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THE SUPERIOR COURTS BILL [B7-2011] AND THE CONSTITUTION SEVENTEENTH AMENDMENT [B6-2011]

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**SUBMISSION BY BUSINESS UNITY SOUTH AFRICA (BUSA) TO THE
 PORTFOLIO COMMITTEE ON JUSTICE AND CONSTITUTIONAL
 DEVELOPMENT, PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA**

22 JULY 2011

1. BACKGROUND

BUSA is a confederation of business organisations including chambers of commerce and industry, professional associations, corporate associations and unisectoral organisations. It represents both big and small business across sectors on macro-economic and high-level issues that affect it at the national and international levels. BUSA's function is to ensure that business plays a constructive role in the country's economic growth, development and transformation and to create an environment in which businesses of all sizes and in all sectors can thrive, expand and be competitive.

As the apex business organisation in South Africa, BUSA represents the views of its members in a number of national structures and bodies, both statutory and non-statutory. BUSA also represents businesses' interests in the National Economic Development and Labour Council (NEDLAC).

We view our submission as important to our efforts to support Parliament in its legislative and oversight activities, as well as the high priority that BUSA places on engaging constructively with the Executive, Members of Parliament and social partners alike.





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2. INTRODUCTORY REMARKS

Business Unity South Africa (BUSA), the recognised voice of organised business in South Africa, wishes to take this opportunity to respond to the request for submissions by the Portfolio Committee on Justice and Constitutional Development on the Constitution Seventeenth Amendment [B6-2011] and the Superior Courts Bill [B7-2011].

BUSA's comments on the two Bills will be limited to those provisions in the Bills that relate either directly or indirectly to the Labour Court and the Labour Appeal Court as the discussions between the Department of Justice and Constitutional Development (DOJ) and the social partners in the National Economic Development Labour Council (NEDLAC) on all the drafts of the Superior Courts Bill over the past number of years had been limited to these two courts, the judges that preside in these courts and the future of these two courts within the broader South African court system.

3. COMMENTS ON THE SUPERIOR COURTS BILL [B7-2011]

BUSA's comments are limited to Schedule 2 to the Bill which sets out the laws that will be amended, and specifically to the proposed amendments in item 2 to the Labour Relations Act 66 of 1995 (LRA).

3.1 Proposed amendment to section 151(2) of the LRA

BUSA supports this amendment.

However, cognisance must be taken of the fact that the social partners in NEDLAC (i.e. BUSA (organised business), the Department of Labour (DOL) and COSATU, FEDUSA and NACTU (organised labour)) are currently engaged in negotiations on amendments to the labour laws, including the LRA.

The social partners have distinguished six themes in terms of which they are addressing issues in the labour laws and the labour market that need to be rectified through amendments to these laws. One of these themes is "dispute



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resolution".

Under this theme, the meaning of the words “matters under its jurisdiction” in section 151(2) is currently the subject of negotiations by the social partners. Organised labour is arguing that the Labour Court should be the sole court that has jurisdiction over all labour matters. However, the High Court, through its inherent jurisdiction, has been prepared since the promulgation of the LRA some fifteen years ago, to assume jurisdiction over labour matters, specifically those that were underpinned by the common law of contract or administrative law. This preparedness by the High Court, through its inherent jurisdiction, to involve itself in labour disputes has afforded a disputing party, in certain circumstances, the opportunity to choose whether to refer his/her dispute either to the Labour Court or to the High Court.

BUSA feels strongly that this issue should remain in NEDLAC where the social partners should put all their effort into resolving the matter. At the appropriate time, this matter will come before Parliament but as part of a package of proposed amendments to the different labour laws. It would thus be premature for Parliament to be seized with this matter during its deliberations on the Superior Courts Bill.

3.2 Proposed amendment to section 154(1) of LRA

BUSA supports this proposed amendment.

3.3 Proposed amendment to section 154(2) of LRA

BUSA supports this proposed amendment.

3.4 Proposed deletion of section 154(3) of LRA

BUSA supports the proposed deletion.

3.5 Proposed substitution of section 154(4) of LRA

BUSA supports the proposed substitution.



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3.6 Proposed substitution of section 154(5) of LRA

BUSA supports the proposed substitution.

3.7 Proposed deletion of section 154(7) of LRA

BUSA supports the proposed deletion.

3.8 Proposed substitution of section 154(9) of LRA

BUSA supports the proposed substitution.

3.9. Proposed addition of subsection (10) to section 154 of LRA

BUSA supports the proposed addition of subsection (10).

3.10 Proposed amendment of section 170(2) of LRA

BUSA supports the proposed amendment.

3.11 Proposed amendment of section 170(4) of LRA

BUSA supports the proposed substitution.

3.12 Proposed deletion of section 170(5) of LRA

BUSA supports the deletion of this subsection.

4. COMMENTS ON THE CONSTITUTION SEVENTEENTH AMENDMENT [B6-2011]

BUSA's comments, as in the case of the Superior Courts Bill discussed in clause 2 above, are limited to the Bill's possible impact on the Labour Court and the Labour Appeal Court.



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4.1 Proposed amendment to section 168 of the Constitution

BUSA supports the proposed amendment.

However, attention must again be drawn to the present negotiations in NEDLAC under the theme entitled “dispute resolution”. Organised labour is arguing that the Labour Appeal Court should be the final court of appeal and that the Supreme Court of Appeal should not have jurisdiction to hear an appeal from the Labour Appeal Court. Since the promulgation of the LRA, the Supreme Court of Appeal has been prepared, on a number of occasions, to hear an appeal against the decision of the Labour Appeal Court.

BUSA feels strongly that this issue should remain in NEDLAC where the social partners should put all their effort into resolving this matter. At the appropriate time, this matter will come before Parliament but as part of a package of proposed amendments to the various labour laws. It would thus be premature for Parliament to be seized with this matter during its deliberations on the Constitution Seventeenth Amendment.

5. CONCLUDING REMARKS

At the NEDLAC meeting convened by the DOJ on Wednesday, 22 June 2011 during which the DOJ provided information on the two Bills discussed in clauses 2 and 3 above, the DOJ mentioned that it was going to contract experts to conduct a comprehensive study of the current framework of all the courts, including the Labour Courts. The DOJ undertook to bring the matter to NEDLAC for deliberation should the study make any recommendations in respect of the future of the Labour Courts, such as, for example, that the courts should cease to exist separately as specialist courts and be folded into other courts.

In conclusion, BUSA wishes to express its appreciation for the opportunity to submit input on the two Bills.



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