

## **LABOUR BROKERING: MODERN SLAVERY OR CAPITALIST NECESSITY**

**Anis Mahomed Karodia**

There are a great many unacceptable labour practices throughout South Africa, many of them undoubtedly related to the treatment of workers supplied by labour brokers. Labour – broking, in terms of the policy of the Department of Labour, is the provision of casual workers (not service) by a job placement agency to a client in return for a fee. In other words the labour broker acts as a middle man; subject to certain conditions. The labour broker is exempt from paying PAYE, before the money owed is paid to the broker by the company, it supplied with workers. The arrangement involves three parties, the client, labour – broker and the worker. The employer pays the employee's salary to the broker, who deducts his agreed percentage fee and pays the balance to the employee; the percentage deducted differs from sector to sector; a contract is essential between client and broker, because of several liability issues attached to any labour dispute, between the labour – broker, client and employee; unlike permanent employees, casual workers do not receive medical aid, life insurance cover, pension fund or other benefits associated with permanent employment.

The source of the problem may lie, not so much with how workers were recruited, but in the fact that the Department of Labour has not adequately monitored nor has it prosecuted breaches of labour law. Trade unions too, should take some of the responsibility for not prosecuting more vigorously breaches not only on the law concerning wages and length of employment but, often even more importantly, issues of health and safety. Regulations exist; and are contained in the Labour Relations Act and the Basic Conditions of the Employment Act. Any worker who labours for more than 24 hours a month is, in law, an employee, and qualifies proportionately to the hours worked for rights and benefits. These laws may often be ignored or may be inadequate, but this is where the debate should start. It is argued by many that often the emotive furor about whether labour brokers should be, banned, regulated or self – regulated, an impression is created that agencies supplying temporary or casual labour operate in a lawless and therefore anarchic environment. There is a welter of evidence about abuses to the department, and resulting in no action. By the same token “temporary employment services (TES)” are covered by current labour legislation. But, if laws exist they must be applied, and if not in the interests of the workers, it has to be determined who profits from this neglect. It is the hirers of casual labour and unscrupulous suppliers who stand to gain the most: the hirers because they take no responsibility and the labour brokers who take no responsibility. TES usually provide cheap casual labour, but who hires this labour.

2.

Construction companies, both large and small do so. Research work conducted on the world cup soccer stadiums by University of Cape Town found that such companies prefer to source their labour from brokers, because it dispenses with the problem of unfair dismissal and retrenchment costs and procedures. The construction and agribusiness are not the only large scale users of such labour. Only last week, the South African Post Office released its annual report which made clear that, it employed 11 labour brokers to provide 8600 casual postal workers at an annual cost of about R350 million. According to the Communication workers union, the hourly rate paid to the brokers, of between R21 and R45, is more than double the pay received by the workers. Such disparity cannot be justified. A similar situation exists in numerous sectors (garment industry, editing, journalism and so on).

In the current debate, the two problems often tend to be conflated, but they are different, although the employer rationale, to reduce labour costs is the same. Many argue that the issue should be debated in order to find alternatives that best suit South African conditions, rather than to call for a total ban or for regulation when laws already exist. At the public hearing on labour brokering, held in Germiston, Johannesburg in October, 2009, the demand to ban labour brokers was the only view allowed. There was a picture of intolerance, ignorance and bigotry and people with an opposing view were shouted down. Many felt that, it was a Cosatu rally and not a hearing. There was also the claim that the demand for the ban was a resolution adopted at the African National Congress (ANC) conference in Polokwane after “democratic debate.” It is a categorical fact, that there was no resolution calling for a ban, and neither the Trade Union Confederation nor the International Labour Organization supports this position. But for Cosatu, labour brokers tend to cause the ills of poverty wages, casualisation and growing joblessness and that the very government that does not enforce the regulations, also uses the service of labour brokers. In respect of the occupational service dispensation (OSD) involving a host of government sectors (education, health and others), resulting in controversial

agreements in the public sector signed by Cosatu and its affiliates, was not signed by independent unions. This has resulted in deals which left the workers worse off and the availability of overtime in certain public sectors has been reduced. According to the mainly KwaZulu – Natal – based National Teachers Union, the delays in implementation and the promise now of future backdating amount to “a sellout” driven by a majority union allied to the employer and other unionists feel that there should be no retreat into the sort of unthinking “gang mentality” witnessed in Germiston, and further state the manipulations of interest groups and the blandishments of patronage should not be tolerated and that unity and in diversity and alternative viewpoints should be celebrated.

3.

Cosatu's biggest affiliation, the National Union of Metalworkers (NUMSA) has indicated that it will work "tirelessly" to force the government to ban labour brokers and said that they were "modern day slavery" and that South Africa had no place for such labour practice and that demonstrations will be organized across the country as part of exerting pressure on Parliament and big business to abandon the labour brokering system. The call is for permanent employment. In addition the union said that South Africa had taken over Brazil as the most unequal country in the world, and that the first decade of democracy had not benefited the majority but only "white capital." And that the capitalist crisis in South Africa, sharply assumes racial features on the basis that jobs are those done by black workers. Cosatu President Sdumo Dlamini told President Zuma that decent jobs and labour brokers cannot co – exist and threatened that if action is not taken to ban them, "the country will come to a standstill." Opposition parties issued a statement were they proposed self – regulation of the labour brokering industry. The union retorted that the opposition parties (Cope and the DA) wanted to exploit and oppress black labour, without any restrictions. Cosatu said that it will compel the government for an outright ban, instead of regulation, on labour brokers. This will pit the labour federation against business and the Confederation of Associations in the Private employment Sector (CAPES), a body that represents over 700 companies involved in the R26 billion a year industry. A strike of all workers has been called for October7, 2009. Members will also testify to Parliament's portfolio committee on labour, to pressure it to pass a law, and to hear painful testimony, on the plight of worker; and will, also call for the amendment of the Constitution; if labour brokering cannot be banned through the Labour Relations Act, then there is no definition of a workplace and workers cannot be organized in the sector. It is human trafficking or modern slavery. Business Unity South Africa (Busa) indicates that 3,1 million people out of a total of 20,3 million economically active people are employed through labour brokers. In Namibia, the government has banned labour brokering, a practice which was introduced in that country 12 years ago, by a South African company, Africa Personnel Service. The company has appealed the banning and is now awaiting final judgment.

In their submissions to parliament, Busa insisted labour brokers were "pivotal facilitators and enablers of employment." CAPES said that they were opposed to the ban on labour brokers on the grounds that it could have dire repercussions for the 500 000 assignees placed daily on temporary employment services and further said that they support co – regulation of the industry to stop unethical practices and blamed the Labour Department for poor enforcement of many aspects of existing legislation, which was adequate. Labour department Director – General Jimmy Manyi said his job was to implement government policy and that the future labour brokers, was being discussed by the different stakeholders and would be consolidated at the National Economic Development Council (Nedlac). I will implement whatever decision is taken at Nedlac and by parliament.

4.

The African National Congress portfolio committee chairperson on labour, Lumka Yengeni said that people who attended last month's hearing were not those who were affected, but rather employers and that they did not understand the burning issues of labour brokering, because the communities did not make any submissions.

Neren Rau, chief executive of the South African Chamber of Commerce and Industry, supports the regulation of labour brokering but warned that a total ban would be detrimental to the economy. He concluded that South Africa requires stronger enforcement of labour laws. Hearings were held in five provinces and parliamentarians heard harrowing accounts of the experiences workers endured. Yengeni of the ANC said, that the industry was infested with violations of labour laws and lack of social security. Her stance flew in the face of the ANC position that labour brokers should be regulated to "prohibit certain abusive practices." The council chambers came to a standstill, when the Unemployed People's Party called for labour brokers to be regulated rather than banned. Party leader Plaatjie Mashego raised the ire of workers when he argued: "The general banning of the entire industry would be in contradiction of the dire need to create opportunities for the unemployed." Democratic Alliance Member of Parliament and the committee alleged that unions had prescribed to people what to say at the hearing. He said that the questions raised were not directly concerned with the labour brokering issue. Unions oppose labour brokering because, they say, employers shrug of their responsibilities to workers when they are employed through middlemen, diminishing their rights and the unions ability to organize. The Secretary General of Cosatu indicated that labour brokers take a lions share of the workers wages – 20 percent – we want a ban but we will engage and added that three years ago 66 percent of workers in the retail industry were casuals. The unions said that the Labour Minister was right when he said that labour brokers should be banned and that labour brokers would soon be a thing of the past. He said that it was an extreme form of capitalism which reduces workers to commodities that can be traded for profit. Further, that labour brokers are anti – trade unions and that all workers must enjoy the same rights and protection as any other workers.

Trade Union Solidarity has been accused by its labour movement counterparts of pursuing a Democratic Alliance – linked agenda on the issue. This emerged when Solidarity suggested that a "middle ground must be pursued", which will entail the banning of "certain practices" by labour brokers and the formation of new regulations. It also indicated that it has submitted its request to parliament and that employees placed by labour brokers must become part of the bargaining council. The National Union of Metalworkers said that "Solidarity was not advancing the true interests of its workers and suggested possible business links between the trade federation and a labour broking company, Express Personnel Services," The Unions in general are of the view that Solidarity is racist in its viewpoints and is a supporter of white business interests. Cosatu has demanded that labour brokers must be banned; the permanent employment of workers; and the reinstatement of those workers that have lost their jobs within the mining sector.

5.

Unexpected results caused by actions intended to bring about planned outcomes occur so frequently that the term “law of unintended consequences” has been coined. Most often the “law of unintended consequences” applies to government actions that do not deliver promised outcomes and even result in consequences that are the very opposite of their stated intentions. Labour policy and legislation affect the lives of a large proportion of the population of any country and appear to attract a disproportionate share of wrong ideas that feel right. Often the consequences are mass unemployment. People whose productivity level is lower than the statutory minimum wage become unemployable. The government’s responsibility is to create an environment that will increase employment opportunities, reduce unemployment, and reduce poverty. This is a vexing debate that all must apply their minds to, in a rational manner, without emotion, in the interests of workers, the economy and the development of South Africa, if we are to become a winning nation.