

# Deregulation of small businesses: Who pays the social costs?

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*"Deregulation" is generally understood to mean the development of the private sector, unfettered by the state, and its law-enforcement machinery. It is a concept used by many official reports in connection with the programme of privatisation.*

*"Deregulation" has become topical with the abolition of certain standards pertaining to the manufacture of medicines, and with the relaxation of the Medical Schemes Act, and social security laws covering workers.*

*It is in the fields of working conditions, occupational health and safety, and social security that deregulation has the most far-reaching consequences. This article attempts to explain the political origins, objectives, proposals and consequences of the "Report of the Committee of Economic Affairs on a Strategy for Small Business Development and for Deregulation". This Report is the precursor of the Temporary Removal of Restrictions on Economic Activities Act, no. 87 of 1986.*

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## **The 1983 Constitution and deregulation**

The 1983 constitution, which provides for a tri-cameral parliament, cites as national goals (among others): "to respect, to further and to protect the self-determination of population groups and peoples, and to further private initiative and effective competition."

The state president requested the President's Council to advise him on ways and means of putting these aims into practice. The request was then referred to the Committee of Economic Affairs, which in 1985 published its "Report on a

Strategy for Small Business Development and for Deregulation". This Report served as the basis for the Removal of Restrictions on Economic Activities Act no. 87 of 1986, which empowers the state president to exempt certain businesses from certain minimum requirements. The specific regulations concerning small businesses' exemption will be issued by proclamation - probably after the elections in May.

## **Objectives of the Report**

The Report looks at the laws and regulations governing small businesses, and makes recommendations as to how these laws can be removed or minimised, with the aim of increasing small businesses' market entry and competitiveness.

The stated aim of the Report reveals its basic premise, namely that "...freedom and equity are best served by a system based on private enterprise or the profit motive in which individual initiative is permitted the maximum scope, provided that it does not restrain other individuals from exercising such initiative".

Statements such as these deny the conditions under which most South Africans live. Political repression, exploitation, poverty and unemployment make the kind of "individual initiative" that produces profits a ludicrous notion. The recommendations made in the Report are aimed at stimulating small business development by, among other things, containing the social costs which arise in that sector. As a result, workers who until recently were covered by very limited social security laws (Workmen's Compensation Act, Unemployment Insurance Act; Machinery and Occupational Safety Act; Basic Conditions of Employment Act and Wage Act) will find their rights eroded by the exemption of employers from certain statutory social security obligations.

## **Report: Social security requirements are "luxuries"**

The Report argues that both the informal sector and the small business sector are sources of widespread employment and income because they are labour-intensive, competitive, and easy to enter. Developing the small business sector would stimulate the economy as a whole. However, according to the Report, small businesses have difficulty in complying with the above-mentioned laws and regulations as they cannot afford either the money or the administrative efforts involved. Costs and administrative procedures arise from taxation; registration for GST; compensation and unemployment benefits for all staff members; satisfying factories, health and safety and fire protection inspectors; registration of black



**Widespread poverty and unemployment contradict the notion of "individual initiative" stressed by the Report**



### Will the informal sector gain anything from deregulation?

staff members; Industrial Council regulations; minimum wage stipulations; returns to the Department of Statistics; licensing requirements; etc.

The Report comments on these requirements:

"Many of these rules and regulations that seek to prevent social costs ... can be regarded as luxuries that only wealthy societies can afford. If they were applied to the informal sector the cost of economic activity would increase to a level that could not be borne by informal sector entrepreneurs."

### Proposals of the Report

The Report proposes that the social costs of small businesses should be contained by a "flexible approach in applying standards". This would make it easier to comply with laws and regulations, and so facilitate the with the setting up of a small business. According to the Report, there should be minimum entry standards, and tighter controls should be imposed only *after* the business has been established.

### Political aspects of the Report

The main thrust of the Report appears to be limiting the costs of small businesses, in order to increase and strengthen small business operations, with the aim of promoting overall economic growth. If, however, we look at the Report more closely, the *political* motivation of the recommendations become apparent. In commissioning the investigation, the state president requested that special attention should be given to "*the development function rather than pure*

*financing*". One of the objectives listed by the Report is "increasing the participation of economically less developed communities in the economy and improving their perceptions of the merits of the free market system".

## **Definitions of "small business"**

The recommendations of the Committee might well result in more people finding more ways and means of surviving (for instance through enterprises like pirate taxis, shebeens, hawking, backyard mechanics and other forms of small trade and services). What is defined as "small business", however, is so vague that the deregulation which the Report proposes could serve as a model for the economy as a whole. In that case, small businesses in the informal sector would be immediately thwarted.

The Committee makes it clear that it gives first priority to the deregulation of small businesses proper. But by quoting examples of deregulation in the US, the Committee implies that its recommendations go beyond the interests of small business operations. The examples of deregulation in the US cover enterprises in the fields of transportation, banking, energy, and telecommunications.

The definition of "small business" to which the Report applies its deregulation recommendations is equally wide: "This definition covers a wide spectrum of small, independent undertakings ranging from highly sophisticated, modern concerns to unsophisticated concerns, often a single person, making a precarious existence in the informal sector, peripheral to the modern market economy." The Report lists a number of sectors into which its definition of "small businesses" might fall:

- Retail
- Private transport
- Manufacturing
- Construction
- Wholesale trade.

Though individual enterprises within these sectors may be "small" (using turnover and the number of employees as criteria), the overall number of employees who might be affected by the lowering of standards and social security provisions is substantial. Small businesses and informal sector operations are notorious for paying low wages, and any exemption from the Wage Act and other laws can only further lower the workers' standard of living and health.



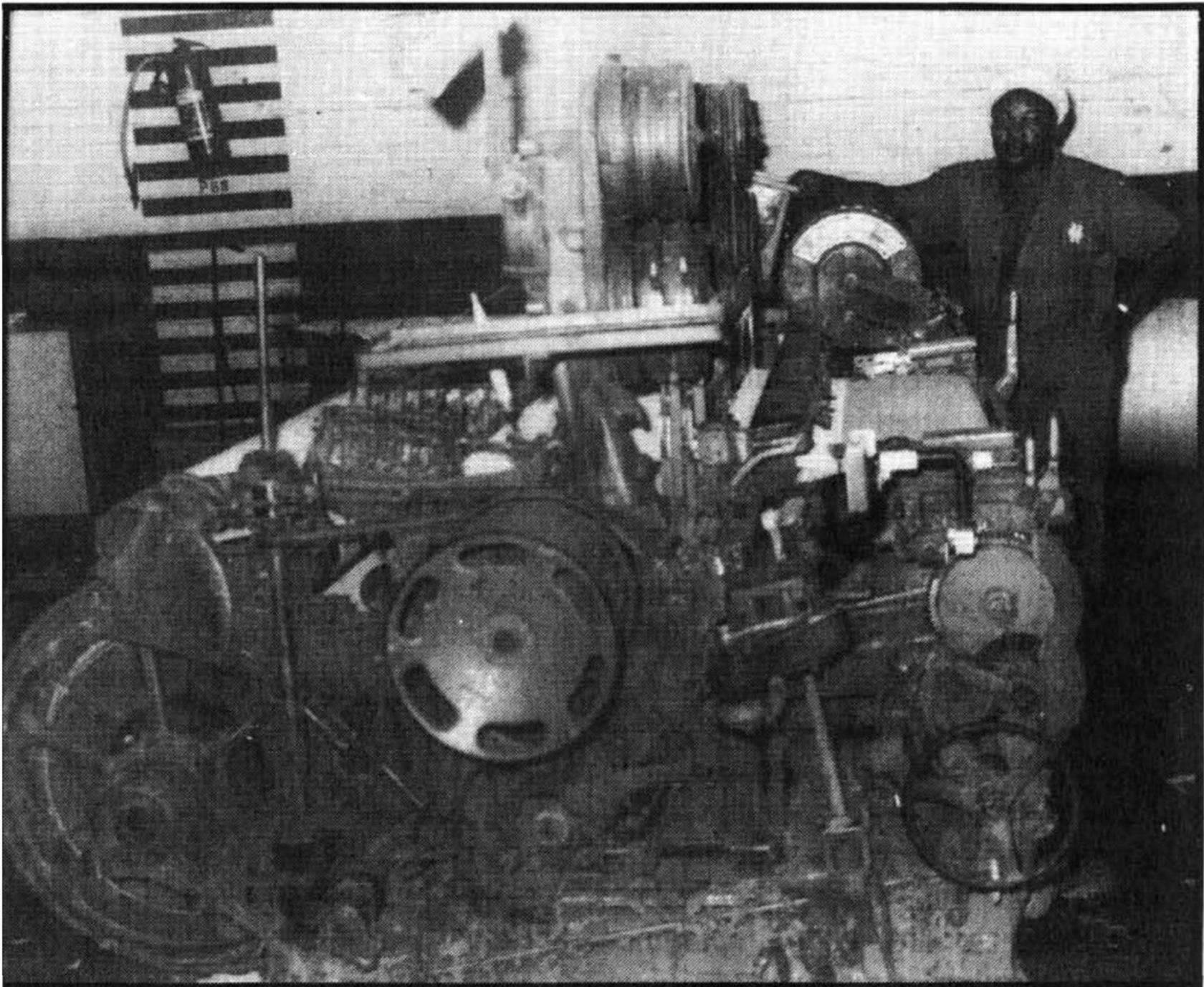
Workers stand to lose what little protection they have in the law

- the Wage Act of 1957, which obliges an employer to pay a minimum wage; to keep a daily attendance register, and a prescribed wage register for every employee
- the Unemployment Insurance Act of 1966, which obliges employers and employees to contribute to the Unemployment Insurance Fund. Many small business employers are not registered, and their employees are therefore not covered under the Act. The Committee supports such exemption.
- the Workmen's Compensation Act of 1941, whereby every employer employing one or more persons has to register with the accident fund and pay accident insurance premiums. The Committee applies a cost-benefit analysis to this form of insurance: it recommends that "Consideration should be given to the question of whether the collection of contributions to the accident fund is a cost effective exercise for the Fund in respect of small business employers".
- the Basic Conditions of Employment Act of 1983, which deals with working hours, overtime pay, leave conditions, termination of service procedures, annual and sick leave conditions, and service contracts. The Committee recommends

the exemption of small businesses from those requirements which are difficult to meet, especially record-keeping; the necessity for keeping records is implied in this Act.

- the Machinery and Occupational Safety Act of 1983. This Act exempts industries employing fewer than 7 people from certain provisions relating to health and welfare. With regard to this Act, the Committee recommends that these exemptions should be expanded.

All these laws and regulations were originally formulated to guard minimum health and safety standards for workers. Yet the Committee appears to regard these laws as dispensable. These laws represent one of the few instances where the state enters into capital-labour relations, though the state does very little to enforce the laws and regulations. So deregulation will not significantly help the informal sector but it will significantly erode the few safeguards for workers in "small businesses" in the formal sector of the economy.



Noisy machinery in a textile plant: Will workers be entitled to safe machinery and compensation?



The Health Act, among other things, lays down standards for the handling of foodstuffs

## The Health Act

It seems the central state is happy to allow costs arising from inadequate or dangerous working conditions, to be transferred to individual workers and employers. This is particularly clear from the recommendations the Committee makes with regard to "minimum standards" and "public health".

It is only when it comes to potential threats to "public health", rather than the health of workers, that the central government wishes to continue to enforce minimum standards: The Committee reminds the authorities that they "... cannot altogether ignore social costs since the cost to the community may eventually turn out to be too high."

The Committee therefore recommends the maintenance of minimum health standards "to protect society against disease" - meaning infectious diseases which are not limited to the workforce.

It is thus no coincidence that of all acts providing for health and social security, only the Health Act of 1977 has been rigidly enforced.



**The Health Act will remain in force to safeguard "public health"**

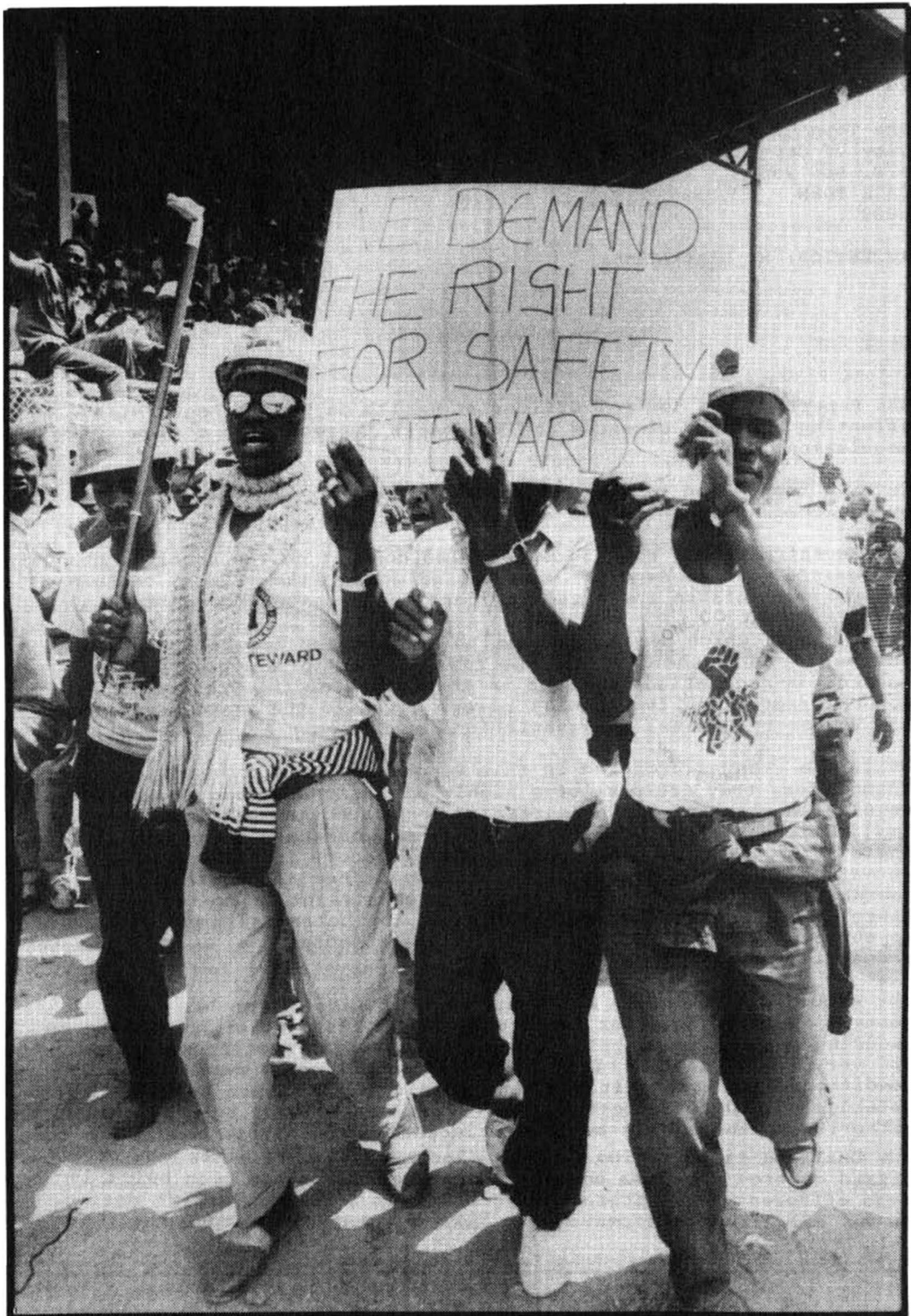
This Act lays down standards for premises, buildings, equipment used for handling foodstuffs, sewerage and draining systems, washing and toilet facilities, tiling of walls and floors, lighting and floor space, storage and transport of foodstuffs, etc. Of all the acts dealing with health and social security, the Health Act is the only one which effectively prohibits the operation of non-complying businesses. The concern here is to prevent the spread of disease to the wider community rather than protecting the health of workers themselves.

## **Opposition**

Both big business and the union movement have expressed opposition to the proposals of the Report. Big businesses fear that they will be undercut by exempted businesses, while union representatives foresee that workers will lose the little protection they have in unorganised sectors and areas. The unions also fear that employers who feel threatened by organised workers could shift production away from unionised areas into areas where exemptions might apply.

## **Conclusion**

Several of the laws laying down standards for health and safety at work, and for social security of workers, are characterised by exclusions rather than inclusions. They have been criticised as inadequate because they are not sufficiently comprehensive: the benefits themselves are inadequate, there is not enough protection for workers against unfair labour practices, and workers experience great difficulties in claiming benefits. If the regulations to be proclaimed soon incorporate the recommendations of the Committee, workers will lose even these few benefits and rights.



Unions oppose deregulation, as it will cut down on workers' rights

29 January 1987

The Town Clerk  
City of Cape Town  
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**ATTENTION: Mr Blackshaw**

Dear Sir

**RE: Report of the Medical Officer of Health on Health Legislation affecting Business Licences and Proposals thereon with a view to De-Regulation**

We have been asked by the Transport and General Workers' Union to submit comment on the above Report.

Time constraints do not allow detailed comment on the specific changes recommended in the Report. However, we would like to make certain general comments on the trends evident in these recommendations.

This Report, which deals with Health By-laws and Regulations administered by the City of Cape Town, is part of a general move towards de-regulation, obvious in the thrust of the President's Council report and the special powers given to the State President by the Temporary Removal of Restrictions on Economic Activities Bill.

While the changes proposed in this Report may seem trivial in themselves, they are part of a highly significant trend towards de-regulation which is being aggressively pursued and has important implications for the health and safety of workers. It is notable that there is no indication of concern on this score in the Report. The potential impact of de-regulation on public health (eg through contaminated foodstuffs) is cited as a constraint on de-regulation but there is no equivalent consideration of the potential impact of such measures on the health of workers in the affected industries/undertakings.

The Report recommends a shift from an 'ex ante' to an 'ex post' control approach in order to ease the establishment of businesses by reducing the initial capital outlay involved in meeting standards. At the very least, this will delay the introduction of decent working conditions. At worst, it may mean such conditions are never established. Unless there is very close supervision by the local authorities, there will be little incentive to improve conditions once the business is operating. It is also short-sighted: dealing with hazard control problems once a process/workplace has been built is less efficient than incorporating controls into the initial design. It may also be more expensive to make changes afterwards, a further

South Africa has minimal legislative protections for workers' health and safety. This is obvious in any comparison with legislation in other industrialised countries. The Commission of Enquiry on Occupational Health (Erasmus Commission) revealed appalling conditions in a wide range of industries. After a very long delay, the Machinery and Occupational Safety Act was passed in 1983. The Act shows evidence of the concern expressed in Wiehahn Commission recommendations that South African labour law and practice should be in line with international standards. While this Act allows employers much control over health and safety matters, it also endows workers with important new rights and legal protection. The current moves towards de-regulation and downgrading of standards are in direct contradiction to the structures and procedures of MOSA.

It is unrealistic to regard the de-regulation process as reversible in the event of economic recovery. The suspension of protections is likely to be permanent. De-regulation represents an erosion of the already limited rights of workers and will have particularly devastating effects on the most vulnerable groups of workers, for example those in small and isolated workplaces and those not organised into trade unions. The uncertainty of workers' position is exacerbated by the piecemeal way in which protections would be dismantled via exemptions and deregulation, and the extended discretionary powers of the enforcing authorities.

The recommendations contained in this Report, while minor in certain respects, indicate a shift in attitudes from the establishment and enforcement of general standards to a piecemeal application and progressive weakening of such standards as exist. In such a climate, it is likely that employers will seek to escape the 'inhibitory' effects of further sections of legislation. With the assurance that 'any deregulation proposals will be viewed favourably by the State' they are given every encouragement to apply for abolition of, or exemption from, the few standards that remain.

All these factors give rise, we believe, to a situation with potentially serious implications for the health and welfare of workers. In the longer term, one would hope that the Council and other responsible authorities would seek ways to extend and secure the minimal rights of workers with regard to workplace health and safety. In the short term, we would urge that the City Council at least review its recommendations on de-regulation with a view to assuring that these rights are not further undermined.

Yours faithfully

Judith Cornell

for the INDUSTRIAL HEALTH RESEARCH GROUP