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The labour hire judgement: a victory for workers' rights

Prepared by Herbert Jauch for The Villager newspaper

On 27 June, a High Court Judgement was delivered that declared Namibia's labour Amendment Act and the strict regulations for labour hire companies as legal, rational and in line with the country's constitution. This represents an important milestone for the protection of workers' rights and has to be placed in its historical context. The issue of labour hire in Namibia, i.e. the usage of labour brokers to employ workers, has been topic of heated debate in Namibia since the late 1990s, when workers demonstrated against labour hire companies in Walvis Bay. Research undertaken by the Labour Resource and Research Institute (LaRRI) in 1999 provided a first picture of labour hire practices in Namibia. It pointed to some of the reasons why companies use labour hire workers and to the conditions of employment offered at such companies. Trade unions and some politicians called for legislation to outlaw such companies as they reminded them of the colonial migrant labour system and should therefore be abolished.

Namibia's labour hire practices conform with global trends to a large extent. The country's labour hire industry is dominated by one large company, which originated in South Africa and now operates across Namibia. In addition, there are several smaller labour hire companies most of whom are limited to serving a few clients, mostly in one particular town. Overall, at least 10 labour hire companies are currently operational in Namibia. They all supply mostly unskilled and semi-skilled workers to client companies in various industries, including mining, fishing, and retail. Their clients include private companies but also state-owned enterprises (SOEs). Labour hire companies retain a substantial part (15-55%) of workers' hourly wage rates as their fee. (LaRRI 2006).

Over the years client companies have used labour hire workers to reduce the impact of strikes by permanent workers, to increase flexibility and to cut labour costs, to avoid having to deal with disciplinary cases, to outsource labour relations, to avoid social responsibility towards staff and to avoid trade unions..

Workers employed through labour brokers are paid significantly less than permanent workers and they usually do not enjoy any benefits. Although the legal provisions should have applied to them as well (in theory), many labour hire workers suffered from violations of the provisions of the Namibian Labour Act and do not receive any paid leave and not even severance pay in case of retrenchment. Even if they worked for the same labour broker and the same client company for several years, they had no job security and are employed on the basis of "no work – no pay". Their employment contract with the labour broker is terminated as soon as the commercial contract between the labour broker and its client ends.

The use of labour brokers in Namibia is not limited to peak periods and specific tasks only. Instead, it has become an established practice and in some instances permanent workers were retrenched and replaced by labour hire workers. Labour brokers thus pose a threat to permanent workers, especially in the lower skills categories. They accentuate the division of labour into core (permanent) and peripheral workers.

It is important to understand that labour hire does not create jobs and is hardly a springboard for workers to get permanent jobs. Instead, the jobs are created by the client companies where the labour hire workers are sent to perform their duties. The labour hire industry may create business opportunities and profits for a small group of labour hire shareholders and managers, but it does not contribute to socio-economic development and the creation of decent work. Given the very high levels of unemployment in Namibia, labour brokers use the widespread unemployment to their own advantage.

Attempts to end labour hire

When Namibia's new Labour Act was passed in 2007, lawmakers inserted clause 128 which stated that: "*No person may, for reward, employ any person with a view to making that person available to a third party to perform work for the third party*". Trade unions welcomed this amendment while employers opposed the clause and argued that the Bill would not only outlaw labour hire but also other practices such as outsourcing and sub-contracting. The biggest labour hire company in Namibia, Africa Personnel Services (APS), which has its head office in South Africa, went a step further and took the Namibian government to court, claiming that the ban on labour hire was an unconstitutional infringement on its right to do business. A High Court decision of November 2008 upheld the ban on labour hire but the Supreme Court decided otherwise and declared the ban unconstitutional in December 2009.

The Ministry of Labour then prepared amendments to the Labour Act with the aim to severely limit or prevent labour hire companies from operating in the country. The Labour Amendment Act of 2012 thus states that any employer who recruits staff through labour broker may not offer employment conditions that are in any way worse than those offered to permanent staff in comparable positions. Also all legal provisions regarding workers' rights and retrenchment procedures have to be upheld and labour brokers may not be used to replace striking workers. Government and unions hope that these strong legal requirements will protect workers against the exploitative labour hire practices and the recent court judgement confirmed the right of law makers to take steps against exploitation. However, any new regulations will only be as effective as their implementation and in an environment of mass unemployment the struggle against exploitative practices certainly will have to continue.

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