

05 June 2026

BRIEFING NOTE TO BUSA MEMBERS

Clarification of the Department of Employment and Labour's Misleading Statement Regarding BUSA's Role in the International Labour Organisation's Proceedings and Outcomes of the Committee on the Application of Standards

South Africa was selected for examination at the 114th Session of the International Labour Conference's (ILC) Committee on the Application of Standards (CAS) in Geneva, Switzerland, this year. The case concerned the government's compliance with ILO Convention 111 on discrimination in employment and occupation. The Committee of Experts on the Application of Conventions and Recommendations (CEACR), an ILO supervisory body comprised of experts from various countries, receives reports from governments (and sometimes social partners) and assesses whether there are any gaps in compliance with ratified or adopted ILO conventions. The CEACR publishes its findings in a report during February each year, which is the basis for selecting cases to be examined by the CAS. The selection of cases is done jointly by the CAS officers representing the social partners, based on established criteria. South Africa's inclusion for examination followed this established process.

Following the CAS's examination of the case, the Department of Employment and Labour (DEL) issued a media statement on 4 June 2026 which contains serious and potentially damaging misrepresentations.

Misrepresentation #1

The DEL statement accuses BUSA of "engaging in forum shopping attempting to achieve through international mechanisms outcomes that remain under active consideration within national legal systems". This implies that BUSA initiated the complaint to the CAS or ILO, which is inaccurate. As outlined above, the selection process for cases demonstrates how cases are chosen for examination, and BUSA did not bring a complaint to the ILO. The CEACR report itself shows that its observations and findings are based solely on the government's own reports or submissions to the ILO.

Misrepresentation #2

The DEL claims that the "five-year sectoral targets were the product of an extensive consultation process running from 2018 to 2025, when they were published". BUSA filed an application in the Labour Court challenging, among other things, the lack of meaningful consultation in determining these targets, providing evidence to support its claim that the purported consultation was inadequate. The Minister of Employment and Labour has yet to provide the record of decisions demonstrating adherence to all legal provisions in arriving at the decision on sectoral targets. This is despite a Labour Court order compelling the Minister to submit the complete record of her decision by 12 May 2026, which she is currently in breach of.

Misrepresentation #3

"In a related Employment Equity case decided on 22 May 2026, the Constitutional Court dismissed a challenge to the consultation process, ruling that there had been sufficient consultation to determine the sectoral targets." This bold misstatement was also uttered by the government representative during the CAS proceedings and repeated in their media release.

In the matter of The National Employer's Association of South Africa ("NEASA") and Sakeliga v the Department and the Minister of Employment and Labour ("the NEASA matter"), the matter was heard as one of urgency and was dismissed by the High Court. The application was launched in two parts. In Part A, the applicants sought interdictory relief pending the finalisation of declaratory and judicial review remedies under Part B. NEASA and Sakeliga appealed the decision in respect of Part A of their application to the Supreme Court of Appeal ("SCA") and the Constitutional Court; however, this appeal has now been dismissed as well.

While the Minister has characterised the dismissal as a vindication of the Department's position on the Employment Equity Targets, the judgment did not dispose of the main application, which concerns the procedural and substantive challenges to the Sector Targets. Accordingly, Part B of the NEASA and Sakeliga matter, which seeks to review and set aside the employment equity amendments and the accompanying regulations, continues. Similar to BUSA, the Minister has failed to file the complete record in the NEASA and Sakeliga matter.

This is not a dismissal of a "challenge to the consultation process" and in no way implies that "there had been sufficient consultation to determine the sectoral targets" as claimed by the government statement.

It is important to note that the process, which the DEL claims is "receiving broad backing from ILO member countries and the Workers' group", is not yet concluded.

The conclusions of all examined cases will be presented and adopted on Wednesday, 10 June 2026. This declaration of victory is both wishful and premature.

This misrepresentation of facts either indicates a fundamental lack of capacity within the DEL to fully comprehend the ILO processes it has been involved in since 1994, or malicious intent to mislead the public. Both possibilities reflect poorly on the DEL's commitment to truth.

Annexure:

Statement presented by the BUSA CEO during the Sitting of the Committee on Application of Standards in response to the Government presentation

ISSUED BY

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