

Straight Talk (27), 6-12 August 2012:

The Labour Amendment Act: A step in the right direction

Prepared by Herbert Jauch for The Villager newspaper

On 1 August, the Labour Amendment Act came into operation amidst much protest from sections of the Namibian employers. Similar to the Chamber of Mines which had threatened with mine closures if mining taxes were raised, the Namibia Employers' Federation (NEF) seems to have resorted to spreading panic. It warned that jobs would be lost if the Labour Amendment Act was implemented and hinted at possible social unrest and even court action by employers to stop the law. In response, the Minister of Labour and Social Welfare, Immanuel Ngatjizeko pointed out that many Namibian workers were still lowly paid without benefits and job security and thus government had to take measures to protect them more effectively. He asked employers how a law that will pave the way towards a greater degree of justice could threaten social stability in Namibia or chase away investors.

This debate shows once again that Namibia still has a long way to go to achieve social justice and decent work for all. We need to remember that the background to the Labour Amendment Act is the question of labour hire in Namibia. This highly exploitative practice spread in the country since the late 1990s and thus 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 clause while employers opposed the clause and argued that the law 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), 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. Given the well-documented abuses of workers at labour hire companies, the Labour Amendment Act is merely a step towards ensuring better protection and improved

working conditions for the workers concerned. This is in line with the ILO's decent work agenda to which Namibia is a signatory.

Some employers claim that the implementation of the Labour Amendment Act will lead to thousands of job losses. This is hard to imagine. A supermarket, for example, that currently employs its staff through labour hire companies will not be able to just retrench them. Instead, the new law aims to ensure that the supermarket takes full responsibility for its staff and affords them the same rights and working conditions as permanent staff. What is wrong with that? Do employers really claim that this would lead to retrenchments? Do Namibian employers still believe that it is their right to impose highly exploitative working conditions that leave workers without any sense of job security?

The debate around the Labour Amendment Act suggests that many employers still think that the state should not prescribe employment practices and leave working conditions to be determined by "market forces". Given the high levels of structural unemployment that especially affects young people and those with lower skills levels, such "market-driven" working conditions would inevitably be very poor for most workers in Namibia. This is currently the case and thus the Labour Amendment Act is an attempt to secure better conditions for some of those currently exploited workers. It is a step in the right direction but the new regulations will only be as effective as their implementation. In an environment of mass unemployment and a severely under-staffed labour inspectorate, the battle against labour brokers (and labour exploitation in general) will not end with the new law. The Ministry of Labour has shown a willingness to act but it needs to be supported by strong trade unions to ignite a campaign for a decent working conditions for all. As pointed out in some of my previous columns, this is not merely a labour matter but requires new economic and development policies that grant the interests and needs of working people a central place.

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