



Food & Allied Workers Union (FAWU)

Suite No.701, 7th Floor, Vogue House, Thibault Square, Cape Town, 8001. P.O Box 455,
Woodstock, 7915 - Registration Number LR2/6/2/1348
E-mail: fawu-wcr@intekom.co.za - mlungiseleli ndongeni;; gafiieldien Benjamin; Sandra Jaftha;
Sipho Mhlahlo

Tel (021) 421 4120/4125; Fax (021) 421 8478

Western Cape Province

August 21, 2009

Parliament of the Republic of South Africa
Plein Street
Cape Town

Attention: The Chairperson
Portfolio Committee on Labour

Dear Madam

Re: Submission on Labour Brokers

This submission is made on behalf of the Food and Allied Workers Union and Sikhula Sonke. It also serves as an addendum to the primary written submission of FAWU as contained in the COSATU submission document.

We firstly wish to express our gratitude for having been afforded the opportunity to make this submission on behalf of our members.

Chairperson, since the inception of Labour Brokers in the South African Labour arena, worker's conditions of employment as well as their other employment rights have gradually been eroded. With the dawn of Democracy in the early 1990's, workers had high hopes and expectations of what new opportunities, benefits, conditions and

rights the proposed new Labour Reform would bring for them. It has instead created an unintended loophole (Section 198 of LRA) in the form of Labour Brokers. The new phenomenon of being a contract worker employed by the Labour Broker have gradually taken hold and have become a nightmare for those affected workers as well as for trade unions as a whole. The existence of Labour Brokers have made it much easier for employers to dispose of their workforce by making their positions redundant. In most instances then would the Labour Broker be invited to supply cheaper Labour for those same redundant positions.

The prospect of attaining permanent positions also evaporates as all vacant employment positions are then also supplied and filled by the Labour Broker. This has seriously impacted on job security. It has been the trend in most if not in all sectors and industries within the South African economy. The experiences and relationships with Labour Brokers have thus far not been good as they retard any attempt to advance the plight and interests of their workers. They and their clients (the primary employers) have become very intolerant to the workers exercising their rights to join trade unions and of observing their conditions of employment.

Fawu and Sikhula Sonke both organize in the Agricultural sector. We believe this sector to be the sector with the highest rate of abuse and exploitation by Labour Brokers. Here it can be found that a Labour Broker do not need to have complicated infrastructure to operate. In some instances they operate only with a cellphone and a 'bakkie'. Two of the worst accidents in the last four years involved workers employed by Labour Brokers in the Agricultural Sector, namely the Eerste River train crossing collision and the Piketberg bus disaster. Little or no consideration is spent on the health and safety considerations of their employees. There seems to be some unjustified loyalty between the farmer or landowner and the Labour Broker. This loyalty undermines both of their's duty to observe the necessary regulations and legislation affecting them and their employees. In most of these instances it would be found that there is a much closer relationship between the Labour Broker and his client than expected. They are either related as family, friends or ex senior

staff employees on the farm taking over the role of Labour Broker. The primary employer then hides behind the Labour Broker and vice versa. By implication it means absolution of any responsibility towards their employees. It is for reasons such as these and others that we as FAWU call on the Honorable Minister of Labour to establish a statutory council in the Agricultural Sector. However, this should be done without the involvement of Labour Brokers. It is our belief that they are just as responsible for the erosion of worker's rights and the abuses and exploitation on farms.

The issue of organizing on farms has also become much more difficult than previously was the case. At any given time the official figures of organized workers in the Agricultural Sector would reflect between 0,01% and 7%. This is disturbingly low in contrast to other sectors and industries in the economy. The right to private property in terms of Section 25 of the Constitution also contributes to this as the farm property in most cases also serves as the home of the farmer.

The migration or transfer of workers from one sector to another also poses substantial challenges to trade unions to organize and represent their members as well as undermining the same rights that workers wish to exercise through their trade union. Labour Brokers often transfer workers from workplace to workplace and this makes it difficult for trade unions to keep track of their membership as well as representing them effectively. The result therefore is that trade unions have to generalize instead of focusing on the challenges in their specific sector/s. As a further result, this then places unnecessary stress on trade unions' financial resources as they have to represent members working in sectors of which they have little or no knowledge or experience of or such members resigning from trade unions due to a lack of quality representation.

The draconian manner in how the contracts of employment of Labour Brokers are drawn up should also stand up for scrutiny. In some instances workers are required to agree to pay fines for breaking the company's "code of conduct". In other instances their employment are immediately terminated if the primary employer for any reason

whatsoever do not want the employee on his premises. The position is then immediately filled by another worker whom is also employed by the Labour Broker. This raises the question of who the employee is really working for and why the primary employer should get involved in the relationship between the Labour Broker and his employees? Labour Brokers also undermines the ILO's Decent Work Convention as well as the Government's Decent Work Agenda. It takes place in the following ways:

- There are no quality employment opportunities. There is a constant lack of skills development opportunities and job security etc.
- There is little or no rights being observed. The right to freedom of association – to join trade unions are seriously undermined.
- The right to Social Protection are seen as a burden by Labour Brokers. Their employees in most instances do not enjoy UIF and Pension Fund Benefits.
- Social Dialogue are basically non existent as there are no or minimal engagement with stakeholders such as employees and trade unions. In some instances employees are not aware of who their employer are.

The reality currently is that workers employed by Labour Brokers are being exploited not only by them but also by the primary employer. Workers employed by the Labour Broker in most cases do not enjoy any of the benefits than those employed by the primary employer whilst both perform the same functions.

It is therefore that we submit that no form of regulation should be considered. Business would either propose that the status quo remain or some form of co-regulation or self regulation. We believe that it should not be an option in your deliberations and instead should be outlawed, banned in it's entirety. It has and continues to be the cause of much hardship and of the creation the "working poor" precisely because of their continued exploitation.

In conclusion, we understand the reason to the findings of the Namibian High Court on the same issue and concur with the learned Judge that Labour Brokering is the worst form of employment as it is inappropriate, unfair and outdated.

Madame Chairperson you are challenged and even required to become the champion of all those employees who either are currently employed by Labour Brokers or who have in the past been employed by them. Your decision henceforth should be to repeal Section 198 of the Labour Relations Act and thereby banning Labour Brokers. Thank you.