that consultations were still taking place because there were structures that had expressed their own concerns, and that there was some work that has been done and there was our deadline of the 2<sup>nd</sup> April 2019.
  - 6.5.4. That the protocol documents was a document that sought to bring together all pieces of legislation that needed to be complied with and what the different roles and responsibilities of the stakeholders that work with children were in so far as ensuring compliance with the prescripts as contained in those pieces of legislations such that in the submissions to be made by labour they are not tempted to raise issues as though wanting the provisions of those legislations to be revisited as such was another process.
- 6.6. SADTU indicated that they needed time to finalise their submission.
- 6.7. CTU-ATU indicated that it was a complex matter therefore required more time to finalise their submission.
- 6.8. The Employer indicated that the following:
- 6.8.1. That the task team should not loose essences of what the document was about.
  - 6.8.2. That the document was aimed at other departments because the Department of Justice has not come abroad neither has the SGBs.
  - 6.8.3. That the task team should keep in mind that the document focused on the external factors.
- 6.9. The General Secretary enquired whether the task team should reconvene after the 2 April 2019.
- 6.10. SADTU indicated the following:
- 6.10.1. That 2 April 2019 would be too soon to reconvene.
  - 6.10.2. That they would inform the Secretariat if there was any substantive issue in their submission that required the task team to reconvene.
- 6.11. The Employer proposed that the task team reconvene two weeks from 2 April 2019.
- 6.12. CTU-ATU enquired whether it was possible to have a bi-lateral in order to share information as they had many constituencies.
- 6.13. The Employer agreed to the bi-lateral.
- 6.14. SADTU proposed two weeks after 2 April 2019 before 18 April 2019.

6.15. The General Secretary indicated the following:

- 6.15.1. That two weeks from 2 April 2019 parties shall have finalised their inputs in terms of the protocol document.
- 6.15.2. That parties in their mandate seeking processes should alert their principals that there was nothing new as the protocol was just pieces of legislation put together in one document such that each department / organisation, where teachers are found unsuitable to work with children, knows what their obligations where.
- 6.15.3. Requested the Employer draft a one-page summary of the purpose of the Protocol document which would assist labour to share information.
- 6.15.4. That the Secretariat would communicate with parties after the 18 April 2019 in terms of taking the process forward.

**Decision 4:**

- 1) Labour parties to provide inputs on the protocol document by 18 April 2019.
- 2) Employer to draft a one-page summary of the purpose of the Protocol document to assist labour to share information
- 3) The Secretariat to communicate with parties after 18 April 2019 in terms of taking the process forward.

**7. CONFIRMATION OF DATE OF THE NEXT MEETING**

7.1. To be done administratively.

**8. CLOSURE**

8.1. The meeting closed at 11H02 with a vote of thanks from Ms N O Foca the facilitator.