

THE RETAIL SECTOR GROWTH, EXPANSION, EMPLOYMENT AND INCOME INEQUALITY: A CASE STUDY OF SHOPRITE AND PICK N PAY IN SOUTH AFRICA AND NAMIBIA

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Abstract

The South African and Namibian economy is liberalised, and there is a movement of big companies from outside Africa to South Africa and Namibia. Some South African firms are operating in Namibia. Shoprite and Pick n Pay have grown and expanded in South Africa and other parts of Africa. These companies have contributed to job creation in South Africa and Namibia. However, most of the jobs created are sub-standard employment with little benefits and low wages. This paper argues that sub-standard employment created by Shoprite and Pick n Pay regenerates and deepens cheap labour, income inequality and labour exploitation. The paper aims to provide a picture of the current state of income inequality at Shoprite and Pick n Pay, and argues that sub-standard employment is the main driver of this situation in South Africa and Namibia. The paper uses the secondary and current data to examine and highlight the income inequalities at Pick n Pay and Shoprite. The results show that sub-standard employment by Pick n Pay and Shoprite regenerates cheap labour systems, income inequality, and exploitation. The paper also recommends that there is a need to identify and address the employment discrepancies, and then construct a different kind of workplace solidarity and legislative framework which takes seriously the changes taking place in retail sectors. Such a change calls for a more effective regulatory framework to overcome insecurities experienced by retail workers as a result of different employment contracts and income inequalities.

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Pick n Pay and Shoprite have grown exponentially over the years, and have been supported by an increase in both the supply of the retail space, and the number of shopping centres in South Africa and Namibia. Generally, African countries have experienced a boom in shopping centre development, and high density suburbs have also benefited from this. The relatively developed infrastructure and institutions in South Africa and Namibia have attracted multinational companies. This article posits that the economic contribution made by Shoprite and Pick n Pay is of great value to the economy and the public, as more employment opportunities are generated. However, the nature and quality of employment offered by these retail companies are substandard because the majority of the jobs created are casual, temporary, outsourced via labour brokers (labour agencies).

The paper focuses on South Africa and Namibia for the following reasons: They are middle income countries with a relatively high per capita income; they have the highest level of wage inequality; and they are characterised by widespread poverty. Furthermore, a large number of workers, particularly those who fall under substandard employment, earn very low wages that hardly enable them to sustain themselves and their families. According to Klerck (2005, p.277), the legacy of institutionalised discrimination still plays a vital role in generating segmented labour supplies in South Africa and Namibia. Concurring, Kanyanze, Kondo and Martens (2006, p.156), observe that the distribution of resources overlaps with racial categories, and that both countries still have socio-economic development challenges.

The paper is divided into seven sections. The first section describes the methodology the paper used. The second section of the paper provides a brief background of Shoprite and Pick n Pay shopping centres. The third section discusses sub-standard employment and critically evaluates and analyses sub-standard employment at Shoprite and Pick n Pay in South Africa and Namibia. The fourth section shows attempts to regulate labour brokers, and the fifth section chronicles the trade unions' and workers' resistance to different types of non-standard employment. The sixth section articulates the crisis of union representation in South Africa and Namibia. The last section presents the conclusion and recommendations.

Methodology

The article is a desk-based research, hence it employed a desktop research methodology. To supplement the desktop research method, relevant secondary sources such as journals, articles, books and official documents were used. Data was drawn from literature on retail sector, employment in the retail sectors, and reports on labour issues in South Africa and Namibia. The research method was advantageous because it was relatively inexpensive, provided rich data, good sources of background information, and was unobtrusive. The research method was a platform for critical engagement, analyses and evaluation of existing and current literature on employment relations at the retail sector.

RESULTS AND DISCUSSION

Shoprite and Pick and Pay Retail Company: An outline

The importance of supermarkets has been an interesting area of study in developing nations (Balsevich, Berdegué, Flores, Mainville, & Reardon, 2003; Boselie, Henson, & Weatherspoon, 2003; Cacho, 2003; IFPRI, 2003; Reardon, Timmer, Barrett, & Berdegué, 2003). According to Weatherspoon and Reardon (2003), there has been a steady expansion of the retail sector in South Africa, Namibia and other African countries. The expansion dates as far back as the 1990s. Supermarkets such as Shoprite and Pick n Pay have benefited from economies of scale in these respective countries. Furthermore, their ability to provide a variety of foodstuffs has enhanced their growth in Africa as a whole.

The South African Development Communities (SADC) region is the hub of Shoprite and Pick n Pay as their growth has been massively influenced by the economic and political conditions as well as the type or nature of the consumers. However, the retail sector has struggled with operational costs. Hence, the paper's argument that despite the expansion and growth of Shoprite and Pick n Pay shopping centres, there has been a rise of non-standard employment in South Africa and Namibia. Pick n Pay and Shoprite are two of the four main retail companies dominating in South Africa (Weatherspoon & Reardon, 2003; Department of labour, 2015, p.16). In fact, South Africa has the largest expansion of retail supermarkets. This growth has been attributed to malls that have been built in the black townships (Department of labour, 2015).

On the other hand, it is worth noting that the expansion of malls has posed a threat to the indigenous market in the sub region. This is because of the competition between the small indigenous retailers and multinational retailers such as Pick n Pay and Shoprite (Tustin & Strydom, 2006). The expansion of multinational retail sectors to townships has had economic implications such as a drop in the market shares of indigenous retailers. In some instances, it has diminished entrepreneurship which has been mostly seen in the informal sector. Small indigenous retailers find it difficult to compete with multinational retailers, both in terms of the pricing of products and attracting customers. As a result, the indigenous retail stores have become less competitive as the new shopping malls and centres expand.

Shoprite is a leader in South Africa’s retail sector and in Africa, followed by Pick n Pay. It has 1410 corporate stores of which 130 stores are in other African countries. Shoprite has 1855 stores across Africa. After expanding to other parts of South Africa, Pick n Pay also expanded to six other countries; namely, Zimbabwe, Namibia, Swaziland, Zambia, Botswana and Lesotho. Similarly, Shoprite spread to 14 African states. In Namibia, Shoprite has 89 stores and Pick n Pay has 35 stores. In Zambia, Shoprite has 58 stores and Pick n pay has 11 stores. In Zimbabwe, Pick n Pay has 57 stores. In Angola, Shoprite has 49 stores compared to Pick n Pay (Shoprite Holdings LTD integrated report, 2016; Pick n Pay integrated annual report, 2016).

Figure 1 below shows the number of stores in Namibia, Zambia, Swaziland, Botswana and Lesotho.

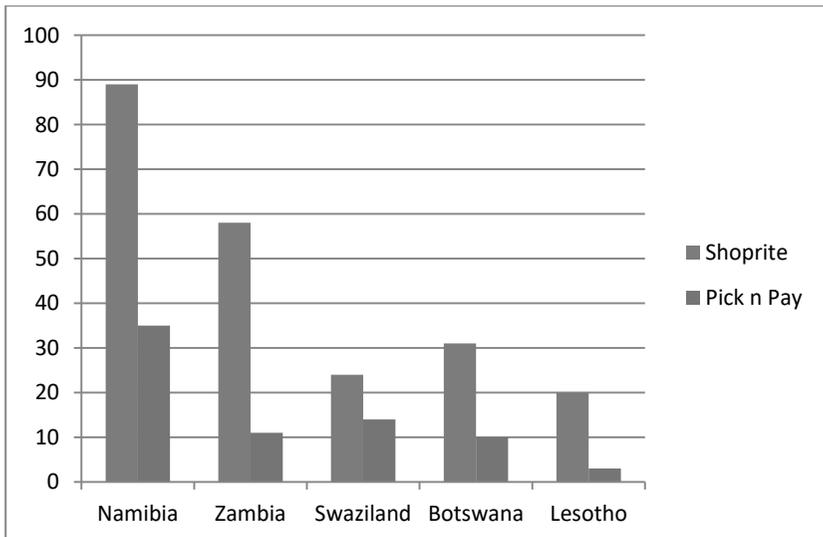


Figure 1: Number of stores in Namibia, Zambia, Swaziland, Botswana and Lesotho.

Source: Shoprite Holdings LTD integrated report, 2016; Pick n Pay integrated annual report, 2016

Both companies provide services that go beyond the grocery business. They also offer other business services such as liquor sales, pharmacy and money market kiosks. For example, Shoprite incorporates 14 distinctive retail brands namely; Usave, Checkers, Checkers Hyper, Computicket, Ok Furniture, Ok Power Express, Ok Franchise Division, House & Home, Checkers food services, Medirite Pharmacy, Liquorshop, Transpharm, Hungry Lion and Freshmark. Pick n Pay houses liquor stores, Computicket, Pick n Pay clothing, and boxer supermarket.

Non-standard Employment and Income Inequality at Shoprite and Pick n Pay

The system of cheap labour and exploitation dates as far back as the colonial and apartheid rule in South Africa and Namibia. For example, the contract labour system in Namibia has been described in detail in a study by Likuwa & Shiweda (2017). They define contract labour as a system in which workers, mostly males from the age of sixteen years and old enough to work, were recruited to work in the central and Southern parts of Namibia during the colonial period. The men were hired to work for approximately six to eighteen months (Likuwa & Shiweda, 2017). Once they were hired, the workers were denied the rights to negotiate the type of employment and salaries. They were hired through recruitment agencies who then sold them to various employers, and the workers were expected to abide by the rule of the contract (Likuwa & Shiweda, 2017).

In fact, the contract labour system is a form of modern slavery and exploitation. The nature of the contract labour system has had political, social and economic implications on the lives and families of the contracted labourers. Notably, the cheap labour system did not end after Namibia gained independence, but continued through sub-standard employment such as casual, temporary and labour broker employment with poor wages, sub-standard working conditions with features such as fluctuating working days, no leave and no guarantee of permanent employment.

The very same system was deliberately used to build the South African and Namibian economy. The system was backed up by the discriminatory legal system and repressive state machinery (Department of

Information and Publicity, SWAPO of Namibia, 1981). The majority of the black people in Namibia and South Africa were incorporated into the capitalist economy as cheap labour in commercial agriculture, mining, manufacturing and service sectors (Mhone, 2001). In both countries, the white minority enjoyed great wealth and privileges entrenched by the apartheid laws at the expense of most of the black and coloured population. The cheap labour system was so ruthless and pervasive to such an extent that many black people could only survive if few of their family members were employed at any one time. The nature of employment was contract employment with very little wages and benefits for the black contract workers. Employers in mines, municipalities, railways, farming sector, hotels and catering industries were notoriously paying black workers very lower wages (Department of Information and Publicity, SWAPO of Namibia, 1981). Green and Sparks (1992, p. 18) share the same sentiments by pointing out that black workers were paid bachelor wages – a wage that was far too little to maintain the workers themselves, and the wage was barely enough for workers to afford to return to their homes in rural areas. Workers had minimal access to proper housing and social services such as education, health and pensions (Green & Sparks, 1992).

The majority of the black population was side-lined and did not have benefits. They were lowered to sub-citizens with limited political rights, while their social position, deliberately designed by the discriminatory laws, turned them into commodities for profit-making (Mhone, 2001). This culminated in the first major strike against such commodification of human-beings in Namibia. In December 1971 to January 1972, 15 000 to 20 000 Namibian contract-workers, with support from SWAPO, embarked on a countrywide strike demanding free choice in location of employment, better wages according to qualifications and abilities; the abolishment of low-paid contract system, freedom of movement, permission to take family members to their place of work, and the unconditional right to visit or be visited (Melber, 1983).

Namibia and South Africa gained independence, liberation and democracy in the 1990s. Sadly, the system of cheap labour did not end with the advent of liberation, democracy and majority rule (Mhone, 2001). The system continues to affect the South Africans and Namibians; mainly the blacks and coloureds. Hence, this paper's argument that the system of cheap labour is now consolidated through the introduction of sub-standard employment in commercial agriculture, mining, manufacturing and retail sectors (Kenny, 2005; Klerck, 2005). In both countries, there has been a consolidation and dominance of relations of labour exploitation based on the

extensive use of sub-standard employment by Shoprite and Pick n Pay. Through this, the nightmare of the modern non-standard employment haunts and stalks most poor people. Massive flexible retail work defines the conditions of life of the working population (Kenny, 2005).

Sub-standard employment is defined as jobs that fall outside the scope of a standard employment relationship, which in turn is understood as full-time, indefinite employment in a subordinate employment relationship. Forms of sub-standard employment include: Temporary employment, temporary agency work or labour hire/broker work, part-time work, casual employment and outsourcing (Dickinson, 2015; ILO 2015; Theron & Visser, 2010). Sub-standard employment, especially for part-time, temporary and labour agency/hire workers, has always existed in the South African and Namibian labour market (Botes, 2013). It has since become a big labour and political issue that has been challenged in courts by trade unions in both South Africa and Namibia (Theron & Visser, 2010).

Many companies including the retail companies argue that they use sub-standard employment for different reasons. Van Eck (2010) details these to include that companies prefer sub-standard employment because of its specific characteristics, such as size, the industry in which it operates, the skills level of its workforce, its exclusive knowledge, the practices of competing enterprises, and the regulatory framework of the country in which companies operate. The aim of neoliberal policy adopted by both countries, which calls for labour market flexibility and deregulation, is to reduce workers' wages and other benefits in order to restore the profitability of capitalist companies. As such, both retail companies engage in sub-standard employment practices to maximise profit. Because of the high rate of unemployment in both countries supplemented by neoliberal policies, the retail companies are maintaining a real pool of cheap labour to take up sub-standard employment.

The companies also argue that fulltime protected employment creates strictures in the labour market and discourages competition. As such, companies are unable to adjust the quantity and the quality of labour supply to constant changes in the global context (Klerck, 2005). It is worth mentioning that some sectors of the economy, such as agriculture, construction and retail, have traditionally been associated with sub-standard arrangements, such as temporary, part-time and seasonal employment. Pick n Pay has argued and maintained that they do have variable-time workers and they receive the same benefits as full-time permanent workers. The company further elaborates that it does not operate on normal office hours. As such,

there is a need for staff on duty for extra hours during the working week and weekends (IOL, 2012).

The increasing use of sub-standard employment by the retail sector dates as far back as the 1930s and 1990s (Kenny, 2005; Klerck, 2005). This type of employment has experienced remarkable growth over the past years and has even penetrated deeper into the South African and Namibian economy (Klerck, 2005). Not much has changed in terms of the nature of employment because workers, particularly women, at Shoprite and Pick n Pay are still subjected to contract, casual and part-time work. The majority of the workers have worked for some years on a casual and part-time basis. These workers are called “permanent casuals and part-time employment” by the retail companies. For example, a 2011 report titled: *Pick n Pay: on your side?* by Friedrich Ebert Stiftung (FES) revealed that the number of casual and part-time workers at Pick n Pay in Namibia was 729, and full-time permanent workers was 562 (Friedrich Ebert Stiftung, 2011) at that time. About 90% of the 1 000 workers at the Shoprite’s Centurion facility in Gauteng province, South Africa, are employed by labour brokers (Maromo, 2016). Most of the casual and part-time workers are employed as shelf packers, cashiers and store controllers.

It is common practice that sub-standard workers who do the same work as permanent workers at Shoprite and Pick n Pay, earn radically different wages, with casuals and part-time workers at the very bottom of the wage pyramid. For example, in South Africa, the lowest amount that casual and part-time workers received, reported in 2007, was R22, 800 per annum, and it was increased to R24 000 per annum in 2009 at Shoprite (Patel & Taal, 2011). At Pick n Pay, the minimum wage for full-time permanent workers was R3, 800 in South Africa, and the hourly rate for casuals was R17 at Pick n Pay in 2011 (FES, 2011). In 2012, in South Africa, Pick n Pay had 36 538 workers, 16 000 of whom were permanent full-time, and nearly 20 000 being numerous categories of variable-time workers or casuals supplied by labour brokers. The report reveals that the pay at Pick n Pay for full-timers and casuals was R3, 167 a month (IOL, 2012).

The minimum wage for full-time permanent workers at Pick n Pay was N\$ 1,500 in Namibia in 2011. As for the hourly minimum wage, it was reported that casual workers’ hourly wage was approximately N\$ 6.00 (FES, 2011). According to a report by the Namibian newspaper, *New Era*, casuals and part-time workers earn a weekly wage of as little as N\$ 300 (New Era, 2014). The hourly rate of labour broker workers working at Shoprite’s distribution centre in Pretoria, South Africa, is R23 per hour for 44 hours a

week. Outsourced cleaners at the same centre earn as little as R13 per hour (Maromo, 2016). At Checkers, also a Shoprite brand, it was reported that casual workers earn as little as R550 a week in South Africa (Ntongana, 2016).

The 2018 report titled: *“South African multinational corporations in Africa: Bargaining with multinationals”* compiled by the Labour Research Service (LRS) indicates that the average annual income for an entry-level worker within the retail sector in Southern Africa amounts to R28 506. As for South Africa’s Shoprite/Checkers, the annual income for an entry level retail wage amounts to R44 400. The average annual income for a non-executive director is R706 019, while an Executive Director in the retail sector on average earns R17 467 403. This shows that the wage gap between workers and directors is extremely wide (Daniel, 2018). Shoprite pays low wages using minimum wages as a benchmark wherever it operates in Africa. Consequently, unequal lower wages get paid to workers in different countries who do the same work (Patel & Taal, 2011). Financial insecurity and income vulnerability is a daily reality for most of these workers and being excluded from a direct employment relationship and legitimate unions means their chances of addressing their income insecurities and inequalities are minimal. For them, they are separated, isolated and excluded from fulltime permanent jobs. As much as it is argued that sub-standard employment has the advantage of providing flexible employment in South Africa and Namibia, it also creates income inequality and labour exploitation.

Labour broking or hiring is also one of the highly contested issues in the South African and Namibian economies. Labour broking or hiring has dominated almost every sector of the Namibian and South African economies (Botes, 2013). A labour broker is defined as a person who procures or provides workers to work for a client (Benjamin, 2010; Botes, 2013; Theron, Godfrey & Visser, 2011). The labour brokers provide employers with very cheap manual labour force as well as highly skilled workers. However, in the retail sector, many of the workforces provided by labour brokers are less skilled and desperate workers (Kenny, 2005; Klerck, 2005). Workers provided to companies by labour brokers are paid by labour brokers and their employment is with their respective labour brokers, not the companies they work for, even if the companies supervise them daily (Klerck, 2005).

Labour brokers’ workers are very insecure and are easily controlled and deployed at any time. They also give companies less pressure in terms of hiring them permanently (Klerck, 2005). In addition, Shoprite and Pick n Pay have been outsourcing the so-called non-core services such as security, cleaning and shelf-packing from labour broking agencies providing

merchandising services (Kenny, 2005). Workers do not have contracts with employers where they are located. Consequently, the situation becomes very difficult for them to organise and bargain. For example, outsourced and labour broker workers work at Shoprite and Pick n Pay, but they do not regard Shoprite and Pick n Pay as their employer. However, they perform daily duties for Shoprite and Pick n Pay. Labour brokers and outsourced workers are not directly connected to Shoprite and Pick n Pay in terms of employment relations and methods of wage payment. This system is taking place in a South Africa and Namibian context of high level unemployment, inequality and poverty.

This paper argues that labour brokers have converted the majority of the poor people into commodities for renting or sale. It is labour for rent or sale in the sense that, as long as companies such as Shoprite and Pick n Pay keep on paying the labour brokers money for providing workers, then the workforce will always be supplied whenever needed. At Shoprite and Pick n Pay, the labour broker is paid for the number of workers supplied and the time spent at work. As such, sub-standard employment has weakened trade unions in the workplace, in collective bargaining and as labour actors who promote and protect the rights of workers. The balance of power has shifted to the companies. It is worth noting that the weakening of unions causes competition between workers. In most cases, this has led to the emergence of competitive unionism. The inequality and divisions between workers as a result, become not only bigger, but they are entrenched in the very logic of union organisation and strategy.

To demonstrate this further, labour brokers and companies enter into an agreement where a payment by client (companies) is made for the temporary (or whatever duration) use of workers recruited and brought to the clients. Because most people are unemployed and live in poverty, they run to labour brokers for help in terms of finding employment. As such, labour brokers indirectly own their labour power. Workers become an easy way for labour brokers to make money, and the system helps companies to cut labour costs drastically. The strength of the labour brokers lies in the fact that they are the “middle men” who have access to both the workers and the places where workers can be placed. This leaves clients with fewer things to worry about; for example, the labour costs and other related issues. Because trade unions are not able to deal with the situation, the workers’ own labour power is fast decaying and labour power is reclaimed and owned by the labour brokers.

At both retail companies, the work has been reorganised, and as a result the working class has been restructured. Shoprite and Pick n Pay have radically restructured employment in such a way that full-time employment is declining (Patel & Taal, 2011). The rate of exploitation of labour power has extremely increased through the lengthening of the working day hours, shift work and overtime, and through raising the intensity of work. In other words, with line speeds increasing, fewer workers are expected to do work which require more workers in a short given time period. However, wage levels remain insufficient and this, to some extent, puts pressure on workers to find additional sources of income such as taking out loans, agreeing to work very long hours, overtime or extra shifts. Because workers are employed on a non-permanent basis and through outsourcing and labour brokers, their jobs are more precarious. This has been a long-term strategy of Shoprite and Pick n Pay to make sure that the cost of labour is reduced (Kenny, 2005; Patel & Taal, 2011).

After a review and analysis of data, the paper argues that the introduction of non-standard employment regenerates and intensifies cheap labour and exploitation, and income inequality. For instance, sub-standard employment is firmly grounded in a neoliberal framework. It produces highly unequal distribution of income between flexible and full-time workers despite doing the same job for the same number of hours. Provision of better wages, better working conditions, resources, and related benefits such as leave days and provident funds is only available to those who are employed permanently. The flexible employment system undermines the declared international labour rights to have access to decent employment and protection. Minimum wages, benefits and better working conditions are provided on the status of employment, rather than on need hence flexible employment regenerates exploitation and inequalities between workers (Botes, 2013).

As indicated in the paper, a non-executive director in the retail sector in Southern Africa earns (706 019 annually) 25 times more than that of a worker (28 506 annually) and an executive director (17 467 403 annually) 613 more. It has been seen that wages outside of South Africa are lower than inside the country and therefore the average salary of an executive director can be as high as 1 763 times more than that of an entry-level worker (Daniel, 2018). For example, in 2016, the average annual income for an entry-level worker within the retail sector in Swaziland Shoprite amounted to 25 207, and in Botswana Pick n Pay, it amounted to 16 620, and Lesotho Pick n Pay, it was 24 770 (Daniel, 2018).

The paper also argues that the sub-standard workers are clearly hired for the purpose of maximising profit, reducing the cost of labour at Shoprite and Pick n Pay, as well as managing employment relations in an orderly and cheap manner. The use of sub-standard employment by retail companies is a strategy to have less regulated space within the employment relations within which there is more space to make profit at the expense of cheap labour associated casuals, temporary, outsourced and labour broker employment (Kenny, 2005; Theron 2005; Botes, 2013). Very low wages and precarious conditions of sub-standard employers are further perpetuated by a lack of centralised collective and lack of trade union representation amongst sub-standard workers. As such, they are kept excluded from representation. At some point the wages of casual and part-time workers vary from month to month and between Shoprite and Pick n Pay. This leads to financial insecurity for workers and their families. As for labour broker workers, such variations in the workers basic salaries depend on the completion of work targets set by the retail companies. This means the retail companies pay labour brokers only for work completed.

There are few incentives for employers to invest in the training of workers employed casually, temporarily and via labour brokers. In fact, they are more likely to become increasingly disadvantaged in the global context of a growing demand for skilled personnel (Klerck, 2005). Unfortunately, this means they will remain in low-paid jobs, and at worst, they are slowly and surely pushed into the status of long-term joblessness and marginalisation. The deep pain suffered by sub-standard workers is the terribly low incentives they receive for what is often extremely demanding and exhausting work (Klerck, 2005). A 2016 report by the International Labour Organisation (ILO) reveals that workers in non-standard forms of employment have a high risk of facing decent work shortfalls along one or more of the following dimensions of work: Access to employment; access to social security; and labour market transitions to decent work; wage differentials; conditions of work; training and career development; occupational safety and health and; freedom of association and collective bargaining (Serrano & Xhafa, 2016).

Attempts to Regulate Labour Hire and Other Forms of Non-Standard Employment in Namibia and South Africa

From the two scenarios presented above, sub-standard workers in both retail companies in both countries are faced with a cheap labour system; their labour rights are reduced. Sub-standard workers are also faced with the absence of the right to organise. Nevertheless, these workers have been

taking actions, especially against sub-standard employment, lower wages, and other working conditions through strikes.

Over the years, labour legislations were drafted to protect workers in the traditional full-time employment standard. However, they are currently inadequate to provide protection to workers employed in new forms of sub-standard employment (Botes, 2013). It is becoming a hard task for the courts to differentiate a worker who is not an employee from an employee (Botes, 2013). For example, Botes, (2013) reported that labour hire in Namibia was unregulated: Labour hire left the workers vulnerable and exploited and; most labour hire workers found themselves in lawless situations. In 2007, the Namibian government passed the legislation to ban the labour hire system. Before the banning of labour hire in 2007, the Namibia Labour Act of 1992 made no reference to labour hire leaving it to continue freely and unregulated. However, in 1992 an attempt to regulate it was made. The first attempt to regulate labour hire in Namibia was through the Proposed Guidelines for Labour Hire Employment and Operating Standards in 2000. The proposed guidelines stated that the standard labour law rules as set out in labour law legislation have to apply to labour hire, but many of the detailed questions regarding labour hire specifically were not covered (Botes, 2013).

The guidelines were not implemented. Subsequently, the Ministry of Labour drafted a series of amended guidelines to try to regulate labour hire. The guidelines recommended that labour hire agencies should register with the Namibian Labour Commissioner before they start operating (Botes, 2013). Labour agencies were also required to comply with the Constitution of the Republic of Namibia, Labour Act of 1992, the Companies Act of 2004 and other relevant Namibian legislation. The aim was to make sure that the rights of workers provided for in these Acts were protected (Botes, 2013).

The Namibian Act of 1992 was replaced by the Namibian Labour Act of 2004. The 2004 Act tried to address the weaknesses of the Namibian Labour Act of 1992. In section 126 of the 2004 Act, certain aspects of labour hire were provided for. For example, amongst others, a definition of labour hire was formulated. The term used for labour hire was "employment hire services", and it was defined as; "employment hire services" means any person who, for reward, procures for or provides to a client, individuals who, (a) render services to, or perform work for, the client; and (b) are remunerated either by the employment hire service, or the client" (Botes, 2013, p.516). The 2004 Act focused solely on the identity of employees in section 126 (5) 50 and the proposed employer of these employees in section 126 (2). However, in spite of the definition provided by section 126 (2), and

mainly because the person who paid their salaries was not the person to whom they were accountable, workers were not sure who their true employer was (Botes, 2013).

With regard to the identity of employment hire services as employees, section 126 (5) determined that they could be considered as true employees in spite of any interruption in employment. However, if the characteristics of "employment hire services" employment were considered, it seemed they could even have been regarded as independent contractors, which excluded them from all labour law protection. These employees' status therefore still led to limited job security and limited labour rights. The employees were also excluded from certain benefits such as maternity leave, sick leave, pension, protection against unfair dismissal, and a minimum notice period. The 2004 Act did not become operative since members of parliament of Namibia, trade unions and Namibian employers did not agree on all aspects of the legislation. As a result, labour hire continued unregulated (Botes, 2013).

In 2007, the Namibian government argued that labour hire was based on contract system of the 1900s and it was thus a system based on exploitation of desperate workers. It was banned totally in 2007. The law regarded labour hire as a continued exploitation of desperate workers to the employers' advantage (Botes, 2013; Namukwambi, 2008).

In 2008, the Namibian government revisited the issue of labour hire after numerous labour court case battles. One of such cases was that of African Personnel Service vs Government of the Republic of Namibia (Botes, 2013). After taking into consideration the International Labour Organisation's (ILO) permission to allow labour hire to operate, and other Namibian legislation such as the Constitution, the Supreme Court of Namibia decided the ban was not necessary to achieve morality and decency (Botes, 2013).

In April 2012 the Namibian government promulgated a new labour act. The Labour Amendment Act 2 of 2012 came into effect on 1 August 2012. Part IV of the Employment Services Act 8 of 2011 came into effect on 1 September 2012. The ban on labour hire was lifted and replaced by a new provision in the 2012 Labour Act. The main aim of the new provision was to provide for the protection of the temporary employees of labour brokers, and to grant them the entire scope of employment rights contained in the 2007 Labour Act (Botes, 2013). The client was indicated as the "true" employer of the employee (Botes, 2013, p. 522). According to the amended legislation, employers are prohibited the use temporary employees in anticipation of or during a strike or lock-out. They are also prohibited from employing

temporary employees within six months after large-scale retrenchments were carried out within that particular business (Botes, 2013).

With regards to South Africa, section 198 of the South African Labour Relation Act of 1996 defines the labour broker or temporary employment service (TES) as “any individual who, for payment, procures for or supplies to a client (company or organisation) other persons – (a) who renders services to, or performs work for, the client; and (b) who are paid by the temporary employment service not a client whom the workers render services for” (Mostert, 2011, pp.14-15). In terms of the Labour Relations Act (LRA) and the Basic Conditions of Employment Act (BCEA), the labour broker, rather than the client, is the employer, unless the person procured is an independent contractor (Centre for Rural Legal Studies, 2009; Jeffrey, 2011; Tshoose & Tsweledi, 2014; Van Eck, 2010).

The International Labour Organisation (ILO), a United Nations (UN) agency dealing with labour issues, particularly international labour standards, social protection and work opportunities for all, defines a labour broker as a person or entity that employs workers and places them at the service of a third party (client) who is the actual employer. Put differently, a labour broker connects the workers to the actual employer but remains an agent and continues to profit from the employment relationship which ensues between the worker and the actual employer (Mostert, 2011).

The Labour Relations Amendment Act (LRAA) came into effect on 1 January 2015 after the then president of South Africa, Jacob Zuma, had approved the amendments to the Labour Relation Act of 1996 (LRA) in 2014. The LRAA responds to, among other things, the increased informalization of labour and seeks to ensure that vulnerable and exploited groups of workers receive adequate protection. Some of the most important amendments introduced by the LRAA relates to workers employed through a Temporary Employment Service (TES) – also known as labour brokers - and fixed term employees (Patel, 2014). Labour broker workers have been given new rights. According to the LRAA, labour broking work can only be of a temporary kind, like when another worker is away from work. If the work a worker is doing is not of a temporary nature, the worker automatically becomes a worker of a client company, and even if the work is temporary work the client company must employ one after three months and must give the worker the same wages and benefits as other workers doing the same job.

The LRAA further states that after three months, the client company must employ the workers fulltime. If workers are given notice after the three months, workers can dispute it as unfair dismissals at the CCMA or a

bargaining council even if one has worked less than three months for a client company and is still a labour broker worker. Furthermore, the LRAA says that from the first day a worker starts working for the labour broker, the worker is covered by the rights set out in the bargaining council or sectoral determination that the client company falls under. A worker must be given written details of his or her job when he or she starts working for the labour broker. Workers' rights are the responsibility of the labour broker and the client company, so if the labour broker breaches the worker's rights as set out in the bargaining council agreements or sectoral determinations, a worker can hold the labour broker, the client company, or both, responsible (Casual workers advice office, 2015). Employers are further restricted from employing workers on a fixed term contract that exceeds three months.

Protest against Flexible Employment, Outsourced and Labour Brokers

Over the years, trade unions (such as the National Union of Namibian workers (NUNW) and South African Commercial, Catering and Allied Workers Union (SACCAWU) representing workers in the retail sector and non-fulltime workers at Shoprite and Pick n Pay have been protesting, demanding the following: Wage increase (that has always been the first priority for the protesting workers); the second priority for the workers has been long working hours without overtime payment; the third and the main concern for most workers, non-full-time workers, is sub-standard employment such as casualization, flexi-time, short-term or contract employment, as well as outsourcing and the use of labour broker to hire workers. Other issues raised by workers concern health and safety, management style, and trade union rights (Patel, 2008).

For instance, in 2003 and 2006 Shoprite workers in South Africa and non-permanent workers protested for better working conditions for casuals. In 2006, the protest was on wages and conditions of employment. There were about thirty thousand workers involved in the 2003 strike and about thirty-five thousand workers involved in the 2006 strike (Patel, 2008). In 2010, in Namibia, NUNW called for a consumer boycott of Shoprite to highlight the continued increase in the informalization and casualization of labour by Shoprite. However, Shoprite denied that it uses casual labour in the country. The retail company maintained that all its workers are employed on contract basis (Patel & Taal, 2011).

To illustrate the workers' protests even further, in March 2016 in South Africa about 1000 Shoprite outsourced and labour broker workers organised under the #OutsourcingMustFall movement protested against poor

pay and their employment through labour brokers (Maromo, 2016). The workers demanded an immediate end to labour broking at the Shoprite distribution centre, and the end of all contracts with contractors and service providers. They wanted employment of all contract workers by Shoprite on a permanent and full-time basis. They also demanded a minimum wage of R10 000 per month across the board and equal benefits with permanent employees of Shoprite. Another demand was a moratorium on retrenchments and a freeze on the movement of any contract workers by the contractors from the date of the memorandum (Maromo, 2016).

In September 2016, Workers from Pick 'n Pay's Bake House branch in Kempton Park, Gauteng province marched to the company's head office in Bedfordview demanding an end to casualization of work arguing that most workers have worked for the company for many years, but they are still employed as casual workers. They also demanded an end to the victimisation of workers and reflection of their UIF contribution which is deducted but does not appear on the Labour Department's database. They demanded an increase in salary of R8 000 per month. They were employed at the company's factory in Isando, South Africa, which distributes baked goods to Pick n Pay's various branches around the country (Mahlati, 2016).

The Crisis of Representation in South Africa and Namibia

The South African and Namibian trade unions are faced with the threat of a declining membership base due to the increasing "flexible" forms of employment such as temporary, part time and casuals, and a growing informalization of the economy. For example, the 2016 Namibia labour force survey report reveals that 66.5% of the employed population in Namibia are in informal employments (Namibia Statistics Agency, 2017). These include 67.5% females and 65.6% males. Furthermore, 81.1% of informal employments are in rural areas and 57.3% of informal employment are in urban areas. In an attempt to reduce the cost of labour and to limit trade union influence, employers in sectors such as retail, fishing, mining, hospitality and manufacturing, have resorted to temporary and casual work contracts for low-skilled workers (Jauch, 2017). The labour hire companies have posted a threat of "casualization" to workers' incomes, job security and benefits. Due to the insecurity of their contracts, trade unions found it very difficult to recruit and represent "casual" and temporary fulltime workers (Kenny, 2005; Jauch, 2017).

For example, at Shoprite in Namibia, three trade unions, namely; the Namibia Commercial Catering Food and Allied Workers Union (NACCAFU),

the Namibia Food and Allied Workers Union (NAFAU) and the Namibia Wholesale & Retail Workers Union (NWRWU) compete with each other for representing the majority of the workers. All the unions have not managed to gain an absolute majority. As such, Shoprite does not recognise any union as the bargaining representative. Shoprite solely determines the conditions of employment (Jauch, 2017). Workers are a subordinated group that have little protection and voice. They receive very little for their efforts.

As a result, trade union membership has become increasingly narrow in focus, covering permanent workers in “traditional” sectors such as the public service, mining, fishing, construction and retail. Unions were unable to reach tens of thousands of workers in precarious working conditions on farms, in private households, at labour hire companies and in the informal economy. It is fair to argue that the South African and Namibian’s labour market essentially consists of four distinct layers: Firstly, a small elite enjoying a decent standard of living; secondly, a significant group of formal sector workers with permanent jobs and low to middle incomes; thirdly, a growing group of casual workers and; fourthly and lastly, labour hire workers who are the victims of a labour market that virtually forces them to accept any job under any conditions (Jauch, 2017).

CONCLUSION AND RECOMMENDATIONS

One of the ways to deal with labour in the retail sector at the regional level is to mobilise for the ratification of employment protocol at the SADC. Once the protocol issue is dealt with, then sub-standard employment may be mitigated in statutory manner. In a nutshell, sub-standard employment can be dealt with through the law.

Traditional trade unions no longer adequately represent retail workers; they especially exclude sub-standard workers. Traditional organising strategies no longer address the needs of sub-standard workers. New unions or new forms of associations or workers organisations are needed to address and engage with the challenges that face sub-standard workers. What is also required is clear recognition of difference and the need to construct a different kind of workplace solidarity and legislative framework which takes seriously the changes taking place in retail sectors.

Workers in sub-standard employment suffer the most. Despite working for the big retail companies, very little has been attained under sub-standard employment except an increasing abuse of labour, income inequality and poverty. Sub-standard workers at Shoprite and Pick n Pay still remain severely marginalised from labour protection and minimum wage,

and if this continues, the resolutions continuously made towards achieving poverty and inequality reduction cannot be accomplished. There are substantial protests, lobbying and advocacy that non-standard and labour broker/hire workers should be employed permanently by Shoprite and Pick n Pay. The fact that workers remain confined to sub-standard or flexible form of employment, to which protection and benefits are rarely attached, has consequently resulted in their exclusion from benefiting from retail companies' immense wealth accumulation.

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