

## Repositioning Social Dialogue: The South African Case

by Edward Webster and Katherine Joynt

### Introduction

A crucial moment in South Africa's transition to democracy was the signing of the Laboria Minute in 1990 between unions, employers and government where it was agreed that no laws on labour market issues would be passed without the agreement of all three social partners. This led to the establishment of the National Economic Forum (NEF) in 1992 and its merging with the National Manpower Commission (NMC) to create South Africa's premier social dialogue institution, the National Economic Development and Labour Council (NEDLAC). In many ways the Laboria Minute was to pre-figure the political negotiations that led to South Africa's first democratic elections in April 1994.

NEDLAC is distinctive as a peak-level social dialogue institution in that it includes not just labour market issues but also trade and industrial policy, monetary and fiscal policy as well as developmental issues. The traditional tripartite structure was also broadened to include community organisations.

In 2013 the authors were appointed to undertake an External Review to recommend ways of repositioning NEDLAC. We interviewed representatives from all four of the constituencies and wrote up a report. Subsequently we presented the report separately to all four constituencies and then incorporated their feedback into the review again before finalising our recommendations.

### Impact of NEDLAC on economic reform

The South African experience shows that NEDLAC has had an important impact on the content, pace and sequence of economic reform in three broad areas: the restructuring of the labour market, trade liberalisation and competition policy, as well as privatisation. Peak-level social dialogue improved the quality of the decisions through the input of business and labour and built political bases of support for economic reform. The negotiation process drew all parties into identification with the proposed reforms making them more sustainable in the long run.

Furthermore consultation helped consolidate democracy. This point is central. Many critics see strikes that take place through the Section 77 clause of the Labour Relations Act (LRA) as undermining democracy. Quite the opposite is the case: by participating in peaceful protest, the actors are signalling to their constituents that they are autonomous organisations. Social dialogue assumes a pluralistic society where

autonomous groups with divergent interests recognise each other's existence while promoting their own distinctive views (Trebilcock 1994). In the words of the then Chief Operating Officer, Vic Van Vuuren of Business Unity South Africa (BUSA), 'Social dialogue is vital for balancing market needs, on one side, and the social needs of the broader society, on the other. Without social dialogue the market can overrun social needs or visa versa. Without social dialogue we would have gone the Zimbabwean route.' (Interview: Van Vuuren 2006 in Webster and Sikwebu 2010: 215).

However, in some ways the idea of NEDLAC was undermined at an early stage when government by-passed NEDLAC in 1996 and unilaterally imposed a programme of orthodox fiscal austerity, the Growth Employment Programme and Redistribution (GEAR) policy, on the social partners. This 'original sin' has intensified over the past five years as South Africa has experienced growing workplace and community unrest, culminating in the Marikana massacre in which the police gunned down thirty-four mineworkers on 16 August 2012. Many commentators attribute the growing unrest in South Africa to the failure of social dialogue. NEDLAC constituencies, in particular government and business, are increasingly concerned about whether the costs of NEDLAC outweigh its benefits as a peak-level social dialogue institution. At the Democratic Alliance's Federal Congress in November 2012, Bheki Sibiya, Chief Executive Officer of the Chamber of Mines, suggested that it is 'time to shut NEDLAC down... NEDLAC belongs to a previous era'.

### External Review of NEDLAC: Key issues

Three key issues emerged from our External Review. The first issue raised by almost every respondent was that the constituencies use NEDLAC instrumentally.

*'The main challenge is getting business and government to take it more seriously. Government needs to be more coordinated and educated about its role and function and business needs to stop seeing NEDLAC as the second cousin of social dialogue, where if something really urgent and desperate comes up, they go elsewhere (for example the latest post-Marikana issue).'*

The second issue that emerged was the insider-outsider divide. Many respondents felt that NEDLAC reproduced the socio-economic divide between insiders and outsiders.

*'The insider-outsider dynamic is symptomatic of an institutional failure. The insiders are strong and want to maintain the status quo, and the outsiders are weak and objectified... If there is a monopoly structure in business, a labour aristocracy, and a highly paid civil service that accepts rents in the form of wages and profits, then they are all complacent. If NEDLAC needs to reposition itself... it needs to break out of this insiders-outsiders structure.'*

In particular there was a feeling that the exclusion of the unemployed (especially the youth), rural women, vulnerable workers, smaller trade unions, and Small, Medium and Micro Enterprises (SMMEs) from NEDLAC causes NEDLAC to lose credibility.

The third main issue was that of 'juniorisation', a process which many respondents believed was taking place within NEDLAC. Respondents argued that social partners no longer send their senior representatives; *'In the beginning of NEDLAC, when the ANC (African National Congress) was new to governing, NEDLAC grew out of other engagement forums and there were high level officials there. This is no longer the case because now there are many other formal advisory councils on every board of every state entity. Now people have more access to government than they had in the early days so we don't need NEDLAC for that access.'*

### **Repositioning NEDLAC**

We argued that NEDLAC is an institution that could assist South Africa in overcoming the current policy stalemate. However, to move forward all parties need to recognise this impasse. Indeed, until all social partners recognise this, the kinds of shifts that are necessary by all constituencies will not take place. The role of NEDLAC is to provide an independent space for all the partners to develop a common vision on the way forward.

Ironically, in a context of heightened conflict, social dialogue has lost its meaning. In the first instance, social partners have come to treat NEDLAC as a negotiating forum and often resort to positional bargaining rather than distributive bargaining where the aim of the parties is to agree on common solutions. This instrumental approach to NEDLAC affects all constituencies. Secondly, there is a growing perception that NEDLAC lacks societal legitimacy because it is seen to represent the 'insiders' and exclude many 'outsiders'.

Importantly when peak-level social dialogue in South Africa is compared to other peak-level social dialogue institutions in transitional societies such as South Korea, Slovenia and

Uruguay, NEDLAC has had no impact on macro-economic policy. We recommended that NEDLAC put on the agenda real socio-economic challenges such as labour's demand for a National Minimum Wage.

NEDLAC's role could be that of knowledge provider where information is shared and common solutions to the socio-economic challenges facing South Africa are developed. Seminars, workshops and the Annual Summit would be opportunities for more engagement and meaningful dialogue than in the formal spaces where issues are negotiated and constituencies are tied to their mandates. In order to achieve this NEDLAC would need to build its research and intellectual capacity to become more of a think-tank on central socioeconomic challenges facing all parties.

### **The future of NEDLAC**

Although a Task Team was set up to take forward our recommendations, little progress had been made a year later. Indeed the Executive Director who was driving this process of repositioning NEDLAC resigned in November 2014 in frustration over the lack of political will amongst key constituencies. Although a national gathering, the Labour Indaba, was held in November 2014 to discuss the crisis facing South Africa and the new Deputy President Cyril Ramaphosa drove this process, analysts remain sceptical that the current constituencies have the will to reposition NEDLAC. The alternative is that NEDLAC's marginalisation continues and it becomes a defender of a labour relations system that is failing to respond adequately to (the changing world of work).

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