

BUSINESS UNITY SOUTH AFRICA

TEN-YEAR REVIEW OF THE SOUTH AFRICAN LABOUR MARKET AND INDUSTRIAL RELATIONS SYSTEM 1994-2004: A BUSINESS PERSPECTIVE

Business Unity South Africa (BUSA) welcomes the opportunity to contribute, with its social partners, to the Department of Labour's celebration of the first decade of democracy in South Africa, and to reflect on key achievements and challenges during this period.

The decade has witnessed both the extended exposure of South African businesses to world markets, and its impact on the South African labour market. While the opening of the economy has presented obvious opportunities for business, structural change in the domestic context has had the consequence of long-term employment decline in a number of sectors. Structural transformation has been and remains necessary to ensure competitiveness, and to retain the sound footing on which the economy has been placed. The major challenge in 2004, as it was in 1994, remains the negative social implications consequent on the necessary process of restructuring, and in particular, the threat of further declining levels of employment.

The decade has also witnessed the return by organised business to various structures established at international and regional level to debate labour market issues, and in some instances, to craft regulatory measures. South African employers have risen to this challenge, and play an active and even leading role in this regard.

Shortly after the election of a democratic government in April 1994, South Africa was readmitted as a member state of the International Labour organization. The convening of a South African tripartite delegation to take up its place at the ILO Conference a month later and the readmission, at the same time, of a new, non-racial national employer federation to the International Organisation of Employers, all signalled the return by South African employers to the international labour community.

South Africans from all constituencies soon realised that their unique experience in the use of social dialogue to address differences on labour market issues, honed in difficult domestic debates in the years preceding 1994, enabled them to contribute effectively to discussion at international level, and to confirm the value of tripartite engagement as a means to further interests and resolve differences.

South Africa remains one of the few (if not the only) member state to have a representative on each of the government, employer and worker benches in the ILO's Governing Body. At ILO Conferences convened over the last decade, South Africans have led their respective constituencies in discussions on issues as diverse as the prohibition of the worst forms of child labour and forms of work requiring protection and human resource development.

At regional level, developments in the last ten years have seen employer interests represented and advanced in the Southern African Development Community and in Africa more broadly, through the tripartite structures established at SADC and the African Union. Employers appreciate the close links between labour market policies and trade-related matters and value the importance of social dialogue on these issues, particularly in the sub-region.

At national level, the signal achievement of the decade has been the negotiation of a suite of laws designed to regulate the labour market, and for organised business, the positive contribution that it has been able to make to the development of that legislation and the institutions created by the statutes concerned.

The Labour Relations Act was one of the first significant pieces of legislation passed in September 1995 by the first democratic parliament. Together with the Basic Conditions of Employment Act, passed in 1997 after negotiation between the social partners, the legislative base and the necessary structures to strike the required balance between the demands of workplace flexibility and need for employment security was established. The decade under review has been characterised by declining levels of industrial unrest, a tribute both to the collective bargaining structures and the dispute resolution structures and procedures established by the Labour Relations Act.

Both the Labour Relations Act and the Basic Conditions of Employment Act are dependent for their effective enforcement on an adequate and efficient labour inspectorate. BUSA has previously raised concerns in this regard, and looks forward to working with the Department to improve the nature and extent of labour inspection.

The Employment Equity Act, passed in 1998 after intense negotiation conducted under the auspices of NEDLAC, similarly avoids the extremes either of unbridled market forces as a sufficient means to overcome systemic discrimination in the labour market, or of a rigid, prescriptive legal regulation of statutory quotas. Again, the Act recognises and enforces the role of collective bargaining and other participatory workplace structures as a means for the development of workplace-specific employment equity plans.

BUSA remains committed to playing any appropriate role to educate its constituency to promote the efficient application of the Act, and to the development of systems that might publicly recognise and reward good performance by employers in this regard.

The fourth and final statute in the series of employment laws enacted during the decade was the Skills Development Act. The Sector Education and Training Authorities (SETAs) established by the Act are central to the execution of a skills development strategy. BUSA has previously noted its interest in ensuring the success of this strategy, given the central role of the development of relevant skills necessary for a competitive economy. Business has also noted its concern that certain SETAs are not functioning effectively. While the steps taken by the Minister recently to address this issue are acknowledged and welcomed, BUSA reiterates its view that the funding model that underpins the statute requires review, and that serious consideration ought to be afforded to improving its effective functioning.

The key labour market institutions established during the decade have enjoyed mixed fortunes. Those institutions established by the Labour Relations Act, the Labour Courts and the Commission for Conciliation, Mediation and Arbitration, have both experienced the pressure of unanticipated caseloads. Both these institutions have played a crucial role in the resolution of labour disputes, and the link between efficient dispute resolution and adjudicative structures and the lower levels of industrial unrest experienced since 1995 can be clearly discerned. However, both institutions have suffered from the effects of budgetary constraints, and have not been allocated funds that in real terms have enabled them to discharge their mandates with any degree of efficiency.

The provision of adequate support for the CCMA in particular, budgetary and otherwise, is crucial to the efficient resolution of labour disputes, and to the development of the CCMA's recognised statutory role in dispute prevention.

The Labour Courts, while they fall outside of the jurisdiction of the Department, are equally beset by a series of problems that have hampered the expeditious adjudication of labour disputes. Business has commented on the Superior Courts Bill in so far as it affects the nature and structure of Labour Courts, and looks forward to an early resolution of the issues currently under debate.

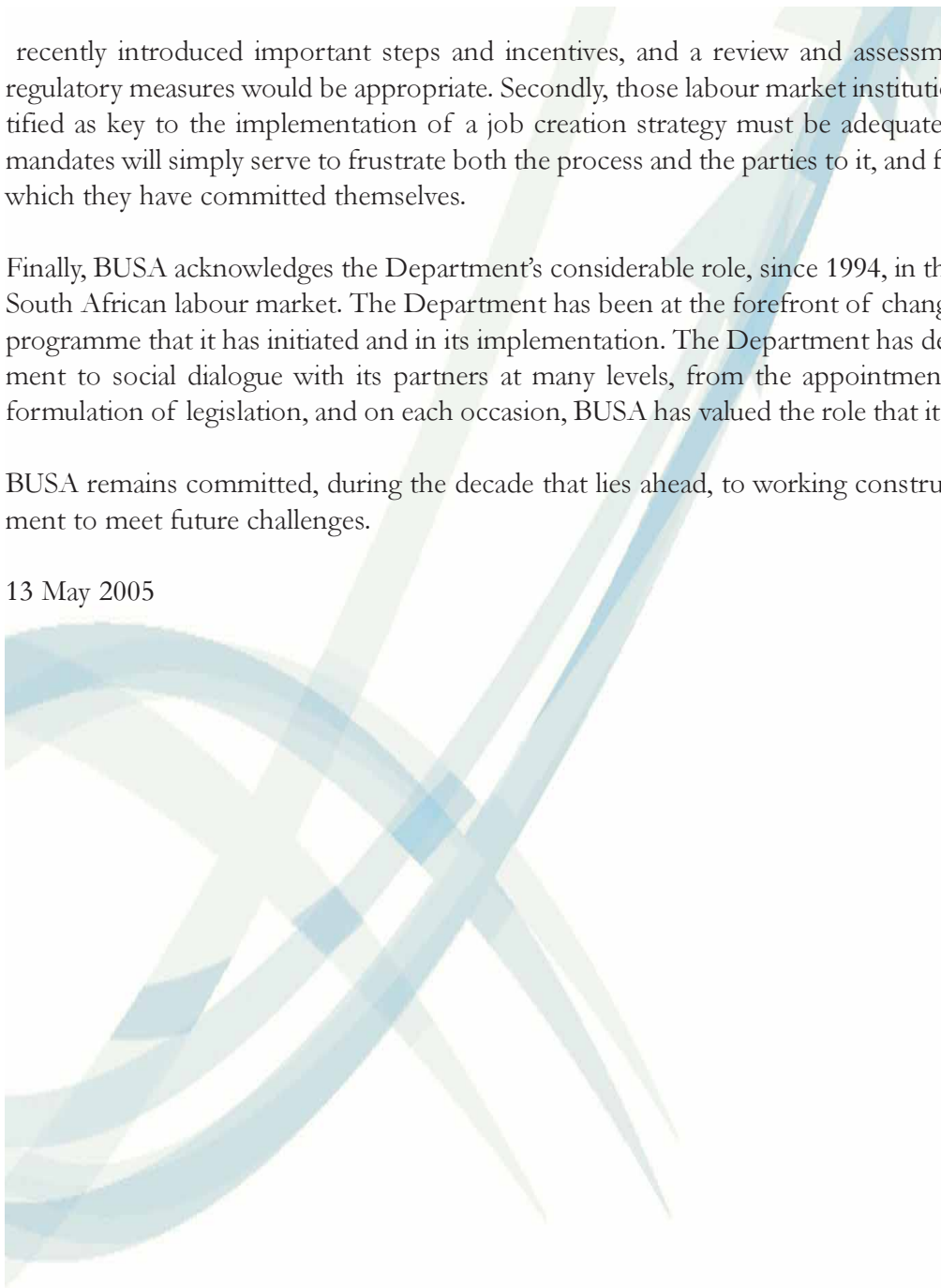
The establishment of NEDLAC must rank as one of the key achievements of the decade under review. The founding of NEDLAC represented a clear expression of commitment to social partnership, and to a comprehensive and participatory democracy. Business welcomed the opportunity to participate in the formulation of economic and social policy. It did so for reasons related to the process of participatory democracy itself, but more importantly, in recognition of the fact that economic prosperity, particularly in a time of structural change, requires the active participation of the social partners. This is particularly so if any meaningful degree of social adhesion is to be achieved as trade-offs central to economic policy formulation are identified and resolved.

Regrettably, and particularly during the later half of the decade, NEDLAC has been plagued by budgetary, management and performance problems. This has resulted, with some exceptions, in a disappointing level of debate, and frankly, a sense that in practice, NEDLAC's role has been devalued. If the terms of NEDLAC's original mandate are to be adequately discharged, a recommitment to the principles on which that organization was founded will be necessary, together with a commitment to utilise available resources to ensure its efficient and sustained operation.

The challenge of rising levels of unemployment has highlighted the importance of unemployment insurance. Significant improvements have been made over the last ten years to improve coverage and benefit entitlements, which have become less selective and arbitrary. The re-establishment of the Fund on a sound financial footing has already been welcomed by organised business. Business' concern at the potential threat to the viability of the Fund that may be occasioned by the costs of extension of coverage to domestic workers is also a matter of record, and BUSA remains of the view that this is a matter that requires careful monitoring.

We noted at the outset that the principal challenge of the decade under review was rapid employment creation. This remains the key challenge for the next decade of democracy. Various attempts during the past decade to address these issues (for example the Growth and Development Summit) do not appear, for a variety of reasons, to have met with as much success as might have been hoped. BUSA remains optimistic that a high-level process, designed to seek a common understanding between government, business and labour on a strategy for employment and growth is possible, and that the parties have the capacity to explore meaningful and pragmatic solutions in the context of a complex and dynamic internationally open economy.

A review of this nature must necessarily acknowledge that small and medium enterprises are, and remain, the key stimulators of job growth in South Africa. If the existing commitments relating to levels of employment are to be met, two preconditions must be satisfied. The first is a flexible regulatory environment that promotes rather than hinders job creation should be established. Other Ministries in this regard have



recently introduced important steps and incentives, and a review and assessment of labour laws and regulatory measures would be appropriate. Secondly, those labour market institutions that have been identified as key to the implementation of a job creation strategy must be adequately resourced. Unfunded mandates will simply serve to frustrate both the process and the parties to it, and fail to deliver the goals to which they have committed themselves.

Finally, BUSA acknowledges the Department's considerable role, since 1994, in the transformation of the South African labour market. The Department has been at the forefront of change, both in the legislative programme that it has initiated and in its implementation. The Department has demonstrated its commitment to social dialogue with its partners at many levels, from the appointment of senior staff to the formulation of legislation, and on each occasion, BUSA has valued the role that it has been invited to play.

BUSA remains committed, during the decade that lies ahead, to working constructively with the Department to meet future challenges.

13 May 2005