

## Politicizing the Banning of Labor Brokers

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**ABSTRACT** The heated debates surrounding the issues of whether to ban or not to ban labor broking in South Africa are becoming more interesting as different interest groups express their opinions and views on the matter, making it highly politicized. It is pertinent to mention that most of the organized labor unions in South Africa are affiliated to at least one political party. This makes it difficult to know their opinions, on the issue and whether the ruling government influences these opinions, as most of the members are part of the ruling government that is reluctant to ban labor broking. These contradictions from members of the alliance are, to a large extent, the major obstacle to resolving the issues surrounding the ban or not to ban labor broking. The government is currently in a dilemma, as it does not know how to handle these issues. This paper examines different political dimensions and infiltrations that are obstacles to how the issues surrounding the banning of labor broking should be treated in order for there to be a concrete position on the issues

### INTRODUCTION

In South Africa, the African National Congress (ANC) is the political party in power. The party has very strong tripartite alliance, which includes a very powerful unionized labor called the Congress of South African Trade Unions (COSATU) and the South African Communist Party (SACP). The members of these unions and political parties are in key positions in the current ANC government (Giliomee 1998). The ANC has consistently expressed the view that labor brokers should be rigorously regularized in order to reduce worker exploitation, ensure decent work for all workers' and protect the rights and dignities of all workers'. Temporary workers should also have the opportunity and rights to be employed as permanent workers, if qualified. However, the alliance members, particularly, COSATU do not believe in regulation of labor broking (Kenny and Bezuidenhout 1999). Their position on the matter is that labor broking should be out rightly banned in South Africa because, according to them, it is a form of modern day slavery, where workers are mere commodities and they are being exploited by employers.

COSATU argues that labor brokers own the laborers and sell them as commodities to the

capitalist employers without affording them any protection under the law (Makepeace 2010). Workers are vulnerable and accept this form of employment arrangement because of high unemployment rate in the country while the labor brokers are benefiting immensely from the temporary contracts (Gericke 2010).

In furtherance to this, Kenny and Bezuidenhout (1999) quoting Littler (1982) assert that "*there is a perpetual tension under capitalism between treating workers as commodities to be hired and fired, and harnessing their ingenuity and cooperativeness. Casual labor constitutes an attempt at bridging this tension by allowing for the employment of suitably qualified laborers whose services can be terminated at will.*"

Labor casualization is now increasingly being practiced in virtually all the sectors of the economy in South Africa (Miraftab 2004). Organizations are now using flexi workers of all sorts for different jobs and the labor brokers are the main supply chains for these sorts of casual and contractual workers.

However, some opposition parties in the South Africa political landscape, the Democratic Alliance (DA) and the Congress of the People (Cope) have persistently argued for continuation of labor broking. The reason adduced for this is that the labor broking industry is a critical component of the country's economy as they create jobs for the poor of the poorest and as such they should continue to exist. The Inkatha Freedom Party (IFP) has made its own contribution to the debates by emphasizing the need for

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flexibility in the employment relations. Their position is that workers should not be mandated to go through labor brokers in seeking for employment. However, they still believe that temporary employment should continue, but that the workers hired through brokers should enjoy the same rights, benefits and protection just like the workers hired directly by the employers. They argued that temporary employment employees should strive for equal pay-equal work, permanent employment and decent conditions (Evans and Gibb 2009). They advocate for strict, effective and efficient regulation as against outright banning of the labor broking. To achieve this, they call for radical transformation and immediate reform in the present legislation.

### Research Problem

The issues surrounding the ban or not to ban labor broking in South Africa are generating heated debates. Different stakeholders and role players in the labor force, trade unions, employers and the government are competing for air-time in order to air their views on what should be done to the problem. It is important to mention that the government has a significant role to play because the buck stops on its table. Any decision reached needs to be implemented and enforced by the government, hence the need for specific direction on how to resolve the various problems associated with the lingering issues of labor broking in South Africa. Presently, labor broking exists and it is a valid trade under the South African law. It seems that the government does not view banning labor broking as a solution, but rather seems to lean towards the belief that the trade should be properly regulated by ensuring that a worker who had spent six months on the job as a temporary employee should be made a permanent worker. However, some political parties, lobby groups, the trade unions and employers do not agree with this view. The trade unions want an outright ban of labor broking but the capitalist employers and some political parties in the country advocate for the right to labor broking.

While some pundits believe that labor brokers play an important role in the economy, they however abhor various abusive practices in the trade and they want an end to this. They have therefore joined forces with those who are agitating for the ban in industries where abuses are

rampant and exploitation of the casual labor is endemic. According to them, the only way to stop these abuses is to stop labor broking in such sectors and industries. On the other hand, they also advocate for the continuation of labor broking where it has recorded huge success by bringing down unemployment rates and ensuring that the rights of the workers are protected to the extent that some of the casual workers who have received sufficient training are converted to secured permanent employment.

Against these competing interests on the issues, the debates continue and up till date, the government has not taken any concrete position or stand in terms of legislating whether to out rightly ban or not to ban labor broking.

### METHODOLOGY

This research utilized a non-empirical research approach by using secondary data pertaining to the issues of labor broking and temporary employment. Articles, books, legislation and contemporary legal lexicons and other useful literature in employment and labor relations were consulted and used to analyze political meddling in the issues of whether to ban labor broking or not.

### Literature Review

Employers have advanced arguments in support of continuation of the trade and practice of labor broking (Braverman 1998) by asserting that *“recent forces of globalization demand flexible employment strategies and banning labor brokers will make it more difficult for local businesses to compete profitably globally via flexible short-term employments and can lead to losses of many job opportunities.”* (Mbwaalala 2013) This assertion is made to serve and protect their selfish and capitalist monopolistic businesses without caring for the protection and plight of the workers that are being used to achieve their objectives of profit making. This is the reason why there have been agitations from different concerned parties on how to use the laws to intervene in order to reduce abusive practices in the trade. The question is, is it mandatory for organizations to engage the services of labor brokers?(Mbwaalala 2013) Assuming a labor broker is engaged, at what time will the organization convert the casual worker who has

acquired the required skills to a standard permanent employee?

The recent global economic crisis has been considered by many, as a major factor in the increased use of temporary or casual labor in order for organizations to be more flexible in their employment strategies (Kakabadse and Kakabadse 2005).

To this end, Evans and Gibb (2009) asserted, *“it is increasingly clear that one of the most challenging and threatening features of the new global economy has been the rise of precarious employment. The economic crisis that plunged the global economy into one of the most serious recessions in history in 2008 may well have exacerbated this problem, as employers continue to pursue strategies that “flexibilize” employment and undermine the very concept of job security.”* These strategies are now being scrutinized and questioned, because they are eroding the dignity of workers and making them vulnerable, hence the need to protect their rights by ensuring that employments are not precarious but permanent and secured (Seifert and Tanguiane 2006).

Mbwaalala (2013) also indicated that stiff competitions amongst all sectors of the economy are the reasons for devising cost effective strategies to hire casual workers for a certain purpose in the organization and emphasized that *“the ever increasing regional and global trade competition has manifested itself in a growing number of non-standard forms of employment including the increasing use of “temporary employment services” or “labor brokers.”*

Various political parties and organizations have waded into the debates and have aired their views. Members of the organized trade unions in South Africa are the most affected and they have been persistent in the call for outright ban on labor broking (Tomren 2012). It has been noted, *“trade unions around the globe have realized that insecure forms of work are not simply a short-term response of employers to temporary economic problems, but instead have become an entrenched feature of many firms’ human resource strategies”* (Evans and Gibb 2009).

It is pertinent to mention that in South Africa, labor relationships between the worker and the employer is regulated by section 198 of the Labor Relations Act (LRA 1995) including the broker and the third party (Benjamin 2010). The broker is the employer while the third person is

the client; the worker is therefore the employee within the space of this relationship (Theron 2003). Section 188 of the LRA regulates all aspects of liabilities and responsibilities arising out of the relationships (Bendix 2010). But more importantly, the aspects that need to be given much attention are Sections 185 and 186 that regulate and protect the workers from unfair labor practices such as unfair dismissal and other related unfair labor practices (Grogan 2007).

Undoubtedly, these relationships are complicated and most times both the employers and the clients are always trying to avoid liabilities and responsibilities arising from the relationships particularly when it relates to unfair dismissal and misconducts of the worker and the protection of workers’ rights” (Ezette 2010).

The use of casual laborer is not only rampant in the private sector but also the public sector (Miraftab 2004). In the private sector, most employers use casual labor because it minimizes costs. However, in the public sector, the practice may be justified if an intern is volunteering to partake, for example, in the local and municipal service delivery activities in the poor black townships. This type of work may specifically design to empower the participants in order to acquire skills, which they will use after the internships (Miraftab 2004).

The alliance between the ANC and COSATU has, in recent years been fluid (Webster and Buhlungu 2004). There are cracks in the walls that hold them together. Some members of COSATU have recently been debating and challenging the desirability of the alliance (Buhlungu 2005) and the COSATU has constantly been criticizing *“the neo-liberal policies of the ANC government that have failed to account for the general fragility of union-party alliances as this has failed to improve the lots of the workers”* (Buhlungu 2005).

It is not out of place to see COSATU, a union that fought apartheid to a standstill and the largest trade organization in South Africa agitating for the ban of labor brokers. It is currently a part of the ruling government that is known to be championing the course and welfare of the workers in South Africa (Barchiesi 2004). However, the concern is that the alliance is making the ANC to be dominant in the parliament of South Africa where they are in the majority without any checks in place except that aggrieved opposition parties usually run to the court to chal-

lunge any absurd and irrational decisions by the ruling party in the parliament (Adam 1998).

The practice of labor broking has been criticized on the ground that it amounts to the empowerment of the few in the sector to the detriment of workers (Brand 2010) who are being used as casual labors but without hope of becoming permanent staff in the organization (Ryglund 2013). The practice is on an increase in South Africa because it is legal and legitimate under the law but the law only supports the practice of labor broking with minimal protection or sometimes no protection for the workers' rights. Brand (2010) points out that *"in South Africa, the use of labor brokers has increased exponentially, because it provides employers with an opportunity to circumvent the onerous provisions of constitutional, international and statutory law that seek to protect workers."*

The amendment being recently proposed for implementation is as a result of two reports of abusive practices brought against labor brokers. The amendment is built on the recommendations in the reports submitted by the Department of Labor to the parliament since 2010. Undoubtedly, at the appropriate time, the laws regulating labor relationships and in particular, labor broking will be amended. However, the snag is that one does not know when the amendment will kick in and become law (Brand 2010).

The COSATU, as part of the tripartite Alliance with ANC and the South African Communist Party (SACP) has been heavily criticized, because even though they have access to power and the ability to represent the working class in the parliament and government and fight for the course of the working class especially the vulnerable by protecting them and fight for permanent jobs for them that is sustainable employment devoid of racial inequality. The reality on the ground is that the alliance is now fragmented and instead of fighting for the course and plights of the workers, members are preoccupied in fighting both in government and within the alliance (Ryglund 2013).

The expectation is to see that the labor trade unions use their leverage and influence in the alliance to press for reforms in defense of employment and social welfare for the vulnerable workers in South Africa. Though some senior members of the alliance are of the view that this is currently happening, majority of the ordinary members of COSATU disagreed with this posi-

tion and that is why they are against regulation of labor broking as a reform intervention. They have reiterated that a ban is appropriate in order to protect the rights of labor, as this will restore their dignity, which labor brokers have taken away for many years (Beckman 2009). However, till date "COSATU had seen little reward in terms of key policies such as banning labor brokers" (Ceruti et al. 2012). From all indications and considering the proposed amendment to the labor law, what will happen is that government will accede to regulation of the practice as opposed to its total ban.

### THE BUSINESS OF LABOR BROKING

Before any business can commence, it must have been duly registered under the law of the country it operates. Presently, in South Africa, labor broking is still recognized under the law (Theron et al. 2007) and brokers still continue to trade in human skills by recruiting workers for a third party, collecting huge fees or remuneration from the third party before disbursing ridiculous very low wages to the casual laborers (Stevenson-Hamilton 2012). The way and manner labor brokers operate is elaborately articulated by Mbwaalala (2013) who states, *"labor brokers enter into employment relationships as third parties with client companies to supply employees through a commercial contract. These labor services usually fall outside the regular two-party contract of employment defined under existing labor laws and thus the employees are not covered by that law. Labor brokers have been labeled as "the re-emergence of a new apartheid strategy" and "modern slavery" by some quarters in labor sectors of Namibia and South Africa. Trade unions, particularly, have led the most vocal resistance against labor brokers in both countries. They argue that, like previous apartheid contract labor systems, labor brokers erode standards for decent working conditions and weaken union representations in the workplace. The unions have repeatedly sent strong calls to lawmakers to amend existing labor laws and put labor broking in its grave where it belongs."* This is the modus operandi of all labor brokers all over the world no matter where they operate. Describing how labor brokers exploit the workers, Mbwaalala (2013) indicates *"that like slaves, brokers hire out employees to third parties and*

*thereafter collect a price or fee from the client for the labor provided by the workers. The broker then deducts a large percentage of the fee and pays the workers a basic salary, often without providing other employment benefits. These workers are regularly excluded from pension benefits, medical coverage and workmen's compensation for injuries on duty or terminations.*" The labor unions have consistently been vocal against the continuation of this sort of unprotected employment, which they label as despicable and deplorable. In South Africa, the business is thriving and the labor brokers are fighting tooth and nail to sustain it, come rain or sunshine. They have advanced various reasons for why it should continue as earlier mentioned and also pointed out that if it is stopped, it would exacerbate the problem of unemployment, which may lead to rebellion against the government. They have enlisted the support of some political parties in the parliament to advance their cause and stall all the moves of the organized trade unions to ban the practice.

No matter what the justification being mentioned to support why the practice and business should continue to exist, issues that are pertinent and need to be taken into consideration are that human beings are being treated like commodity and slaves. Therefore, it has been argued from the start, the casual labor may be appointed on a temporary basis, thereafter, in line with the current thinking by the government who is responsible to uphold the rule of law and protect the vulnerable, the temporary appointment should be, after six months on the job, converted to a permanent full-time job.

In addressing the precarious nature of casual and temporary employments, the proposed amendment to the LRA still retains Section 198 of the LRA and this will continue to apply to all employees. It is only genuine temporary work wherein tenure does not exceed six months that will be allowed under the new regime. If it is more than six months, the employer is under obligation to justify why the temporary employment should exceed the six-month duration. Otherwise, it will be deemed to be an indefinite permanent employment. The burden is now shifted to the employer who wants to continue to place a worker on temporary employment for more than six months to demonstrate by justifying why this should continue.

This may be the only solution for not banning labor brokering.

### **POLITICIZING ON WHETHER TO BAN OR NOT TO BAN LABOR BROKING**

Political process may be the most ideal way to resolve problems of labor brokering in any democratic government (Schmitter and Karl 1991). However, the process must be done in such a way that it is not abused while attempting to solve an identified problem (Sunstein 2001). Although, political intervention should be a part of the solution to any problem in the country, it should not be seen to aggravate a problem. This may be the case if the process is not managed very well and it could lead to drastic setbacks, which will definitely impact the governance and trust. The foregoing assertion is made against the backdrop that politics is now playing a major role regarding the issues on whether to ban or not to ban labor brokering in South Africa.

Presently, in the parliament, there are ongoing debates on whether to ban or retain the practice of labor brokering in the country, and all interested parties are robustly participating in the debates (Adler and Webster 1999). This is done against the backdrop that the parliament has the legislative power to engage in robust debates and consideration on the steps to be taken to take a concrete stand on the issue.

What is now happening is that various interest groups are trying to protect and serve the interests they belong to. The position of COSATU is very complicated and precarious because it is part of ANC, the ruling party that is reluctant to take a concrete stand on the issue of labor brokers. To a reasonable extent, this is understandable because some of the members of the ANC have interests in some of the organizations using the services of labor brokers. This is contradiction and a huge dilemma obstructing the judgments of some members in the parliament and government. Because of all these interests, no concrete decision has been taken; hence there is no legislation in place to backup the agitation of those clamoring for the ban hence the status quo remains.

### **TOXIC COLLUSION BETWEEN THE TRIPARTITE ALLIANCE AND EMPLOYERS**

Most of the members of the tripartite alliance have one business interest or another in most of the organizations that are making use of

the services of atypical and casual workers (Mosoetsa and Tshoedi 2013). There have been accusations and counter accusations being leveled against the members, especially by those who were not appointed to key political positions in the government (Misra 2008). These political engagements are having a huge impact on COSATU because of the massive mobility of unionists into the government with attendant benefits and paraphernalia of office they enjoy. There are also allegations that are leveled against some of the union leaders involved in different business transactions with some of the organizations that are using casual workers including public and government departments. Commenting on how the alliance has failed the workers, Misra (2008) asserts that “*the federation has failed and faces challenges to both membership and organization because it has inadequately confronted the material conditions of capitalism which have resulted in structural issues such as the in formalization and casualization of the workforce.*”

These collusions and the conflict of interest are part of the obstacles preventing the government from taking concrete position in the debates. Undoubtedly, the casual workers continue to suffer while the labor brokers and their collaborators continue to thrive just because there is lack of political will to take a decision on whether to out rightly ban or to regulate the practice.

Instead of ventilating energy on how to improve the condition of workers, the union has been drawn into the internal squabbles and politics of the ANC government and the leaderships of the union are now battling for positions in the government and protecting the government instead of taking care of workers. Presently, one does not really know what the stand of the leaderships in the union is on the issue of labor brokers except that those who are not in the high echelon are voicing out their discontent and agitation for the ban of labor brokers.

### CONCLUSION

Issues relating to whether labor broking should continue or not in South Africa are becoming politicized as opposed to finding solutions to the problems inherent in the practice. The tripartite alliance is not talking in one voice, but rather in different voices and these divisions

and fragmentations are impacting the judgments of the ruling ANC. As a result of these gaps, labor brokers continue to ply their trade and thrive.

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