

Negotiating the future: Labour's role in NEDLAC

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1 INTRODUCTION

The history of the South African labour movement has been one of a struggle to limit the power of both business and government to act autonomously. Since 1990 the labour movement has increasingly become involved in processes of multipartite policy formulation as it attempts to ensure that state policy does not compromise the interests of working people. The National Economic Development and Labour Council (NEDLAC) is the key statutory body which institutionalises this mode of policy-making.

This article is about labour's role in the processes of policy formulation that occur under the auspices of NEDLAC. Our specific concern is to assess the gains that labour has made from its participation in NEDLAC as well as to analyse the difficulties experienced by labour in its engagement with the NEDLAC process. The article is divided into five sections. Firstly we will discuss the formation of NEDLAC and its structure. The article will then go on to identify the aggregate gains that accrue to society as a whole because of NEDLAC, before proceeding to discuss the gains that labour has made from NEDLAC. The fourth section of the article analyses the difficulties experienced by labour in NEDLAC and the implications of these problems for their effective participation. The final section will draw some conclusions about labour's involvement in NEDLAC.

2 THE FORMATION OF NEDLAC

At the time of South Africa's transition to political democracy, not only did the South African trade union movement have a high degree of numerical strength but it was able to wield this power strategically to make significant inroads into the power of the apartheid state (Adler and Webster, 1995). By 1994 union density in South Africa stood at 49.83% (Macun, 1997). Whilst this union membership is dispersed across eight federations, 67% of membership is concentrated within three federations: COSATU, NACTU, and FEDSAL.¹ These three federations make up the labour grouping represented in NEDLAC.

1 Since the research was conducted FEDSAL amalgamated with two other union bodies to form a new federation – FEDUSA.

During the late 1980s and early 1990s COSATU's and NACTU's strategic use of power was to result in the restructuring and transformation of the National Manpower Commission [NMC] and the establishment of the National Economic Forum (NEF). The NMC and NEF would become the forerunners of NEDLAC.

The NMC was restructured from a "toothless advisory body" (Baskin, 1996: 30) into a tripartite negotiating body, which compelled the state to consult before changing labour legislation. The NEF resulted from conflict over the introduction of the new Value Added Tax system in 1991. The NEF represented an attempt to parallel the political negotiation process within CODESA by compelling the apartheid state to negotiate on economic restructuring and policy direction.

The changes in the NMC and the creation of the NEF were testimony to both the strength and strategic capabilities of the South African labour movement. However, labour's performance inside these institutions was by no means an unequivocal success. A number of labour analysts and labour negotiators have identified problems with the unions' engagement in these structures. (see for instance: Friedman and Shaw, forthcoming; Adler and Webster, 1995).

In the first instance, whilst unions were able to put issues onto the agenda, they lacked the technical capabilities to impact significantly on the outcomes of those negotiations. In addition there was a loss of internal union democracy and consequently negotiating positions were very rarely mandated, nor did they always reach the union's membership. The conclusion some analysts draw was that the NEF, in particular, did not deliver much in the way of significant outcomes. However, the primary concern of the NEF was to prevent unilateral restructuring by an illegitimate government and not to formulate new policies. As Christian Sellars of the Chemical Workers' Industrial Union argued, "The National Economic Forum did not accomplish much, but then its purpose was to block unilateral reform by the National Party, rather than to develop new policy". This was in sharp contrast to the central objective of NEDLAC which is actively to consider and to influence policy through consensual agreements on social and economic matters before they are tabled in parliament.

Notwithstanding this primary objective, Friedman and Shaw have argued that the process of blocking government restructuring within the NEF "inhibited the unions' attempt to pursue an alternative social policy agenda", thus reducing them to adopting a reactive role within tripartite institutions (*ibid*: 349).

The history of labour's engagement in tripartite structures is thus somewhat mixed. On the one hand, labour had the political power to prevent the unilateral restructuring of policy, yet on the other lacked the capacity and the internal communication structures fully to deal with engagement in these forums. This history is further complicated by the experience of tripartite structures as mechanisms for blocking government initiatives rather than actively shaping policy.

In February 1995 the NMC and the NEF were integrated into NEDLAC by Act of Parliament 35 of 1994. This statutory body both consolidated

and extended the powers of the NEF and NMC although it was substantially different from these institutions (Baskin, 1996: 30).

Perhaps self-evidently, the fact that NEDLAC is a statutory body means that it has substantially more power and stability than the tripartite consultative forums that existed before or which exist elsewhere in the world. The NEDLAC Act recognises four groups as being eligible for membership of NEDLAC. These are representatives of organised business (at present business is represented by Business South Africa (BSA) and the National African Federated Chambers of Commerce (NAFCOC)); representatives of organised labour comprising COSATU, FEDSAL, and NACTU; representatives of community and development organisations; and representatives of government.

The Act establishes the objectives of NEDLAC as well as delineating its structure. According to section 5(1) of the Act the Council shall –

“strive to promote the goals of economic growth, participation in economic decision-making and social equity;

seek to reach consensus and conclude agreements on matters pertaining to economic and social policy;

consider all proposed labour legislation relating to labour market policy before it is introduced in Parliament;

consider all significant changes to social and economic policy before it is implemented or introduced in Parliament;

encourage and promote the formulation of co-ordinated policy on social and economic matters.”

The provision of the Act for consultation on all proposed labour legislation and social and economic policy provides considerable formal space for labour to shape government policy as well as placing strong limits on the policy areas in which government has autonomy. As Adler and Webster point out, “although parliament is sovereign and NEDLAC is an advisory body, a potential consensus between the social partners would be difficult for parliamentarians to disregard” (Adler and Webster, 1996: 16).

However, the extent to which the space that the Act provides is realised is contingent on the power relations between the social partners and the ability of labour to contest the policy process within NEDLAC, thereby shaping the outcomes of the NEDLAC process.

The question that this article tries to answer is twofold: to what extent has labour managed to use that legislative space to win real gains for its membership, either through influencing the content of policy proposals and outcomes or through blocking undesirable policy proposals? Secondly, what are the reasons for its success or lack of it in using this space?

3 THE STRUCTURE OF NEDLAC

3.1 Constitutional structures

To achieve its objectives, the NEDLAC Act makes provision for three structures. The Executive Council is the most senior structure. It receives report-backs from the chambers and it concludes agreements which are

then taken through the parliamentary process. The Management Committee is in charge of co-ordinating the work of the chambers (NEDLAC, 1996: iii). The Chambers are the formal negotiating structures of NEDLAC.

There are a total of four chambers each dealing with a different policy area. The Trade and Industry Chamber deals with issues related to the "economic and social dimensions of trade, industrial, mining, agricultural and services policies and the associated institutions of delivery". The Development Chamber's area of focus is "all matters pertaining to development both urban and rural implementation strategies, financing of development programmes, campaigns to mobilise the nation behind the RDP, and associated institutions of delivery". The Labour Market Chamber deals with all issues "pertaining to the world of work and the associated institutions of delivery". Finally, the brief of the Public Finance and Monetary Policy Chamber is to reach agreement on all issues "pertaining to the framework within which financial, fiscal, monetary and exchange-rate policies are formulated: the co-ordination of fiscal and monetary policy, and related elements of macroeconomic policy; and the associated institutions of delivery" (NEDLAC 1996: 12-24).

As the Chambers are constitutional NEDLAC structures, they operate according to a set of formal procedures which include the taping of debate and the tabling and endorsement of minutes from previous meetings (interviews: Kettledas, Botha and Du Plessis). Adrian du Plessis, BSA negotiator in the Labour Market Chamber, notes that the formalism of the chambers sometimes constrains the process of negotiations:

"Especially in the chambers where you sit there with a tape recorder and there are minutes, people are going to argue about whether they said 'shall' or 'may'" (interview: Botha and Du Plessis).

Les Kettledas, Deputy Director-General of the Department of Labour, makes a similar point when he notes that "(i)n the chamber you go on record and people may not want to bind themselves" (interview: Kettledas). Thus the formal nature of chamber meetings means that people are, at times, reluctant to engage in hard negotiation lest they find themselves bound to a position that may have shifted between chamber meetings.

3.2 Extra-constitutional structures

In an attempt to "achieve the spirit of NEDLAC rather than the letter" a number of extra-constitutional bodies now exist within the NEDLAC process (interview: Botha and Du Plessis). The most senior of these bodies is the Committee of Principals, which was established during negotiations over the new Labour Relations Act to explore ways to further the negotiation process (interview: Kettledas). These meetings are attended by the overall conveners of the social partners as well as by the senior negotiators in any particular issue. As this is not a constitutional NEDLAC structure, discussions are informal and are aimed at facilitating the process of negotiation rather than at concluding agreements.

The second type of extra-constitutional structures are the conveners meetings, which take place both at a management committee level and at a chamber level (interviews: Wolmarans, Bethlehem and Lekwane). These

meetings are attended by the conveners of each of the social partners in the chamber or management committee. Their function is to set the agenda for the chamber by deciding which issues should be placed on the agenda. In addition they prioritise issues for discussion within the particular structure that they convene (interview: Lekwane). In short, they give a strategic focus to the workload that faces NEDLAC and each of the individual chambers.

The final type of extra-constitutional structures are the working groups or negotiations committees. These structures are set up by the social partners in the chamber and report to the chamber. Aubrey Lekwane, convener of the Development Chamber, notes that "(m)ost of the chamber's work would be dealt with in sub-committees. The chamber acts as a ratifying body for the sub-committees" (interview: Lekwane). Kettledas elaborates on the role on the negotiations committees:

"It has always been felt that you cannot negotiate in a full chamber, so we set up sub-committees which then allow the partners to bring in specific expertise on issues. You must distinguish between the negotiation committees and the chamber. The negotiation committee is about a process of negotiation, it allows for a process of exploring settlement" (interview: Kettledas).

Thus the working groups fulfill a dual purpose. In the first instance they allow the social partners the opportunity to bring in expertise on a specific issue, competencies that their chamber delegates may not have. Secondly, they allow negotiators to explore various options for settlement without the concern of being bound to a position that was a tentative offer aimed at facilitating the reaching of agreement and not a final offer.

Whilst the extra-constitutional structures represent an innovative response to the challenges of multi-partite policy formulation, they also hold the potential for undermining the structure of NEDLAC as agreements get shaped in the crevices of the organisation and the constitutional structures become no more than rubber-stamps for less than transparent negotiations.

Notwithstanding the dangers that the extra-constitutional structures hold, they are indicative of a vigorous and growing institution. What is necessary is that growth be channeled and consolidated so that the lines of authority and responsibility between the different structures are clear. This multiplicity of structures creates the potential for a multi-layered negotiation process in which an agreement is being shaped at numerous levels within NEDLAC. In turn this means that labour's internal mechanisms need to be functioning well to ensure that all its negotiators are fully appraised of the state of negotiations in various NEDLAC structures.

3.3 Placing issues on the agenda

NEDLAC's agenda is drawn principally from the legislative programme of government although, as Sellars points out, there are some important exceptions to this. In order for an issue to pass through all the structures, it first needs to be tabled for discussion by one of the social partners (interview: Sellars). Issues cannot, as Jayendra Naidoo points out, come from nowhere (interview: Naidoo).

When NEDLAC was created, an issue of concern could be tabled by any of the social partners at any level within the Council (interview: Bethlehem). However, this approach resulted in some of the chambers becoming reactive to debates in the public realm instead of focusing on meeting goals established by a strategic agenda. This was particularly the case in the Public Finance and Monetary Policy Chamber during 1996, where discussions were largely driven by debates in the press or the tabling of items from the Finance Ministry (interview: Wolmarans). Whilst this was advantageous for the labour movement in terms of obtaining access to information, many of these issues were not up for negotiation so that very few agreements were reached in that chamber.

The management committee and the conveners' meetings of each chamber now play a greater role in determining the agenda for the chamber as well as prioritising issues on that agenda. A central concern behind this strategic focusing of the agenda is to ensure that the work of the chambers becomes more results-oriented and therefore more able to influence the policy process.

3.4 Labour's representation in NEDLAC

As noted above, the NEDLAC Labour Caucus is comprised of three federations: COSATU; FEDSAL and NACTU. Each of the federations has representatives on all of NEDLAC's constitutional structures, the exception being the convener's meetings that are attended by the convener of the labour caucus who in all cases is a COSATU representative (by virtue of the federation's greater size). The number of representatives that each federation has in each NEDLAC structure is determined by a 4:1:1 ratio, in proportion to the respective organisation's membership.

In dealing with the demands of NEDLAC, NACTU and FEDSAL have internal NEDLAC-specific structures that develop the positions on issues related to NEDLAC. NACTU has a NEDLAC Caucus that meets on a fortnightly basis and together with the central committee forms the mandating structure for NACTU in NEDLAC (interview: Ngcukana). FEDSAL has a total of five NEDLAC Caucus meetings a year, which together with the FEDSAL executive develop the organisation's mandates for NEDLAC (interview: Van der Merwe). COSATU does not have a formal structure that is dedicated to the consideration of solely NEDLAC issues. Instead, its Executive Committee acts as the mandating structure for COSATU's position in the labour caucus (interview: Nhlapo).

The positions of the three federations then have to be amalgamated into the position of the NEDLAC Labour Caucus. This is done through three structures: a biannual Negotiation School; a quarterly Labour Caucus meeting and Labour Caucus meetings before each NEDLAC chamber meeting. The first Negotiation School was held in early 1995 to discuss the strategies which labour would adopt and the objectives which labour hoped to meet in NEDLAC. The school developed a detailed programme of caucuses and seminars to build capacity and to ensure that representatives were properly coordinated and accountable (interview: Sellars). The quarterly Labour Caucus meeting develops mandates for labour's NEDLAC

negotiators. During 1996 a NEDLAC Labour Co-ordinating Office was established to co-ordinate report backs from negotiators as well as to ensure negotiators' presence at NEDLAC meetings. The successes and weaknesses of these structures will be discussed below.

4 LABOUR'S PARTICIPATION IN NEDLAC

In analysing labour's role in NEDLAC we need to differentiate between the outcomes of the institution and the process through which those outcomes are realised. The former provides us with an indication of the extent to which labour has realised its goals in NEDLAC. An assessment of the latter provides us with an understanding of the extent to which outcomes positive to labour will be sustained.

4.1 The outcomes

4.1.1 *Expanding influence*

The NEDLAC Act provides broad ranging rights of consultation on proposed government legislation and policy and in so doing provides labour with considerable access to the ways in which policy is formulated. As such one of the most clearly identifiable outcomes of NEDLAC is access for labour into the policy-making process.

As Cunningham Ngcukana, General Secretary of NACTU and labour representative on the NEDLAC Management Committee, notes, "NEDLAC is a line to put an alternative vision into government" (interview: Ngcukana). Lucky Monnokgotla, General Secretary of BIFAWU and labour representative on the Public Finance and Monetary Chamber, makes a similar point, "NEDLAC is good for labour in the sense that we are able to participate. We can have our views heard around issues that affect our class" (interview: Monnokgotla).

Of particular importance is the fact that this is a right entrenched in legislation, therefore labour already has a guaranteed voice in the policy making process. As such labour need only mobilise in those instances in which negotiations deadlock, as it no longer has to expend considerable resources on getting a place at the table. In some instances, labour has used NEDLAC to put in place structures and processes that expand their area of influence over government policy and actions. The most significant of these is the Technical Sectoral Liaison Committee which was established as a result of labour's insistence that its views be taken into account in the conclusion of trade agreements. This committee provides a forum in which government officials consult the social partners on trade negotiations, thereby providing labour the opportunity to shape trade negotiations.

Other victories have included gaining representation on the government contingents to UNCTAD IX and the ministerial meeting of the World Trade Organisation (interview: Ramburuth). Thus NEDLAC provides labour with the legislative right to influence the policy process and therefore the sorts of policy that government adopts. The scope of this potential is captured

by Jayendra Naidoo, executive director of NEDLAC, when he says that "NEDLAC has given labour a far bigger bite than any other system (in the world). From a union point of view it is a much desired outcome".

4.1.2 New legislation

The labour movement has managed to use the space provided by NEDLAC to intervene successfully in the area of labour legislation. This has resulted in the Labour Market Chamber being the site of slow, painstaking, but ultimately conclusive negotiations. Obviously a key victory for labour in this chamber was the new Labour Relations Act. Aspects of the Act which were the specific result of labour's intervention were the entrenchment of organisational rights, the facilitation of participation in industry restructuring and the right to the disclosure of information (interview: Kettleidas).

4.1.3 Power on the streets

The LRA negotiations constitute a good example of how labour has both utilised the space within NEDLAC to influence the policy process as well as employed power to ensure that its interests are represented. Labour has maintained its capacity to mobilise to break deadlocks on issues of importance to its membership. This dual process of engagement inside the institution and mobilisation on the streets is a continuation of COSATU's strategic involvement in struggle over the last ten years. The ability of the movement to translate mass power into an institutional voice both on the factory floor and in policy arena has been the hallmark of the South African labour movement, and continues to be of importance in ensuring that labour's interests are clearly represented in NEDLAC outcomes. Jayendra Naidoo noted that "labour has successfully retained the right of action" (interview: Naidoo).

4.1.4 Shaping international relations

The labour caucus also succeeded in putting human rights on South Africa's trade agenda, in the form of a side-letter on human rights. Whilst labour had to retreat from its initial position of a strict link between market access and a country's ratification of the core ILO conventions, it nonetheless compelled the government to concede a side-letter, which requires those countries with which South Africa has trade agreements to sign a non-binding agreement to respect human rights and to work towards the ratification of core ILO conventions (Gostner, 1997). The social clause framework agreement is also a symbolic victory as it has shifted the dominant vision of trade from one in which trade is represented as a purely economic phenomenon to one in which trade is seen to have a social dimension (*ibid*). In so doing, the social clause process has enabled labour to challenge the ideological terrain in which the policy process is embedded, thereby opening space for the insertion of a greater social orientation into the policy process.

The partial victory of the social clause also set other processes in motion within NEDLAC, that furthered labour's agenda. Because labour was able

to compel the government to sign the Social Clause Framework Agreement, the government has had to embark on the ratification of core ILO conventions (Rosenthal and Gostner, 1996). Thus, through NEDLAC, labour has not only been able to win concessions from government to improve the domestic context in which it operates, but it has also been able to set in place a number of mechanisms and processes through which they can attempt to influence the policies adopted by international bodies.

4.1.5 *Shaping government policy*

Labour has also managed to win a commitment from government that the reduction of the budget deficit will not take place at the expense of social expenditure (interview: Monnokgotla). This commitment was ratified in the 1997-1998 Budget, where social spending as a percentage of GDP remained constant, whilst total social spending increased by R8 billion (Business Day: 8). Joshua Wolmarans, convener of the NEDLAC Public Finance and Monetary Chamber, acknowledged labour's ability to shape policy:

"I can definitely say that if they (labour) hadn't been there the discussions would have gone in a very different direction. Government and business are often just concerned with the pure economic issues, whereas labour has a social focus. So labour definitely brings more of a social dimension to the chamber's discussions" (interview: Wolmarans).

The above are just a few of the legislative and policy gains that labour has made through NEDLAC. However, what this review of some of labour's gains through NEDLAC has demonstrated are the ways in which labour has been able optimally to utilise its existing power base and history of mobilisation in combination with the rights that are entrenched through the NEDLAC Act to further an agenda that is favourable to their interests.

4.2 Problems and challenges for labour

4.2.1 *If at first you don't succeed*

Labour has also successfully used NEDLAC as a way of getting "a second bite at the cherry". Perhaps the clearest example of this are the negotiations surrounding the Compensation for Occupational Injury and Diseases Act (COIDA). COIDA was initially negotiated through the multipartite Compensation Board and then was passed on to NEDLAC for what was meant to be a formal process of ratification (confidential interviews with government and labour sources).

However, labour felt that its interests had not been adequately represented in the Compensation Board outcome and used NEDLAC as a forum for renegotiating aspects of COIDA.

Yet, whilst this strategy has been a relatively successful one for labour, it does pose questions about the status of other stakeholder bodies *vis a vis* NEDLAC. Using NEDLAC in this fashion holds the possibility of undermining the work of other forums as well as creating a duplication of activities and a slowing down of the decision making process. In addition it establishes a precedent for an opportunistic approach to influencing the

policy process in which labour avails itself of any opportunity to “renegotiate” a prior agreement. Whilst such an approach does provide “a second bite at the cherry”, labour runs the risk of being criticised for slowing down government’s delivery and undermining the integrity of agreements forged in tripartite fora. As such it would seem imperative that the nature of the relationship between different tripartite structures be clarified. It would be ideal if the substance of the negotiations could take place in what Jayendra Naidoo calls “preliminary bases” so that final agreement in NEDLAC becomes a formality (interview: Naidoo).

4.2.2 *Labour and the alliance*

Despite the successes of NEDLAC COSATU has, on occasion, chosen to pursue certain issues through its alliance with the African National Congress and South African Communist Party. This decision has been a tactical move generally with the intention of trying to minimise business’ influence over the negotiation process. Vusi Nhlapo elaborates:

“One very obvious example was the restructuring of state assets. In this instance we felt that business should not be involved as they would want to buy up the sold-off state assets. It is those issues where labour feels that if business had an equal say we will be perpetuating problems of the apartheid era – the underdevelopment of workers, structural unemployment – forever. So if business would gain an advantage that they wouldn’t otherwise have, those issues can’t go to NEDLAC. NEDLAC and the alliance are not mutually exclusive. Labour knows very well what to take to NEDLAC and what to take to the alliance” (interview: Nhlapo).

Thus the Alliance, for COSATU, does not replace NEDLAC; instead the two operate in tandem, on occasion giving labour a double opportunity to shape the outcome of policy. Also the use of the Alliance needs to be balanced with the fact that it does not offer the same degree of structured and formally guaranteed influence that NEDLAC does. In particular, it is not possible to make detailed agreements at the Alliance level. Rather it is a platform for acceptance or adoption of broad principle. More importantly, the Alliance is a more complicated forum than NEDLAC from a labour point of view because of the myriad of different interests represented there (interview: Naidoo). The Alliance is a supplementary process to NEDLAC, but because of its loosely structured nature and, more importantly, the fact that it does not give labour any legislatively guaranteed rights, it is unlikely to replace NEDLAC as the primary focus of struggle over policy.

Notwithstanding the benefits that using the Alliance provides to COSATU, some commentators have remarked that a preference for the “alliance route” is reflective of a lack of commitment from labour leadership to NEDLAC. Such a perception is strengthened by the fact in September / October 1997, when the institution was under attack from critics, there was not clear public support for NEDLAC from labour. That said, at the second annual NEDLAC Summit John Gomomo, President of COSATU, made the following comment, “We remain committed to NEDLAC and pledge to defend the existence of the institution”.

Whilst the possibility of lobbying its alliance partners does strengthen COSATU's position it also serves to diminish the status of NEDLAC. It would seem that the federation needs to evaluate the relative merits of these two routes and decide to back one or the other. Vacillating between the two serves both to stretch resources and to dissipate strategic focus.

4.2.3 "Non-negotiables"

Although labour has managed to exert influence within NEDLAC and thus shape a number of the policies and laws adopted by government, labour has had progressively less influence over the shaping of macro-economic policy. This is perturbing, given the centrality of this area for future legislative and policy developments. In particular, the Growth, Employment and Redistribution (GEAR) strategy articulates a doctrine of economic rationalism in a global context which considerably constrains the policy options which are seen as feasible.

As one respondent put it, "GEAR is now the orienting framework for NEDLAC, for the country, for all of us" (confidential interview: NEDLAC source). The effect of the non-negotiable nature of the GEAR policy has been most stark in the Public Finance and Monetary Policy Chamber. One participant in the chamber argued that:

"The whole GEAR thing meant that the chamber had to redefine what it was doing as it couldn't talk about the big issue ... this has resulted in a strange whittling away of issues to try and reach something that we could discuss constructively within the chamber."

Thus, while labour has been generally able to exercise a fair degree of influence in NEDLAC, the fact that they have been unable to contest GEAR may have negative implications for the extent to which they are able to impact on policy in the future.

That said, NEDLAC is a product of labour's struggle to limit government's power unilaterally to introduce policy. Accordingly it will remain an important site in which to contest the implementation of some of the more conservative elements of GEAR. As Vusi Nhlapo put it, "NEDLAC plays a critical role in ensuring that government does not have unfettered power, so it is a necessary thing" (interview: Nhlapo).

4.2.4 *Lost opportunities*

The above discussion has established that labour has made considerable gains through NEDLAC both in terms of a scorecard and in terms of processes. Labour has been able to make a significant impact on a number of key legislative mechanisms and policy developments as well as to increase their access to the policy making process. However these successes have been compromised by a variety of problems which have limited labour's ability to effectively use all the space that it has won for itself. Accordingly, a number of actors in NEDLAC have argued that labour has been unable to use NEDLAC optimally. One trade unionist close to labour's caucus in NEDLAC asserted that:

"these are real opportunities; the fact that labour isn't taking them up is a different question. Government is offering us (labour) a place at the table which

we aren't taking up. We've been knocking at the door for all these years, now it is open and there is a feeling that we can't go through" (cited in Gostner, 1997: 134).

It is to identifying those problems and the ways in which they have affected labour's participation in NEDLAC that the discussion now turns.

By virtue of its broad focus – according to the Act “all significant changes to economic and social policy” – NEDLAC poses unique challenges for each of the social partners. As Les Kettleidas notes, “there are capacity problems in business, there are capacity problems in government, there are capacity problems in labour” (interview: Kettleidas). The problems of capacity relate both to the amount of meetings generated by the NEDLAC process as well as the complexity of issues, many of which the labour movement had not needed to engage with until the formation of NEDLAC.

Martin Nicol, formerly labour's representative on the Trade and Industry Chamber, estimated that NEDLAC took up approximately 20% of his time. Likewise, Dannhauser van der Merwe, General Secretary of FEDSAL and labour representative on the Management Committee, estimated that if he attended all NEDLAC-related meetings he would have to attend 48 meetings a year (interview: Van der Merwe). This workload is then added onto the unionists' normal responsibilities, with the result that they are often unable to attend all NEDLAC-related meetings. These time commitments don't affect labour only. Business South Africa argues that their representatives spend up to 40% of their time in NEDLAC work and added that this was all voluntary (interview: Botha and Du Plessis).

Perhaps the most striking example of the implications of labour's inability to attend all meetings was around UNCTAD IX in April 1996. As noted above, labour had managed to obtain access to the conference by inclusion in government's team. However, labour leadership was simultaneously involved in organising a stayaway to protest the attempt by business to include the right to lockout in the Constitution. Despite the fact that labour had access to UNCTAD IX to lobby developing countries to support their position on the social clause, they failed to attend any of the meetings! (interview: Ramburuth).

Labour has thus been able to use NEDLAC to increase the space available to it to influence policy, however it has not always had sufficient capacity to use the opportunities that it has created. As a result labour has not always been able to influence the formulation of policy to the extent that is possible.

The second area of the capacity problem relates to the technical expertise and negotiating ability necessary to deal with the issues that are on NEDLAC's agenda. Although, as discussed above, labour has added a social dimension to the discussions in the Public Finance and Monetary Policy Chamber, they have been unable to make significant inroads (interviews: Labour and Nedlac sources). This is due both to the relative distance of these issues from the usual concerns of labour as well the lack of skills within labour to deal with these issues. One of our respondents contended that “on tax COSATU has been making a lot of noise for some time, but at the end of the day they haven't had the capacity to deliver a

clear package" (confidential interview: Labour source). This observation is affirmed by the comments of Monnokgotla, one of labour's representatives in the Public Finance and Monetary Chamber:

"On income tax and the restructuring of tax, initially labour didn't have a very coherent policy position on tax. The Social Equity document is one attempt to address that. But we have lost battles, for instance there is now a tax on pension benefits which we were unable to stop" (interview: Monnakgotla).

Thus labour's lack of capacity and skills has, in some instances, limited the impact it has been able to have on some of the policies that have passed through NEDLAC. However, some of labour's representatives have improved their knowledge of the issues over time and are thus able to engage constructively in debates and shape the outcome of the policy process. Whilst this is an important step forward, the knowledge base is restricted to a few key individuals and, should they leave, labour would suffer a severe blow to its capacity to engage in the policy process. As a confidential respondent linked to the NEDLAC Labour Caucus argues, "there is a failure to build the capacity of negotiators so the knowledge, the information remains very secure in that small group of people".

4.2.5 Government in the driving seat?

This combination of too many meetings to attend with not enough skills to deal with all the issues has resulted in labour "being more reactive than proactive" (interview: Monnokgotla). Where labour has put policy proposals on the table – a few noteworthy instances include the social clause, the Labour Relations Act and the social plan – they have managed to influence the outcome of the process substantially.

To a large extent, however, it is government's legislative programme that drives the NEDLAC agenda. The consequence is that government, notwithstanding the provisions of the Act, has considerable power over what comes to NEDLAC. This is witnessed in the Labour Market Chamber where "the Department of Labour's five-year plan drives the work programme of the chamber" (confidential interview: Business source). The Public Finance and Monetary Policy Chamber experiences similar constraints, "Government does not directly define what is discussed in the chamber, what it does is define what can't be discussed in the chamber" (confidential interview).

Although it is largely government's agenda driving NEDLAC, labour has developed an independent approach to the formulation of policy which is articulated in the Labour Caucus's Social Equity document. Yet despite this document the experience of NEDLAC would seem to suggest that, with the exception of a few cases, the policy framework is largely government's while labour has had influence over the details.

Because government is largely setting the agenda, the potential for labour to define an alternative approach to policy making has been significantly constrained. For this reason it is critical that labour develop the capacity to take a more proactive approach in contesting the policy arena, for in doing so they will be able to shape the framework within which discussions occur and therefore increase the potential for the adoption of policies

that challenge dominant government thinking. The formation in 1996 of the NEDLAC Labour Co-ordinating Office, and its subsequent strengthening by the appointment of an experienced unionist from SACTWU, holds great promise for providing a nucleus around which a proactive labour caucus can grow.

4.2.6 Dysfunctional structures

The lack of person power has also had a significant impact on the extent to which the three federations are able to caucus and get mandates. Whilst, as discussed above, there are very clear structures for mandating, it is not at all clear that they are operating effectively. One respondent argued that "structures are dysfunctional, no-one can say that there is even a semblance of functionality" (confidential interview: Labour source). The failure of structures to function effectively is also identified by Dannhauser van der Merwe, who says:

"We are meant to meet for a labour caucus before each chamber meeting and each Management Committee meeting, but in reality we only managed between 10% and 20% of the time for the Chambers and between 30% and 40% for the Management Committee" (interview: Van der Merwe).

Dysfunctional structures pose a serious threat to labour's engagement in NEDLAC. This is especially true in the context of a plethora of constitutional and extra-constitutional structures within NEDLAC, all of which impact on the negotiations process. It was noted above that if labour did not have clear and functional structures, the multiplicity of structures could undermine the extent to which the union's negotiating position is reflective of a broad consensus; and, instead, the NEDLAC Labour Caucus position runs the risk of being reduced to one or two people in a side-meeting. Thus the apparent lack of functional structures results in situations in which even the labour representatives within NEDLAC are not sure of exactly how and where deals get brokered. Martin Nicol, labour's negotiator in the Trade and Industry Chamber, noted this problem in relation to the social clause process:

"Look, when you go into negotiations you expect to go backwards, the problem is that we don't know how it happened" (cited in Gostner 1997: 138).

4.2.7 Loose mandates but tight leadership

A second consequence of the failure of structures to operate consistently is that "in practice our (labour's) mandate is very loose, mainly because the NEDLAC Labour Caucus doesn't meet more often" (confidential interview: Labour source). Another said: "mandating is often a process that is controlled by a very few individuals, about three to five depending on the issue" (confidential interview: Labour source). Tony Ehrenreich of NUMSA makes a similar point:

"Most of the time as labour we hold a caucus meeting before each NEDLAC meeting and that is informed by the principles underpinning the Social Equity document. (But) because there are so many things on the go at NEDLAC, there is not enough time to always go back for a mandate, so you operate within broad parameters" (cited in Gostner, 1997: 137).

However, the problem of mandating does not only exist between the federations, but also exists within each federation, as the links between the federation and each of the affiliates are not clear. As Enoch Godongwana, General Secretary of NUMSA put it:

"Most of these decisions take place at the level of senior negotiators and then it goes to COSATU EXCO (Executive Committee) to be mandated. The capacity of the affiliates to absorb all that is churned out of NEDLAC is very limited. I don't want to try and give this a semblance of democracy, most of the discussion is at an executive level. This is not an intentional thing, but it has to be that way in order to be expedient" (cited in Gostner, 1997: 138-139).

Where there are no specific mandates, labour can always fall back on congress resolutions, such as occurred during the employment standards negotiations. Operating within broad policy directives agreed at union congresses is not problematic in and of itself as these do constitute a mandated position. However, NEDLAC negotiations are often in areas that are not addressed at congresses and as such there needs to be regular meetings of the structures that provide for the formulation of mandates and policy positions within NEDLAC.

The fact that mandating does not seem to happen in any consistent or coherent way is borne out by the experience of negotiations within NEDLAC, where agreements reached at one level are overturned by leadership at the level of the management committee (confidential interview: Labour source). In some instances, such as the social clause process, it would seem as if the decision to reject decisions rests in the hands of the labour caucus convenor² (Gostner, 1997). As one labour negotiator noted in a confidential interview:

"Look you need to understand something about NEDLAC. The leadership lets us play in the sandpit and then they arrive in fire engines. They do what they want and ride into the sunset."

The role of labour leadership in giving strategic direction to the negotiations process as well as ensuring that the outcome of one process fits into labour's overall agenda is a critical one and should not be dismissed. However, this role should occur through a process of continual mandating and evaluation, not as a crisis intervention at the eleventh hour which serves to undermine labour's front-line negotiators as well as to slow down the negotiation process.

The lack of consultation and mandating between the different levels in NEDLAC and the affiliates has two implications. In the first instance, labour's negotiators are often compelled to negotiate in a situation in which they are unsure of what the official mandated position is on the particular issue that they are negotiating. This insecurity can contribute to undermining the negotiating team as they may not be sure whether or not they have their organisation's backing on a particular issue. In this context, the ability of labour's representatives to negotiate with confidence

² We could not confirm this as, despite repeated attempts, we were unable to obtain an interview with the convenor of the Labour Caucus.

becomes contingent on their own standing and power within labour rather than following from the power of a mandated collective decision.

This problem hasn't affected the functioning of all chambers, as some representatives are of a relatively senior standing within the labour movement, but the operation of some chambers has been slowed down as negotiators do not have the organisational power to access senior leadership for approval (interview: Naidoo). This results in labour's participation in NEDLAC resting on the veto power of a few senior leaders which undermines the essence of the democratic labour movement: that of collective and mandated positions.

The criticism of the form that labour leadership's interventions take is not limited to the labour caucus, but is also expressed by the other constituencies within NEDLAC. As one government representative stressed, "there is nothing wrong with leadership intervention especially if it is creative, innovative and has vision: (the problem) is the manner or the process of that intervention" (confidential interview: Government source). A consequence of this seemingly *ad hoc* process of intervention is the perception from other social partners that there is an "A-team" and a "B-team" within labour. This perception is then translated into a desire to deal only with the "decision-makers" within labour, which undoubtedly militates against the image of labour as a collective agent.

Thus, while the role of leadership is critical, it is essential that their interventions take place in a way that is structured and therefore accountable to a broader section of the labour movement. Generally speaking – as the recent history of the South African labour movement demonstrates – organisational structures and processes are longer-lasting than the presence of key leaders.

Secondly, lack of communication and consultation within labour slows down the rate at which NEDLAC can reach decisions, thereby making labour vulnerable to criticisms of preventing government from delivering reforms to the workplace. A response from a confidential labour source captures this situation:

"The fact that there is not clear communication between labour in the different structures within NEDLAC complicates issues. The result is that you find that an issue has been discussed comprehensively in the chamber, but when it goes to higher level structures you have to sell it from the beginning because senior level leadership knows nothing about it. So the lack of communication really slows down the decision making process."

4.2.8 Difficulties of mobilisation

A substantial part of labour's influence within the NEDLAC process is derived not only from the rights granted to it in the NEDLAC Act, but from its ability to mobilise members in support of a particular issue. Whilst it may be easy to mobilise members around the LRA or a 40-hour working week, both of which are deeply entrenched in the history of South African workers' struggle, the reality is that a considerable proportion of issues negotiated in NEDLAC are not of that nature. Tony Ehrenreich, labour's

representative in the Trade and Industry Chamber, captures this aspect of the NEDLAC process:

"The LRA has a history in South Africa, so in workers minds it is seen as an important issue, there were many historic struggles fought over the LRA and that is in people's minds. When you choose an issue to fight it has to be winnable and people are not going to go onto the streets for a social clause" (Gostner, 1997: 139-140).

Undoubtedly, issues like the LRA and employment standards are close to the shopfloor and to workers' hearts and are therefore easy to mobilise around. However, these issues have also been the subject of a number of well orchestrated campaigns that have helped to place them high on workers' agendas. If information about NEDLAC negotiations is not being dispersed to union membership or even to union officials not directly involved in NEDLAC, it is difficult to imagine that any of these new issues will become sites of struggle to expand labour's rights through NEDLAC.

The present lack of information dispersal in the federations was captured by one respondent who exclaimed, "You don't have a filter at the top of COSATU, you have a f----- plug" (confidential interview: Labour source). Another confidential source made the same point somewhat more subtly, "at the moment an issue gets plugged into COSATU and it gets stuck. That is the biggest capacity problem. You need mechanisms that facilitate participation". Although these quotations refer directly to COSATU, the other federations are also characterised by a failure to disperse information within their structures. That said, NEDLAC is an extremely new institution and labour is beginning to show signs of adapting to the institution, as increasingly NEDLAC is a subject for discussion on the agendas of the executive committees of some of the affiliates.

This failure to disperse information creates the potential for a situation in which labour will have progressively less influence over an increasing range of issues, as the issues tabled at NEDLAC become increasingly far from the power-base of the unions – the rank-and-file membership. Campaigns are not simply the spontaneous outpouring of workers' objective interests but are events requiring a considerable amount of information dispersal and mobilisation. If labour is to maintain an influence over the policy process within NEDLAC it needs to address this problem.

5 CONCLUSIONS AND RECOMMENDATIONS

This article has explored the implications of the legislative rights, articulated through NEDLAC, that labour has won as a consequence of its struggle to limit the state's control over policy-making. In addition we have explored the ways in which labour has used these rights within the context of the challenges posed by its engagement in a complex and ambitious institution.

Labour's success in obtaining the legislated right that all proposed changes to labour legislation and economic and social policy have to be negotiated through NEDLAC has ensured that their role in policy-making is firmly entrenched. The NEDLAC Labour Caucus has managed to successfully use those rights, both to significantly influence policy outcomes and the

policy process as well as to stall government departments in their functioning where the interests of labour were being undermined, thereby compelling government to make some sort of concession. As Jayendra Naidoo outlined, "Labour has already got a lot out of NEDLAC, such as the LRA, the details of changes to regulations, institutions and other minor actors, the ILO conventions, access to WTO, the Workplace Challenge . . . the scale is a million times more than that which was achieved before" (interview: Naidoo).

Notwithstanding labour's gains, our investigation has revealed a number of weaknesses in the nature of labour's engagement in NEDLAC which raise a question mark over the efficacy of labour's involvement in negotiated policy making. The question, put simply, is whether these weaknesses are due to the ambivalence which labour has about this new institutions, and indeed about the new government, or whether they have to do purely with capacity and leadership problems associated with a union movement that is struggling to develop the competencies necessary to engage with a wide range of technical issues. This is not a question which we have managed to answer conclusively through our research. That said, our interviews revealed a broad support for NEDLAC within labour. As such it may be possible to conclude that the problems facing labour have more to do with coming to grips with the complexity and scope of the demands of NEDLAC than an antagonism to or disinterest in the institution.

However, labour has yet to develop a clear strategy of how to use NEDLAC, what issues to bring to the table, what policy directions and strategic parameters must be agreed to up front, and which battles should be fought and why. The capacity and leadership problems are reflected in the host of problems identified in this article, including time constraints, skill shortages, and dysfunctional structures. There is no doubt, however, that if labour fails to develop a strategic response to and programme for its involvement in NEDLAC, then the capacity and leadership problems will simply grow. At present the failure to build up a team, appoint dedicated officials to NEDLAC and address capacity issues, would seem to predict the possibility of labour having an increasingly tenuous hold on the policy process.

An unintended consequence of the lack of functioning structures is that information about NEDLAC negotiations is not forthcoming, which effectively stalls the mobilisation of campaigns to put pressure on government and business within NEDLAC or to expand the rights won through NEDLAC. Clearly, not all issues are "strikingable", but the effective dispersal of information may form the basis for a creative campaign. For instance, consumer boycotts have a long and successful history in South Africa. In addition they have been used successfully by northern consumers to put pressure on multi-national companies to respect labour rights in their foreign subsidiaries. A well-organised consumer boycott of goods manufactured in countries that fail to respect labour rights would form a strong support of labour's position in the Social Clause Framework Agreement.

The lack of functioning structures also raises concerns about the extent to which labour's engagement can be said to be democratic and broadly

representative of the labour movement. This has raised the very serious possibility of the emergence of a small group of individuals who control labour's engagement in NEDLAC, instead of decision-making power being the responsibility of at least all those of the elected leadership and senior officials of those unions engaged in NEDLAC via the three federations. However, the formal framework of structures exists, so all that is required is that structures be used in a regular and consistent manner. This would ensure that labour's negotiators are aware of the official position and that position is broadly reflective of labour's interests. In addition, it would enable a wider range of activists to shape labour's engagement in NEDLAC, thereby providing a larger pool of knowledge, skills and expertise for the negotiators to draw on.

It is true that labour has made significant inroads into key areas of labour market and trade and industry policy, making substantial gains for their membership. However, the *modus operandi* is generally one of reaction. Accordingly it is largely government's frame of reference that drives the NEDLAC process as well as setting the limits on what is possible. In certain instances labour has been able to make significant gains within that framework; however, it is not so clearly advancing a labour-friendly approach to the formulation of policy.

This is in part due to the approach of government to drafting policy in isolation from the social partners and then tabling it at NEDLAC as a *fait accompli*. Government's approach to policy formulation has also meant that NEDLAC is drawn into the policy process after a considerable amount of development has taken place. This creates a situation in which considerable time is spent in debating the policy basics once it gets to NEDLAC, in turn slowing down the process of implementation. If government were to develop a more consultative procedure for developing policy, it would allow the social partners the space to shape the framework within which policy is formulated as well as facilitate the process of consensus seeking. This may mean that NEDLAC becomes a site of formulating briefs for the development of policy rather than debating the final product. This may be a demand that the labour movement may wish to consider raising within NEDLAC.

The credibility and effectiveness of institutions such as NEDLAC will be a product of stakeholder ownership of the outcomes. The first task must surely be to challenge and debate the "big picture issues". Here the presentation of GEAR by government as a non-negotiable seriously undermines the principles and vision of NEDLAC. If the parties (and this includes government) are serious about seeking consensus in economic and social management, then the very essence of NEDLAC, both in principle and in legislation, that all is negotiable needs to be affirmed.

If labour is to optimise its utilisation of NEDLAC, it is essential that it devote time and resources to the development both of a comprehensive vision for South African society as well as the revival of structures to drive and struggle for that vision, both within NEDLAC and on the streets. Without such a strategic focus for NEDLAC as a whole and for the various chambers, labour will be relegated to a role of tinkering with government's

legislative programme or to arguing over the details. As one of our confidential respondents noted:

“Labour can’t be careless: it must use NEDLAC strategically. No other labour movement comes close to the influence labour can wield though NEDLAC, but if you use it badly it will swallow you up.”

The agenda for labour, then, is to develop the strategic focus to use effectively the space it has won through NEDLAC. If it fails to do so, the problems of capacity and of leadership will not be addressed and labour will find itself reacting to government proposals and policy rather than significantly shaping and influencing policy directions of the new government.

GLOSSARY OF TERMS

BIFAWU	Banking Insurance Finance and Assurance Workers' Union
BSA	Business South Africa
CODESA	Convention for a Democratic South Africa
COIDA	Compensation for Occupational Injury and Diseases Act
COSATU	Congress of South African Trade Unions
EXCO	Executive Committee
FEDSAL	Federation of South African Labour Unions
FEDUSA	Federation of Unions of South Africa
GDP	Gross Domestic Product
GEAR	Growth Employment and Redistribution
ILO	International Labour Organisation
LRA	Labour Relations Act
NACTU	National Council of Trade Unions
NAFCOC	National African Federated Chambers of Commerce
NEDLAC	National Economic Development and Labour Council
NEF	National Economic Forum
NMC	National Manpower Commission
NUMSA	National Union of Metal Workers of South Africa
RDP	Reconstruction and Development Programme
SACTWU	South African Clothing and Textile Workers' Union
WTO	World Trade Organisation

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