



NATIONAL ECONOMIC DEVELOPMENT AND LABOUR COUNCIL

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NATIONAL ECONOMIC DEVELOPMENT AND LABOUR COUNCIL (NEDLAC) REPORT ON THE CO-OPERATIVES AMENDMENT BILL

1. BACKGROUND

1.1. The Trade and Industry Chamber and the Development Chamber agreed to consider the Co-operatives Amendment Bill in line with the Growth and Development Summit (GDS) Agreement of 2003.

1.2 In the GDS Agreement, constituencies (Government, Organised Labour, Community and Business) agreed that :

1.2.1 Co-operatives provide an important vehicle to:

- a) Create and develop income- generating activities and sustainable decent employment;
- b) Develop human resource capacities;
- c) Increase savings and investment;
- d) Improve social and economic well-being
- e) Establish and expand a viable and dynamic distinctive sector of the economy, which includes Co-operatives, that responds to the social and economic needs of the community.

1.2.2 The scope for significant increases in employment through the development of Co-operatives requires a supportive policy framework. It is agreed that organised Labour and Community organisations will, in partnership with Government, and with the support of Business, initiate and strengthen Co-operatives at all levels.

1.2.3 Constituencies further endorsed the “Recommendation on the Promotion of Cooperatives” adopted by the International Labour Organisation (ILO) in 2002. The ILO recommendation states that the adoption of special measures should be encouraged to enable Co-operatives, as enterprises and organisations inspired by solidarity, to respond to their member’s needs and the needs of society. Examples of these special measures include:

- a) Grants, fiscal dispensation, procurement provisions.
- b) Services such as accounting, human resource development and management information services;
- c) Access to finance and provisions for investment
- d) Access to land through the land reform programme.

2. PROCESS AT NEDLAC

2.1. Government tabled the Co-operatives Amendment Bill at NEDLAC on 04 March 2010. A Task Team was set up with the purpose of considering the Co-operatives Amendment Bill.

2.2. The Task Team comprised representatives from Business, Community, Labour and Government from the Trade and Industry Chamber and Development Chamber. (A list of representatives attached hereto as Annexure 1).

2.3. The Task Team convened meetings on the following dates:

11 May 2010
07 June 2010
05 July 2010
23 August 2010
03 September 2010
05 November 2010 (Special Meeting on Government's request)
23 November 2010
29 November 2010
30 May 2011
13 July 2011

2.4. Meetings of the two-a-side Task Team

10 September 2010
08 October 2010
13 June 2011
13 July 2011

2.5. The following documents were submitted:

Annexure 2:	The Co-operatives Amendment Bill
Annexure 3:	Comments and input by Business
Annexure 4:	Comments and input by Community Constituency
Annexure 5:	Comments and input by Labour

3. AREAS OF AGREEMENT

The Constituencies considered the Amendment Bill that was presented by Government and agreed on the following aspects:

3.1. Community Development

3.1.1. Constituencies agreed that the facilitation of community development by primary co-operatives would be in line with the definition provided for in the ILO recommendation 193 of 2002.

3.2. Minimum Membership for Primary Cooperatives

3.2.1. Constituencies agreed that minimum membership for primary cooperatives at registration should be five natural persons.

3.3. Disclosures

3.3.3. Constituencies agreed that disclosures to the Registrar by co-operatives should include the nature and the value each individual member has contributed to the Cooperative, as well as any other kind of information which would help the Registrar evaluate the nature, development, organisational strength and legal compliance of the co-operative.

3.4. Exemption from auditing requirements

3.4.1. Constituencies agreed that the current categorisation of primary co-operatives will assist in dealing with flexibility on certain requirements for smaller co-operatives, and alleviate the burden that auditing would impose on primary co-operatives who have limited or no resources to comply with the auditing requirement.

3.4.2. Constituencies further agreed that an annual accounting report will be submitted by primary cooperatives which will be prepared by an independent accounting professional; the annual accounting report will contain annual accounting or financial statements, management decisions, social contributions and other pertinent compliance requirements.

3.5. Co-operative Governance

3.5.1. Constituencies agreed that cooperative governance has been used in the Bill with the intention to address issues of responsible and accountable governance. Constituencies further agreed that the promotion of good governance and best practices in co-operatives is crucial, especially primary co-operatives which are exempted from auditing requirements.

3.6. Non Executive Independent Director

3.6.1. Regarding the use of Non-Executive Independent Directors, Constituencies agreed that this could be catered for as an option for those Co-operatives that feel that this could be beneficial to them. Furthermore Constituencies agreed that these directors on the board must have non-voting rights and cannot hold a chairperson position.

3.7. Emerging Co-operatives and Transitional period

3.7.1. Constituencies agreed that the submission of constitutions and other forms to the Registrar and to the Agency were meant for start-up co-operatives only and not for co-operatives that have been operating for years. In this light, co-operatives that were registered through prior legislation will be given a period of two (2) years to comply with the current legislation.

3.7.2. Constituencies agreed that the Minister of Trade and Industry would sign a notice regarding the transitional period, which will be gazetted and published more widely.

3.8. Supervisory Committee

3.8.1. Constituencies agreed that the supervisory committee was not meant to substitute the Board but rather to oversee the Board and ensure that it performs its duties in accordance with relevant agreements and legal requirements. The supervisory committee should not be compulsory but rather optional.

3.9. International Labour Organisation (ILO) Recommendation 193 of 2002

3.9.1. Constituencies agreed that this policy document should conform to the guidelines of ILO Recommendation 193 (which are *inter alia* the promotion of the ILO fundamental labour standards and the ILO Declaration on Fundamental Principles and Rights at Work), for all workers in cooperatives without distinction whatsoever.

3.9.2. Constituencies further agreed that to ensure that co-operatives are not set up for, or used for, non-compliance with labour laws or used to establish disguised employment relationships, and combat pseudo co-operatives violating workers' rights. The above would find expression in the policy by making a minimum floor of labour standards applicable to cooperatives subject to the applicability of the provisions to cooperatives.

3.10. Co-operatives Legislation

3.10.1. Constituencies agreed that the Co-operatives Amendment Bill is a minimum framework for all cooperatives but does not prohibit other Departments from developing other laws in their areas of responsibility.

3.11. Co-operatives Tribunal

3.11.1. Constituencies agreed that the Registrar or Tribunal should act based on reasonable information brought to it that suggest that there might be irregularities within the affairs of a Co-operative.

3.11.2. Constituencies agreed to the notion of a Co-operatives Tribunal which will be established for the purposes of enforcement of the legislation, inspection and assistance in the cases of liquidation and judicial management. Constituencies further agreed that a clause will be added which will emphasise that the role of the Tribunal in conflict resolution would be applicable only when internal mechanisms fail.

3.12. Co-operatives Advisory Council

3.12.1. Constituencies agreed that the advisory board will have an advisory and monitoring role.

3.13. Co-operatives Banks Act and Cooperatives Act

3.13.1. Constituencies agreed that there should be alignment between the Co-operative Banks Act and the Cooperatives Act.

3.14. Co-operatives Development Agency

3.14.1. Constituencies agreed that one of the functions of the Co-operative Development Agency should be to promote and provide support to cooperatives representative bodies.

3.15. Regulations in the Co-operatives Amendment Bill

3.15.1. Constituencies agreed that additional details and clarification for the Bill shall be contained within the Regulations. The Regulations will not be contradictory to the purposes of the Legislation.

3.16. Organisation of Secondary Co-operatives

3.16.1. Constituencies agreed that secondary co-operatives should be organised sectorally, however, consideration should be made for co-operatives that are multipurpose in nature.

3.17. Usage of the Abbreviation “Co-op”

3.17.1. Constituencies agreed that existing Co-operatives can use the abbreviation “Co-op” if they were prepared to add this to their name and incur the costs involved. “Co-op” would be a unique identification of cooperatives.

3.18. Definitions of Categories

3.18.1. Constituencies agreed that definitions be provided for Category A, B and C primary co-operatives and this will be further explained in the Regulations.

3.19. Multipurpose

3.19.1. Constituencies agreed that Government will provide the capacity and awareness raising mechanisms on the entire instruments and institutions of Co-operatives.

3.20. Ltd

3.20.1. Constituencies agreed that at a primary level the Ltd will be applicable.

3.21. Rotation of Board Members

3.21.1. Constituencies agreed that Cooperatives shall set a term of Office for its board members subject to their Constitution and that The term of Office Shall be agreed to by the members of the Cooperatives themselves.

3.22. Voting of Member Co-operatives

3.22.1. Constituencies agreed that voting in category A and category B will be premised on one member one vote and that there can be proportional voting in category C according to the Constitution of the Cooperative up to the threshold of 15%.

3.23. Applicable fees for converting Cooperatives into Private Companies

3.23.1. Constituencies agreed that fees should apply when converting cooperatives into companies, a prescribed fee for converting co-operatives into companies will be applicable.

3.24. Conversion of a Company into a Cooperative

3.24.1. Constituencies agreed that the timeframe in which the conversion should take place is 90 days.

3.24.2. Constituencies further agreed that companies which were converting should provide the Constitution of the Cooperative which is consistent with the Cooperatives Act.

3.25. Deregistration Period

3.25.1. Constituencies agreed on the period in which a cooperative can be deregistered if it has not complied with the duties and functions of a Co-operative. This should be for a period of two years for category A and B of primary Co-operatives.

3.26. Member Proxies

Constituencies agreed that this should be an optional provision in the Constitutions of Co-operatives.

3.27. Definition of Operational Cooperatives

3.27.1. Constituencies agreed to the definition of an operational primary cooperative as articulated in the Cooperatives amendment Bill.

3.28. Co-operatives Academy

Constituencies acknowledged that it is not within the authority of **the dti** to legislate the creation of an academic institution, which is what the Cooperatives Academy shall represent. This authority lies with the Department of Higher Education and Training (DHET); however Constituencies note that the DHET has agreed in principle to the creation of such an Academy, therefore the Nedlac Constituencies unanimously agreed that this must be pursued with urgency, and that this pursuit is the responsibility of Government.

3.29. Tier structures of Cooperatives

3.29.1. Constituencies agreed to the three (3) tier structure of Cooperatives.

3.30. Distinction between open-close and dual Co-operatives

3.30.1. Constituencies agreed that the issue of distinction between open, -closed and dual co-operatives has tax advantages. The Act should clearly define these cooperatives as the tax dispensations of these co-operatives might be different.

3.30.2. Constituencies further agreed that since the matter has tax implications related to the Cooperatives Amendment Bill, Government must ensure that the proposed Cooperatives Tax Bill, which is commissioned by National Treasury, is aligned to the Cooperatives Amendment Bill.

3.31. Separate Legislation for Worker Co-operatives

3.31.1. Constituencies agreed that once the internal Government (Department of Labour and **the dti**) process on the strategy and possible separate legislation for worker co-operatives is finalized, such will be brought to Nedlac for engagements. These instruments will be aligned with the Co-operatives Amendment Act.

3.32. Reserves for Cooperatives

3.32.1. Constituencies agreed with the provision contained in the Bill in sub-section 46 subsection (3) which states that “if a co-operative retains an amount that is equivalent to 5% of its gross assets in reserves, subsection (2) (“every co-operative must retain at least 5% of the surplus during a financial year in its reserves”) does not apply.

3.32.2. Constituencies agreed that the utilisation of the reserve fund will be articulated in the Constitution of a co-operative and how the money will be used will be provided to the registrar as part of annual reporting. It was further agreed that the Minister of **the dti** will provide a guide for the various categories.

4. GENERAL

- 4.1. Constituencies agreed that Nedlac would be updated on a regular basis on progress made in the monitoring and evaluation processes upon request by Constituencies but not more than once per semester. Constituencies further agreed that a progress report on the effective implementation of the Amendment Act will also be part of the monitoring and evaluation process that will be conducted not more than once per semester.
- 4.2. Constituencies agreed that Government would provide awareness campaign on the entire set of instruments and institutions of the Cooperatives Act.
- 4.3. Constituencies agreed that Government would put in place mechanisms that would ensure that cooperatives governance meets acceptable standards and Co-operatives financed by the State are able to account for the financial resources that the State might invest in their development.
- 4.4. Constituencies agreed that non-compliance with the Co-Operatives Bill which is borne out of an intention to evade the provisions in this Bill should be criminally prosecutable and this provision should be clearly articulated in the Bill. The punitive measures shall be dealt with in the Regulations.

5. AREAS OF DISAGREEMENT

5.1. Participation of juristic persons

- 5.1.1. Constituencies could not reach agreement on the participation of juristic persons in primary cooperatives.

5.1.2. Business and Government are of the view that the participation of juristic persons in primary Cooperatives should be stipulated in the Constitution of Cooperatives.

5.1.3. Labour and Community supports the proposal of the non participation of juristic persons at a primary level in categories A and B. Labour further supports that participation at a primary level in category C must be guided by a threshold which should be 25% for juristic persons and 75% for natural persons.

6. CONCLUSION

This report therefore concludes considerations at NEDLAC of the Co-operatives Amendment Bill of 2010. The Report is submitted to the Minister of Trade and Industry and other Ministers in terms of Section 8 of the NEDLAC Act. No 35 of 1994.

ANNEXURE 1

CO-OPERATIVES TASK TEAM MEMBERS

Business:	Government:	Labour:	Community:
Cleo Mtshali	Jeffrey Ndumo	Neil Newman	Diteko Moreotsenye
John Purchase	E. Koekemoer	Sibusiso Gumede	Thulane Mabuza
Thami Skenjana	Rector Rapoo	Vuyo Ninzi	Conti Matlakala
Fani Xaba		Simon Eppel	Cebisile
Simi Siwisa		Norma Craven	Zacharia Matsela
			Laurence Bale
			Sophia Moreo