

# **Labour Hire in Namibia: The right to do business versus workers' rights**

***Herbert Jauch, May 2012***

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 and during the congress of the National Union of Namibian Workers (NUNW) in 2006, union leaders as well as President Hifikepunye Pohamba stated that labour hire was reminiscent 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). Almost all labour hire companies retain a substantial part (15-55%) of workers' hourly wage rates as their fee (LaRRI 2006).

## **Why do Namibian companies use labour brokers?**

LaRRI's study (2006) revealed that companies mainly use labour brokers for the following reasons:

1. Reducing the impact of strikes by permanent workers. A retail manager pointed out that "*after an illegal strike, we decided to bring in the labour hire services so that it spreads the risks if ever there would be another strike. If the permanent staff went on strike, we could still continue with the labour hire staff.*"
2. Flexibility and cost cutting. Labour hire companies provide workers on demand for specific hours, days or weeks. They thus allow companies to order workers when they are needed and to send them home when there is no work.
3. Avoiding disciplinary cases. A widespread reason for the use of labour hire workers is to avoid the procedures for disciplinary action as set out in the Namibian Labour Act, such as hearings and fair procedures.
4. Concentrating on "core business" by outsourcing labour relations to a labour broker.
5. Replacing "unproductive" workers with labour hire workers

6. Access to skilled and qualified workers at short notice and without long-term employment commitment.
7. Avoiding trade unions. The owner of a construction company stated that:  
*"I started using labour hire because of the unreasonable requests and foolishness of the trade unions. You have to deal with unreasonable requests for very high salary increases. The problem with unions is that they don't request, they demand for these increases and they always want to have meetings... As a one-man business I did not have the time to sit in meetings with the unions all the time...."* (LaRRI 2006)

### **Impact on workers**

Workers employed through labour brokers are paid significantly less than permanent workers and they usually do not enjoy any benefits. Many workers suffer 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 have 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.

Although the legal provisions on employment termination apply (in theory) to labour brokers as well, the usual practice is to hire and fire workers at will. Client companies can request the removal of any worker by the labour broker at any time. The broker then provides a replacement which further advances the "commodification" of labour as an easily exchangeable and replaceable commodity.

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. A regional co-ordinator of Namibia's largest trade union federation, the National Union of Namibian Workers (NUNW) observed:

*"The presence of labour hire workers puts downward pressure on conditions of employment for permanent workers because some companies retrench permanent workers and re-hire them through labour hire at lower rates. Salaries are cut in half and benefits are reduced"* (quoted in LaRRI 2006).

### **Employment creation?**

Labour brokers hardly provide a springboard to permanent jobs. Although a few workers were taken over by client companies as permanent staff, such practices are rather exceptional. Some brokers explicitly prevent their workers from taking up employment at a client company. The employment creation effect of labour hire is very limited as almost all jobs are created by the client companies.

Most Namibian labour brokers describe themselves as black economic empowerment companies. While they may create business opportunities and profits for a small group of labour hire shareholders and managers, they do not contribute to socio-economic development and the creation of decent work. Given the very high levels of unemployment in Namibia (standing at 51% in 2008), 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 deter employers from using labour brokers. However, any new regulations will only be as effective as their implementation and in an environment of mass unemployment and a severely under-staffed labour inspectorate, the battle against labour brokers might not yet be over.

### **References:**

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