

INFORMALISATION OF WORK IN SOUTH AFRICA

Moving the Debate Forward?

Draft monograph by the PSA

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INTRODUCTION

The year 2016 opened like a whirlwind, not least due to anti-outsourcing protests at South Africa's institutions of higher learning. An economy's labour relations regime exists in a delicate trade-off between protecting workers and ensuring flexibility for employers. Workers benefit from a well-functioning labour market regime by being assured of greater workplace stability. This certainty allows workers to plan ahead, manage their resources optimally, and commit to investment spending such as education for their children. On the other hand, firms benefit from labour market flexibility, since this enables them to make decisions about hiring, knowing that when market conditions are not favourable they have flexibility to adjust capital and labour requirements. If this balance is not properly maintained, for example, there is either inadequate protection for workers or weak flexibility for employers. Thus unhappiness on either side of the equation is a sure upshot – labour or capital.

The debate around informalisation (also referred to as casualisation, labour broking, and other terms) manifests an interesting dynamic - unhappiness from both parties. Companies see the rise of informal employment as a means to get around what they view as unfairly restrictive labour laws. This is more so in an uncertain economy. Companies are loathed to be tied to collective bargain arrangements. Workers see the existence of those informal work relations as unjustly undermining their workplace protection. The mutual unhappiness reflects a lack of control over labour broking. In the unregulated vacuum in which labour broking existed, there was bound to be a lack of balance in addressing the competing needs of workers and employers.

Addressing this vacuum became a national priority after 2008, and was the subject of contentious debate. Employers argued that they needed some flexible employment options to survive, while unions held that the very idea of a casualisation undermined hard-fought protections in the rest of the labour market. The labour broking debate was particularly difficult to resolve, because it unfolded in tandem with a broader discussion about the Labour Relations Act and the substance of labour relations in the country. Even as reforms that severely curtailed informalisation were eventually introduced in 2015, the core drivers remained in place. We can thus assert that the issue has yet to be fully resolved.

This monograph is an attempt to shed light on all the critical aspects of the multi-sided and elusive phenomenon of informalisation. Part 1 of the monograph examines the broader picture of the South African labour market, the manifestation of informal work, and specific data in this regard. Part 2 looks at the political debate over informalisation, the reforms enacted in 2015, and some early evidence on their impact. Part 3 explores possible policy considerations, while Part 4 charts a way forward on the issue. Without the full exposition of informalisation as a phenomenon, it would be difficult for labour to tackle the informalisation phenomenon effectively.

UNDERSTANDING INFORMALISATION

The term informalisation encapsulates multiple different trends, all of which have in common a change in the relationship between the worker and the workplace. At its broadest, informalisation involves work done without a permanent contract between employer and employee. It has become popularised largely by the trend of globalisation and technology-induced structural shifts in the economy towards services-intensity. Instead of retaining a large number of workers, some companies would prefer to source these on demand, or alternatively employ a few permanent workers with supplementary workers contracted temporarily from labour brokers. Casualisation and contracting out grew especially in the 1990s, and became a preferred form of “employment” by companies as a way of managing efficiencies and being locked into collective bargaining arrangements.

Three broad streams of informalisation can be identified:

1. **Casualisation:** The changing of the nature of work contracts, from permanent to short-term. In this relationship, the workplace still directly employs the worker, but on a temporary contract, which may limit the benefits available to the worker, and creates an avenue for dismissing the worker without resorting to firing procedures – the company simply decides not to renew the contract.
2. **Outsourcing:** The externalising of tasks that were typically done in-house, and the hiring of a third-party to undertake these tasks. In this relationship, workers performing the work have no relationship with the workplace employer, but are employed by the contractor. This change is often more of a threat to those who traditionally performed the task in question for the primary company, rather than the workers who are now performing the task for the contractor.
3. **Labour broking:** A triangular relationship in which a worker receives instructions from and executes tasks for one company, but is employed and paid by another company whose role it is purely to hire and manage employees.

In a nutshell, these strands constitute the elusive phenomenon called “informalisation” of work.

THE SOUTH AFRICAN LABOUR MARKET

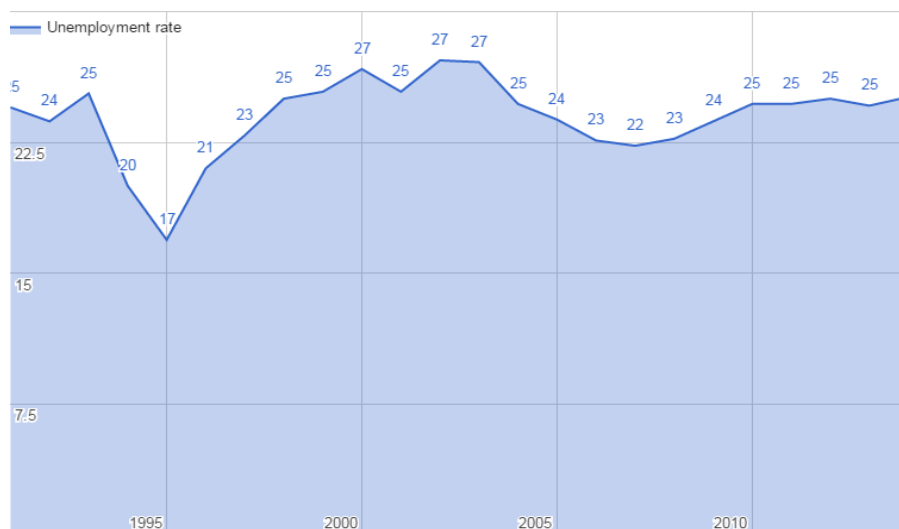
The debate over informalisation should be located within the broader context of the South African labour market, which could be characterised by three key factors:

- a. high levels of unemployment;
- b. large-scale dependence on the service sector to drive employment; and
- c. a relatively inflexible regulatory regime.

Unemployment

South Africa is characterised by stubbornly high unemployment rates,ⁱ which in recent years have fluctuated between 22% and 25%. This picture looks bleak when one considers the plight of youth as captured in the recently released Vulnerable Group Series 1 by Statistics South Africa. According to the Report, “over the last decade, young persons between the ages of 15 and 34 made up approximately 70% of total unemployment.”ⁱⁱ

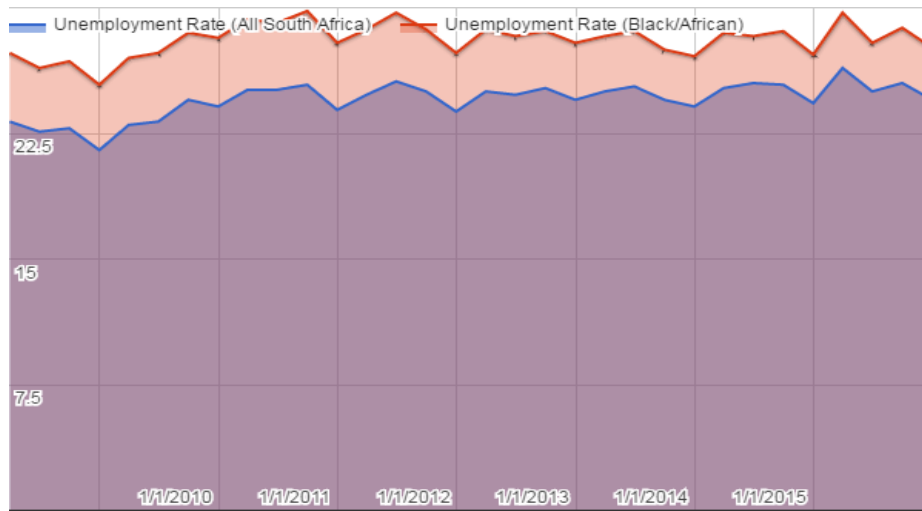
Figure 1: rate of unemployment



Source: StatSA. 2016. “Quarterly Labour Force Survey, Trends 2008 - Q4 2015.”
http://www.statssa.gov.za/?page_id=1854&PPN=P0211&SCH=6621

Unemployment affects different population groups differently, as can be seen in Figure 2 below, which looks at recent trends in total unemployment, against unemployment amongst Black/African South Africans. Unemployment rates differ widely among different racial groups, age groups, and regions. Youth unemployment, for example, is more than twice as high as total unemployment, standing at 50.4% for those aged 15-24 in Quarter 4, 2014.ⁱⁱⁱ

Figure 2: Unemployment and demographics

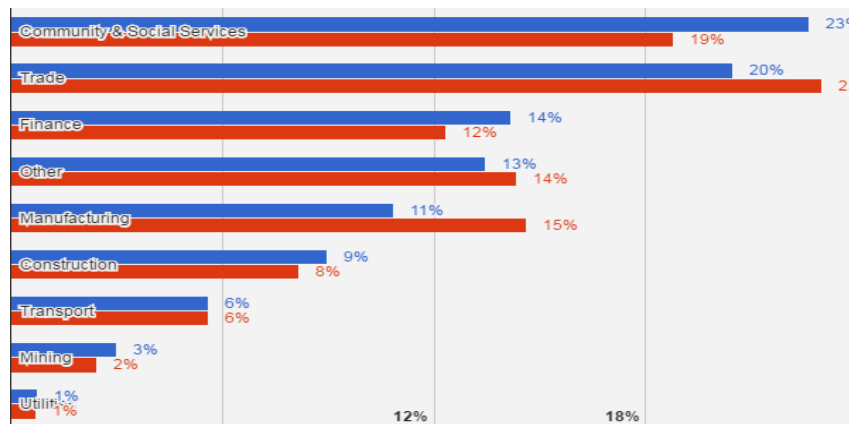


Source: StatSA. 2016. "Quarterly Labour Force Survey, Trends 2008 - Q4 2015." http://www.statssa.gov.za/?page_id=1854&PPN=P0211&SCH=6621

Employment by sector

Figure 3 shows the share of employment by non-agricultural sector^{iv} in 2015 (blue) and 2008 (red).^v As can be seen, service sectors are the biggest employers in South Africa, with community and social services (mostly government), trade (mostly retail and wholesale firms), and finance (banks and others) employing more than half of the working population. The manufacturing sector – which in many other economies forms the backbone of employment generation – has been shedding jobs since 2008, continuing a decades-long decline in employment in the sector, which has only recently stabilised. This is a clear indicator of structural change in the economic trajectory towards service-orientation.

Figure 3: Employment by sector



Source: StatSA. 2016. "Quarterly Labour Force Survey, Trends 2008 - Q4 2015." http://www.statssa.gov.za/?page_id=1854&PPN=P0211&SCH=6621

Labour market flexibility

A view that is prevalent within the business community is that South Africa's labour market is inflexible – meaning that it offers a myriad of protection to workers, ranging from protection from unfair and arbitrary dismissal, to requirements for leave and breaks, and so on. An emphasis tends to be placed on what is colloquially called the difficulty to hire and fire workers. It is however difficult to compare South Africa with other countries in this regard. A number of global efforts exist that attempt to measure labour market flexibility/rigidity, but they tend to be subjective and influenced by those designing the tests. Some are explicitly used as tools to lobby for reduced regulation. Nevertheless, two indicators are presented below, all of which draw on data captured by the World Bank's Doing Business survey

In its "Labour Market Efficiency: Flexibility", the World Economic Forum's Global Competitiveness database ranks South Africa 129th out of 140 countries, thus placing the country below China and India, but above the likes of Brazil and Indonesia.^{vi} South Africa scores 3,7 in this metric, against the top performer Singapore's score of 6,1. Notably, South Africa ranks third to last (ahead of only Zimbabwe and Venezuela) in the "Hiring and firing practices" metric, which is often cited as a crucial driver of informalisation. South Africa also ranks last in the "Cooperation in labor-employer relations" metric.

It must be noted that South Africa ranked better on the Fraser Institute's Economic Freedom report, which placed the country 96th out of 157 countries in the "Labour Market Regulations" section. However, the country scored extremely poorly on the "Hiring and Firing Regulations" sub-section, ranking third-last, ahead of only Venezuela and Syria.^{vii}

The idea that it is difficult to hire and fire workers in South Africa seems to run counter to evidence. In both of the above-mentioned rankings, and in the local analysis of the same dataset,^{viii} South Africa ranks positively for the cost of hiring and firing workers. While the studies unanimously agree that the bureaucracy of hiring and firing is complex, the overall cost of that process seems to remain low. We do not highlight this to support the 'hiring and firing' brigade, but merely to point out that the brigade often dramatises the strength of its claims.

Surveys conducted by small and medium enterprises in South Africa generally indicate that while labour market protections are a concern, other issues – ranging from availability of skills to the size of the domestic market – are more pressing than labour regulatory factors. It must be pointed out, however, that this may not necessarily indicate that the market is more inflexible than suggested by global studies, it could simply mean that other very serious problems exist, or that firms are able to find ways around labour regulations – of which the use of informalisation might be one strategy. Against this backdrop, it can be argued that the rise of informalisation is a response to a perceived inflexibility of the labour market.

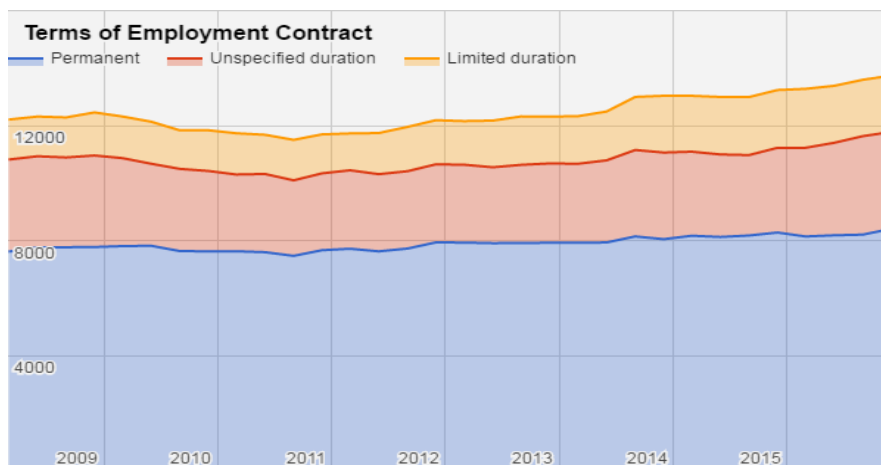
Employment trends

According to Borat,^x temporary employment services (TES) “has been the single highest creator of jobs in the economy.” There are two ways to interpret this statement. One is that TES are making an important contribution to the economy, creating opportunities where there otherwise would not have been job creation. The other is that the jobs “created” by TES would have been created anyway, only now they have been created with reduced protections for the workers concerned. Understanding the balance between these phenomena requires a careful investigation of the data concerned.

It is difficult to quantify informalisation trends in South Africa. There is no independent data that specifically analyses informalisation. Instead, a number of data proxies are used to analyse changes in the nature of employment, and likely growth in labour broking.

One proxy is to look at the nature of employment, in particular the data on the nature of employment contracts (permanent or temporary) and access to basic benefits (maternity leave, paid leave, etc.) This is not an entirely accurate indicator. Cleaning staff, for example, are commonly employed to provide fixed-term services to companies, but are usually employed permanently by their cleaning company. This means that they might be counted as permanently employed, even though this is clearly a labour broker relationship at work. Many in the informal economy might have no contracts at all, and thus would not be considered permanently employed. With this in mind, Figure 4 below shows employment by contract conditions.

Figure 4: Employment by contract

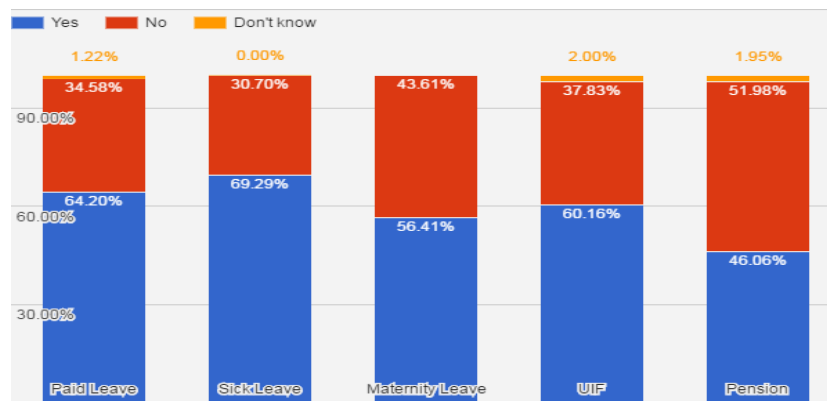


Source: StatSA. 2016. “Quarterly Labour Force Survey, Trends 2008 - Q4 2015.”
http://www.statssa.gov.za/?page_id=1854&PPN=P0211&SCH=6621

While the majority of South Africans are employed on a permanent basis, a considerable portion of them are on ‘limited duration’, or temporary contracts. This group accounts for 24.54% of total employment in most recent data. This figure is relatively consistent for both genders, although women are marginally more likely to be employed on a short-term basis than men.

Another proxy for informalisation would be to look at the availability of benefits. Again, this has limits, as many permanent positions would not come with benefits. However, the analysis can show whether workers are benefiting from the Basic Conditions of Employment Act (BCEA) – which requires paid leave, sick leave, maternity leave, and UIF deduction. As Figure 4 indicates, a large portion of the working population is not granted access to basic workplace rights. The most startling is the figure for maternity leave, which is denied to 43,61% of female employees. Some workers do not qualify for the **Basic Conditions of Employment Act**, such as those who work less than 24 hours in a month. But the numbers registered below are much larger than can be accounted for by that consideration, with only 4,3% of the employed classified as being underemployed.^x Access to benefits seems to indicate deep structural problems in translating legal protections into actual benefits. While it is impossible to know what fraction of this group are being denied these protections because of informalisation, it is certain that the denial of rights is a problem for workers, and that informalisation might play a role in this regard.

Figure 5: Access to Basic employment rights



Source: StatSA. 2016. “Quarterly Labour Force Survey, Trends 2008 - Q4 2015.”
http://www.statssa.gov.za/?page_id=1854&PPN=P0211&SCH=6621

INFORMALISATION TRENDS

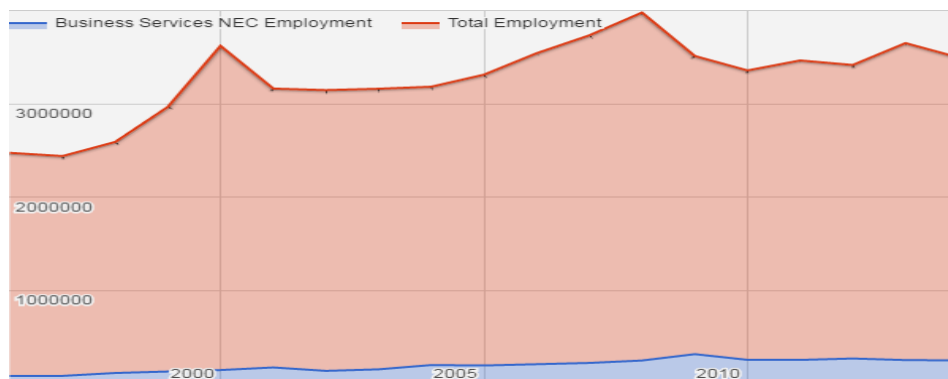
The National Association of Bargaining Councils (NABC) estimates that “almost 1 million workers were employed through labour brokers in 2010,”^{xi} while the largest labour broker industry group, the Confederation of Associations in the Private Employment Sector (Capes), claims to represent labour broking firms that manage placements for 700,000 workers.^{xii} A report by NALEDI claims that “3 million casual workers are employed through labour brokers in a R23 billion per annum industry.”^{xiii}

Beyond these estimates, there is remarkably limited data on the labour broking industry. The one major exception is a study by the University of Cape Town’s Development Policy Research Unit (DPRU). While the DPRU and the report’s authors are extremely well regarded experts, it should be noted that the study was supported by Capes, which is the voice of the labour broking industry in South Africa. The support of the industry group may have some influence on the results, but there is nothing to indicate serious problems in the study.

The study acknowledges the lack of data on informalisation, and therefore takes a roundabout way to study the phenomenon. Using the government’s Quarterly Labour Force Survey, the researchers identify a sub-category within the employment data for the “financial and business services sector”, namely “Business Services Not Elsewhere Classified” (Business Services NEC), which they claim is where the overwhelming majority of Temporary Employment Services are classified. TES are deemed to fit within this category because, even if they are providing staff to specific industries like security or agriculture, their own function is as a business service. Using the Business Service NEC data seems a good strategy to capture professional staffing companies, although it does have limitations. Sector-specific labour brokers may still be captured according to their sector rather than their function. For example, labour brokers in the construction industry may be classified as employment agencies (and put in the “Business Services NEC” section) or as construction companies. The category most likely captures many other types of businesses, that are not labour brokers, but which do not easily fit into other categories.

These doubts aside, the data show 1,3 million jobs were created in the Business Services NEC category since 1995, a significant portion of the 5,4 million jobs created across the economy. Figure 6 shows the growth of temporary employment services as a portion of total employment. TES employment as a portion of total employment hit a high of 8,96% in 2009, rising from only 3,31% in 1996, and most recently reaching 7,09% in 2014.

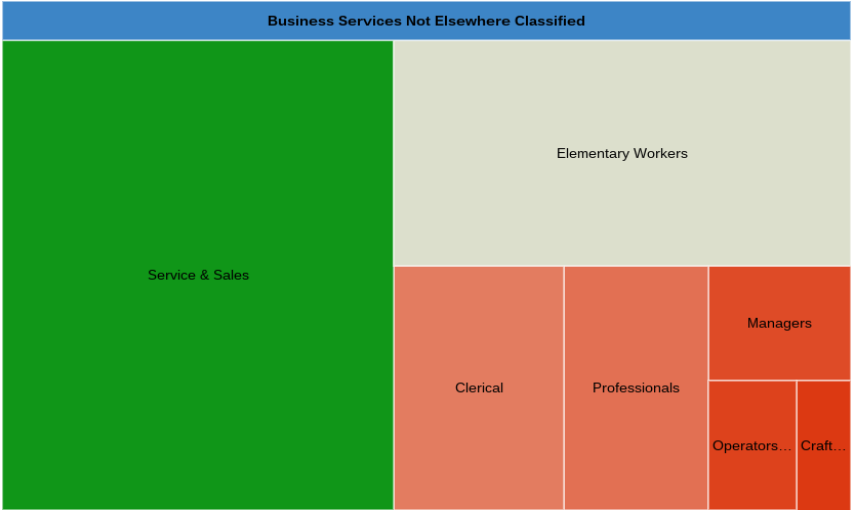
Figure 6: Temporary vis-à-vis total employment



Source: Borat, H., Cassim, A. & Yu, D. 2014. “Temporary Employment Services in South Africa: Assessing the Industry’s Economic Contribution.” Johannesburg: Capes.

Almost half of the jobs created in TES were classified as ‘Service and Sales’ jobs, which can include anything from call centres to retail staff. A range of skilled professions make up about a quarter of total jobs, while another quarter are classified as ‘Elementary Workers’, a broad category that includes numerous jobs that involve (skilled or unskilled) physical labour, such as farm or construction workers. The distribution of jobs in the TES segment can be seen in Figure 7 below.

Figure 7: Jobs in Business Services N.E.C, by Job Function



Source: Borat, H., Cassim, A. & Yu, D. 2014. “Temporary Employment Services in South Africa: Assessing the Industry’s Economic Contribution.” Johannesburg: Capes.

Table 1 below breaks down employment in the TES by various different demographic groups, and compares it to total employment. Overall, the differences are not very large, and are consistent with the differences observed when comparing specific sectors to the average.

But some points are worth noting. Most notably, employees in the TES space tend to be less well educated than is common in general employment. On the one hand, this would seem to confirm that informalisation has largely struck in lower-wage, low-skills jobs. Workers in this category are very vulnerable to abuse. However, it also seems to indicate that the TES sector is absorbing a particularly vulnerable group of workers in South Africa, which is vitally important in the face of the country’s serious education crisis. This is the core of the “little is better than nothing” discourse.

Some high-skill sectors have also seen a rise in casualisation, which generally takes the form of short-term contracting. This might be because of uncertainty in streams of income (as is the case in the NGO sector) or because a firm wants to build an extremely high pressure delivery expectations for staff members (as is the case in some trading firms). But, in general, skilled professionals are less likely to be impacted negatively by informalisation, given the availability of work opportunities for them compared to low-skilled sectors. There is an inclination amongst companies to attract and retain skilled professionals.

The most concerning observation is that young people, who suffer disproportionately from unemployment, do not seem to benefit from TES. The 15-24 year old group is less likely than average to be employed by a labour broker. This seems directly to contradict one of the positive narratives that could justify labour broking: that it provides an avenue for young people to get access to some work experience, and develop into a more permanent role. Rather, the data seem to indicate that the next, older age groups are significantly more likely to be working in TES. This is extremely worrying. Both the age group 25-34 and 35-44 play a crucially important role in any economy: raising and educating children, driving most retail trade, and making important investments like buying houses. Significant uncertainty at the workplace for this group could be a serious systemic threat to the economy.

Table 1: Temporary employment and demographics

	General	TES	More (+) or Less (-) Likely in TES		General	TES	More (+) or Less (-) Likely in TES
Population Group				Age			
African	68.90%	77.20%	8.30%	15-24	8.60%	8.20%	-0.40%
Coloured	12.50%	9.80%	-2.70%	25-34	33.00%	38.60%	5.60%
Indian	3.70%	3.10%	-0.60%	35-44	30.70%	36.90%	6.20%
White	14.90%	9.90%	-5.00%	45-54	19.30%	12.40%	-6.90%
Education				55-65	8.40%	3.90%	-4.50%
No education	1.70%	0.60%	-1.10%	Region			
Grade 0-7	5.40%	2.90%	-2.50%	Urban	81.10%	87.60%	6.50%
Grade 8-11	32.40%	44.20%	11.80%	Rural	18.90%	12.40%	-6.50%
Grade 12	34.60%	40.30%	5.70%	Gender			
Diploma	13.10%	8.40%	-4.70%	Male	57.60%	61.60%	4.00%
Degrees	12.90%	3.70%	-9.20%	Female	42.40%	38.40%	-4.00%

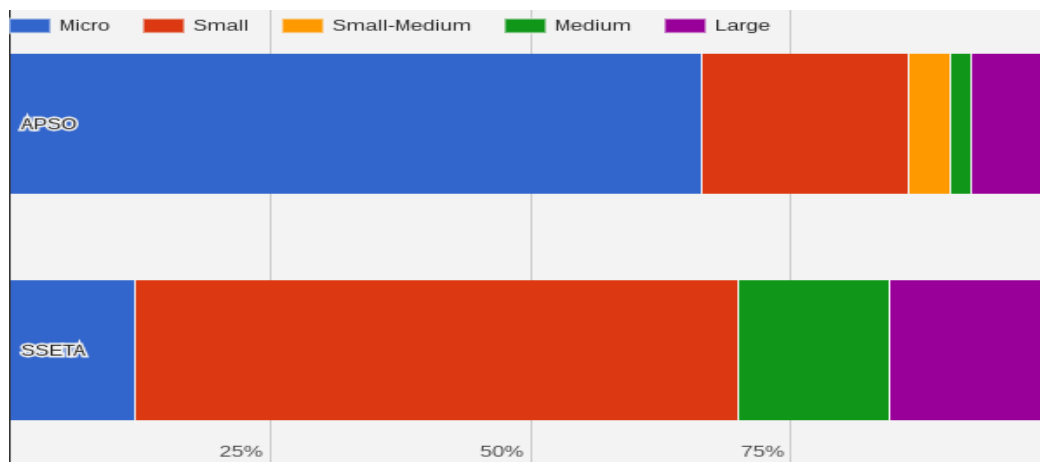
Source: Borat, H., Cassim, A. & Yu, D. 2014. "Temporary Employment Services in South Africa: Assessing the Industry's Economic Contribution." Johannesburg: Capes.

As informalisation has expanded, so too has the labour broker industry. Again, it is difficult to understand the exact nature of the labour broking industry, but some estimates are available.

A commonly cited statistic is that there were 3 140 temporary employment services firms registered with the Services Sector Education Training Authority (SSETA), up from 1 076 in 2 000.^{xiv} This figure is an example of how many firms are operating in the TES space. But this might not paint the true picture of the situation, for the figure does not include companies that are not registered with the Services SETA. Capes claims to represent more than 1 200 staffing firms, which directly employ more than 10 000 employees (that is, employees working for the staffing firm, not those being sent out to staffing positions).

Labour brokers include many large multinational companies, which, in the South African context, include Kelly, Adcorp and TES Connect. The majority of labour brokers, however, are small or medium-size firms, directly employing less than 50 people. Figure 7 below^{xv} shows the distribution of firm size in the labour broking industry.^{xvi}

Figure 6: Actors in the labour broking space, by firm size



Source: Studies quoted in Borat, H., Cassim, A. & Yu, D. 2014. "Temporary Employment Services in South Africa: Assessing the Industry's Economic Contribution." Johannesburg: Capes.

Overall, three key observations should be noted from the above trends. First, the industry is very diverse, covering many different sectors and being facilitated by very different firms. While informalisation may be discussed as a singular trend, in reality the conditions of informalised workers are likely to vary considerably depending on the nature of their industry and employer. Second, labour brokers seem to be offering a path to employment for workers aged between 25-44, with some level of high school education. This is a particularly important economic group and, depending on one's perspective, this trend could either mean labour brokers are creating opportunities for a vulnerable group, or it could be interpreted as locking these workers into low-quality, insecure employment. Third, a remarkable number of labour brokers seem to be small firms. These firms are likely to find reforms more challenging than larger firms, and thus regulatory changes could put pressure on small firms, and might encourage consolidation of firms in the industry.

TOWARDS REFORMS

Legal status pre-2015

Temporary employment services in South Africa are recognised by law, and defined as: “any person who, for reward, procures for or provides to a client other persons-

- a. who render services to, or perform work for, the client; and
- b. who are remunerated by the temporary employment service.”^{xvii}

The legal standing of TES and the workers they place changed drastically with amendments to the LRA in 2014. But prior to these changes, nonstandard workers faced a precarious legal position. Technically speaking, those employed under casualisation conditions were fully covered by all labour market protections. However, these obligations applied to the relationship between the worker and the labour broker, and did not fully apply to the relationship between the worker and the workplace employer.

The practical impact of these conditions meant that many of the central rights awarded under the LRA and the BCEA were not extended to non-standard workers. Three differences in particular were cause for concern.

First, workers were not protected from arbitrary dismissal. A workplace could dismiss a worker by cancelling their contract with the labour broker, and thereby avoid their actions being constrained by traditional dismissal procedures. In effect, they were not firing anyone; they were merely cancelling a service.

Second, differentiated wages and benefits could be offered to non-standard workers, relative to permanent employees. The Equal Employment Act (EEA) did apply to both the broker and the workplace employer, meaning that, it was not legal for employers to discriminate based on race, gender, religion, and so on. Thus, both brokers and workplace employers would be jointly and severally liable.^{xviii} However, since the contract workers technically had a different job status to permanent staff, regardless of the functions they performed, different treatment was legal. Outcomes of sectoral bargaining councils did not extend to non-standard workers. And, since labour broking is fiercely competitive, wages and benefits tended to be much lower for these employees.

Third, access to a range of fundamental workers’ rights, including those in the BCEA, were complicated by the fact that the physical workplace had no obligation to provide them, even though the labour brokers technically did have such an obligation.

The ills of informalisation

Labour brokers and temporary work placement services are generally accepted as normal parts of the labour market. They are commonplace organisations that meet the short-term needs of companies or help overcome the barriers to searching for new staff. They became contentious in South Africa because of the legal omissions highlighted above.

The central issue of concern was that “temporary” employees were performing permanent jobs. Workers provided by labour brokers often perform roles that are indistinguishable from those of permanent staff, and hold their position for an indefinite period. Any common sense definition would classify these workers as permanent. This amounts to the temporalisation of permanence. While these permanent-temporary workers have to abide by all the rules and requirements of their workplace, they are not granted many basic labour protections afforded to permanent staff.

Their biggest vulnerability is in the case of hiring and firing, as temporary workers can be easily dismissed from their workplace, without this counting as a firing, but rather as a cancellation or altering of the workplace’s contract with the labour broker. While the worker is technically still protected from arbitrary dismissal by the labour broker themselves, and might be reassigned, this protection is weak. This also could create uncertainty and instability, as a worker always has to adjust to different work environments without any prospect of full protection. The loss of a contract with a workplace is a loss of business for the labour broker, tending to allow for justified retrenchment of staff in dire circumstances.

A related issue, particularly for unions, was the lack of union representation and the fact that temporary staff do not qualify for increase in line with those won in bargaining councils. As a result, temporary workers are often underpaid. The whole system of labour brokering, it would appear, creates a two-tier labour market by stealth. The following example in the retail sector is telling.^{xix}

Shoprite Checkers		Pick n' Pay	
Full-time	R4000	Full-time	R4500
40hr full-time	R3000	85-hour VTE	R3000
Part-timers	R1800	60hr VTE	R2000

Part-timers are reported as earning much less than full-time staff. It is not clear from this example whether the difference is attributed to differing hourly rates, or different hours worked, but in many cases both are a cause for concern. Lower hourly rates are self-evidently worrying, but an unpredictable working schedule can be equally damaging, although it should be considered that such unpredictability is also characteristic of genuinely temporary work,

which might disappear altogether if excessively strict restrictions were placed on labour brokers.

Political debate

The issue of labour broking has become an extremely contentious issue in South Africa. The labour movement has come out strongly in favour of an absolute ban on labour broking. Even while noting the debate around a regulated resolution to labour broking, some key players in the labour space still “call for a complete ban on labour brokers ...”^{xx}

The African National Congress (ANC) itself adopted the issue of labour broking during its policy realignment, following the ascent of Jacob Zuma to the apex of the party. The party did not, however, COSATU’s position on labour broking. While noting “divergent views” within the tripartite alliance, the ANC’s official position was stated as:

In line with its 2009 Election Manifesto, the ANC would like to set the record straight on its position regarding labour brokers. In order to avoid exploitation of workers, ensuring decent work for all workers as well as protecting employment relationship, the ANC Government will introduce laws to regulate contract work, subcontracting and outsourcing, address the problem of labour broking and prohibit certain abusive practices. To cover vulnerable workers in different legal relationships, ensuring the right to permanent employment for affected workers, the Manifesto further states that provisions will be introduced to facilitate unionisation of workers and conclusion of sectoral collective agreements.^{xxi}

Business, led by TES industry groups, Capes and the Federation of African Professional Staffing Organisations (APSO), generally opposed the regulation of labour brokers, arguing that abuses were rare and that legal protections were adequate. However, in the midst of significant momentum towards the banning of labour brokers, business largely shifted their focus to preventing an outright ban, even if it meant additional regulation. Business Unity South Africa (BUSA) argued that “government’s own regulatory impact assessment study of the 2010 proposed amendment bill indicated significant job losses if labour brokers were to be banned. As a result of this very same study, it was recommended that regulation was a more sensible option than an outright ban, taking into consideration the impact on employment, in particular.”^{xxii}

Unsurprisingly, given this distribution of opinions, the regulatory option was the most likely, and ultimately the eventual result. However, it should be noted that up until the vote on the amendments, ANC MPs were reported as having significant doubts about regulation, and favouring an absolute ban on labour broking. Quite clearly, the political climate is still primed for the return of calls for an absolute ban on labour brokers.

The character of reforms

After an extended debate, a range of new protections for non-standard workers were introduced in amendments to the LRA and the BCEA. The reforms were first tabled on the 17

December 2010, and came into force on 1 January 2015, with a grace period that expired on 1 April 2015. The core reforms introduced include:^{xxiii,xxiv,xxv}

1. *A statutory three-month maximum period for temporary employment. Employees may be hired on short-term contracts for three-months, but after that must be made permanent if they are to be retained. The three month period does not apply in cases where either (a) the temporary employee is substituting for another employee who is temporarily absent, or (b) there is a special sectoral dispensation, that is either agreed in a bargaining council or decided by the Minister.*
2. *A redefinition of who is regarded as an employee, which subsequently changes the rights available to that employee. Under the act, a person is considered an employee regardless of the nature of their contract, so long as any of these conditions are met:*
 - a. *the manner in which the person works is subject to the control or direction of another person;*
 - b. *the person's hours of work are subject to the control or direction of another person;*
 - c. *in the case of a person who works for an organisation, the person forms part of that organization;*
 - d. *the person has worked for that other person for an average of at least 40 hours per month over the last three months;*
 - e. *the person is economically dependent on the other person for whom he or she works or renders services;*
 - f. *the person is provided with tools of trade or work equipment by the other person; and*
 - g. *the person only works for or renders services to one person.*
3. *A subsequent equalisation of the benefits and powers on offer to both permanent and temporary workers.*
4. *Joint and several liability between the client and the labour broker, meaning both parties are liable for any legal abuses suffered by employees.*
5. *Changes to the concept of dismissal, which no longer only applies to the termination of an employment contract, but the end of the working relationship, meaning temporary staff would have recourse to pursue charges of unfair dismissal.*
6. *Restrictions to the use of fixed term contracts, which can effectively only be used if the work itself is for a fixed term. Constant renewal of fixed term contracts are therefore no longer allowed, employees working under these arrangements must be considered permanent.*
7. *A range of related reforms that are not specifically regarding labour brokers. These include the introduction of new powers for the Minister and some reforms to the Commission for Conciliation, Mediation and Arbitration (CCMA).*

The reforms regarding labour brokers do not apply to the following:

1. Employees earning less than a given salary threshold, which is reported as R205,000 for the initial period.^{xxvi}
2. Small firms, defined as employing fewer than 10 people.
3. New firms, defined as employing fewer than 50 people and having been in operation for less than 2 years old.

The reforms are a compromise, given the immense political pressure to issue an outright ban on labour brokers. But the new restrictions are significant, aimed at ending the most serious

concerns with temporary employment services. Most notable is the end to ‘permanently temporary’ employment, in which firms cannot keep staff on a constant string of outsourced and fixed-term contracts. Similarly, the amendments aim to close the gap in treatment between permanent and temporary workers. In effect, then, while labour brokers were not eliminated, any labour broking activity outside genuinely temporary employment has legally ended.

Both Capes and the regional industry body, APSO, have stated that they intend to challenge the law in court, particularly seeking clarification on the operation of the three-month rule.

The impact of reforms

In a general sense, there is little research to inform conclusions regarding the the changes. The only large scale piece of research currently available on the impact of the reforms is produced by Capes, and therefore has a very clear agenda. As pointed out above, the study^{xxvii} was conducted by leading academic Haroon Bhorat and his colleagues at UCT, but the findings are entirely based on a survey conducted by Capes. The survey methodology is not explained and it is not clear to what extent it follows scientific best practices. The Capes website has a tab that allows for self-reporting of the same survey questions analysed in the study, although it is not clear if this form was the basis for the study. If it was, it is deeply problematic, and guilty of leading questions and inappropriate selection biases from its location on the website.

With these factors considered, the results should be treated with caution, but are presented below.^{xxviii}

Table 2: Changes to employment through labour brokers in response to reforms, by industry

	Total	Affected	Retrenched	Terminated	Permanent	Direct Contract	Change
Metal & Engineering	1017	764	248	516	10	0	253
Construction	250	100	0	85	15	0	150
FMCG	350	347	102	75	120	50	3
Retail	169	113	0	0	113	0	56
Banking	643	464	30	250	111	73	179
Hospitality	572	572	0	100	272	200	0
Government	795	793	0	793	0	0	2
Utilities	690	314	0	232	82	0	376

Waste Management	130	96	0	0	96	0	34
Manufacturing	913	913	0	713	150	50	0
Healthcare	3	3	0	3	0	0	0
Motor & Transport	192	50	0	0	35	15	142
White Collar	83	83	0	83	0	0	0
Insurance	70	12	0	2	0	10	58
Education	120	120	0	100	0	20	0
Park homes	76	48	0	24	24	0	28
Elite Fibre	26	33	0	0	0	33	0
Other	814	564	0	160	404	0	250
Total	6913	5389	380	3136	1432	451	1524

Source: Borat, H., Magadla, S. & Steenkamp, F. 2015. "Employment Effects in the Temporary Employment Services (TES) Sector: Post-Regulatory Amendment Affects (A Briefing Note)". Johannesburg: Capes.

The overall picture is not positive. While a substantial number of workers in their sample were made permanent, more than twice as many lost their jobs. Some of these job losses could have been down to unrelated impacts, which is particularly a risk in the metals sector, which has hemorrhaged jobs over the period, because of unrelated problems in the industry. Others – such as manufacturing, a sector with relatively stable employment across the year in question – are more challenging to explain, and could be driven by the changes in labour regulation.

The other industry group, APSO, claims similar results. They cite that of 4 546 job contracts analysed, 47% were terminated, while 30% were granted longer contracts, and 23% became permanent employees.^{xxix}

Case studies

To illustrate the complexity of the labour broking phenomenon, consider two industries in which it has played a major role: construction and agriculture. Both are traditionally bedrocks of employment for less-skilled workers, and both feature short-term employment, based on harvest seasons for agriculture and project demands for construction.

Research^{xxx} conducted in 2007 (prior to the regulatory reforms) on agricultural workers in the town of Grabouw highlights many of the most concerning aspects of informalisation. Short-term seasonal labour is the norm in the sector, with 12,000 seasonal workers employed during

the picking season in Grabouw, with their employment facilitated by at least 192 labour brokers. Labour brokers in this case are not of the highly organised variety found in urban settings, but were mostly ex-farm labourers themselves, had little formal education, and lived in similar conditions to the workers. Brokers were generally not knowledgeable of labour law and their responsibilities to employees, even though 90% of workers interviewed identified the broker as their employer, not the farm.

Workers employed through the brokers brought up many of the most pressing complaints, including: not earning as much as permanent workers (and often earning below minimum wage), not qualifying for benefits, lack of paid sick leave, and a lack of protection from injury at work; while other structural issues were noted, such as women earning less than men amongst brokered workers. In many cases, the central issues of concern were more practical, everyday obligations that would be expected of employers, but were not provided because of the tenuous relationship between worker and informalised worker. The key example in the case of Grabouw is transport.

Transport is provided by brokers, who charge an upfront fee for the service, and deduct this amount from the worker's already slim wages. Transport is often uncomfortable and very unsafe, and when accidents do occur, there is little legal recourse available to workers. Similar issues exist with accommodation, and both highlight just how fundamental an impact the disempowering of temporary workers can have on their everyday lives.

Construction offers a more urban example.^{xxxi} Again, contract work is a norm in the industry, with subcontracted workers typically brought in for specialist tasks such as joinery or electrical wiring. This subcontracting relationship has typically been project-based between firms, but the employees of the subcontractor were usually employed on a permanent or recurring basis. This relationship has broken down, as workers have either been placed on short-term contracts or have been provided by labour brokers. This leaves workers at the end of a long chain of contractual relationships, in which the property developer hires a lead contractor, who in turn hires a sub-contractor, who in turn hires a labour broker, who then hires a worker.

Labour brokers in the construction space were generally found to be multi-purpose employment agencies, catering for many sectors, and often without clear knowledge on the extent of their involvement in construction. Workers generally were offered contracts of two to four months, but could also be granted contracts for up to 18-months for longer projects, or could be given contracts that were tied to the length of the project. Contracts typically included a provision that workers could not expect the contract to be renewed at the end of term (although this would have to have changed after the reforms came into effect in 2015.)

While all the common problems with labour brokers were encountered in the labour industry – including underpaying, lack of benefits, and insecurity of tenure – the picture was much more mixed than was the case in the Grabouw study. The construction industry is much more regulated, and employment services are generally more formalised. In many parts of the country, employers in the industry were required to be members of bargaining councils, and

this included labour brokers. This created some check on wage abuse, and offered a leverage point to defend the interests of workers. In one case, a Cape Town based bargaining council held a construction company jointly liable for the actions of their labour broker, and was able to use this pressure to force the broker to comply with benefits requirements. Fundamental uncertainty around terms of employment remained a concern, but this has long been the norm in the construction industry, so the impact is more limited than it would be in other sectors.

Overall, one can certainly not downplay the abuses that are present in the construction industry, and at best the protections offer only limited improvement. But the industry is clearly different from the case of agriculture in Grabouw. It is seemingly less abusive. On the one hand, this seems to indicate that greater regulation and formalisation can have a positive impact; on the other, it simply goes to show the complexity of labour broking in South Africa.

DRIVERS OF INFORMALISATION

While the labour broker debate seemed to have died down following the introduction of the 2014/15 reforms, the #OutsourcingMustFall protests that engulfed institutions of higher learning in early 2016 reignited the fire. For workers, a lot of uncertainty remains as to the effectiveness of the reforms, and for many unions the reforms are a step down from the outright ban that they lobbied so hard for. For employers, the underlying conditions that gave rise to labour broking, namely a highly regulated and inflexible labour market, still remain, and it is inevitable that labour brokering firms and their clients will attempt to find further ways to circumvent the spirit of the amendments. For TES firms, their legal challenge to the new regulations is likely just the first step in new efforts to protect the labour broking industry.

With this in mind, there is still need for continued analysis of the labour broking debate, and constant reflection on the various arguments involved, and the way forward. One approach to this is to consider the various reasons why labour brokers exited in the first place. These reasons drive both the benefits and costs of informalisation, with a different balance on either, depending on the reason in question.

Broadly speaking, three motivations for labour broking could be identified:

1. legitimate short-term employment requirements;
2. unscrupulous or abusive behavior; and
3. perceived labour market rigidity.

Short-term employment requirements

Firms with seasonal fluctuations or unexpected shifts in their business needs may turn to labour brokers for legitimately short-term staffing solutions. This is likely to happen if an employer is hosting an event or undertaking a large construction project, but the widest use is likely to be in the agriculture industry, where seasonal harvests require extremely short-term fluctuations in the workforce. While there are large-scale needs for protection of truly short-term workers, and they are made extremely vulnerable by the unpredictable nature of their work, there is nevertheless broad consensus that this form of brokered work is not the problem.

The work involved can only exist on a short term basis. It is simply unfeasible for agriculture firms, for example, to employ a full harvest-season workforce throughout the year. Bans on this form of labour broking would likely result in an absolute loss of these jobs, while having spill-on effects that could have serious implications for the broader workforce. The most likely response would be to reduce the labour-intensity of production, whereby machines replace workers, such as through the rollout of mechanical harvesting in the case of agriculture. This mechanisation would not only affect temporary workers, but also the core permanent workforce.

Possibilities from informalisation

Informalisation seems to suggest a significant shift in how business is done. Truly temporary employment is a long-standing part of the South African economy, particularly in the agriculture space. And while informalisation has increased across the economy, it's not clear if it has spread significantly amongst truly-temporary positions, nor is it clear whether the rise of labour brokers has significantly damaged conditions for temporary workers.

In fact, the opposite may be true. The rise of labour brokers may have had a formalisation effect on those who previously worked on a short-term basis. In many parts of the world, short-term labour is extremely precarious, and takes advantage of local communities or migrants, preying on the most vulnerable. The symbolic image of this form of employment might be that of workers waiting beside the street, hoping to be picked up for a daily job.

Temporary employment through labour brokers could offer benefits in this case, by (1) creating a more fixed legal relationship, between the broker and employee; (2) offering easier access to job opportunities, through the placement services of the broker; and (3) smoothing the costs involved in hiring short-term staff, by letting the broker choose and administer the most capable staff for the job.

Temporary employment and long-term prospects

Reforms explicitly aim to protect genuinely short-term employment. The three-month period is an acknowledgement that the economy needs this type of flexibility. The big – and as yet unanswered – question is whether three months is adequate for truly temporary employment. For most functions, it certainly seems like it should be. Nevertheless, some temporary roles, notably in construction, may be at risk. Temporary is a relative term, dependent on the time horizon for a given project or industry. An agricultural firm with a very brief harvesting season will have very different needs than a large scale building contractor who spends months constructing a skyscraper.

A related question is on the promotion of transitions from temporary to permanent employment. There is a big question in the debate on labour broking: whether temporary employees are more likely than otherwise to be hired as permanent staff. A truly temporary staff member may be retained after their short stint if they manage to prove themselves as particularly valuable to their employer. But this seems less likely to happen if firms have a hard three months to make that decision, and once they make the call, they have little leeway to change their minds without incurring substantial costs.

PONDERING POLICY OPTIONS

The most important policy element is to continue allowing labour brokers that provide short-term placements. This was perhaps the largest consideration that prevented the ban on labour brokers that so many lobbied for.

Greater protections for these workers are certainly welcomed, but it must be recognised that legal recourse is not the only barrier preventing better job protection. Even in countries in which temporary workers have access to full employment rights, the precarious nature of their employment means they often cannot practically access those rights. Half the battle with worker's rights is (1) promoting knowledge of those rights; (2) equipping institutions to monitor and provide access to vulnerable communities who wouldn't be able or willing to undertake the complex processes required to challenge employers; and (3) safeguarding workers from threats of retaliation for exercising their rights, which, in the case of temporary workers, would take the form of a simple failure to hire the person in question come the next season. For these – and many other reasons related to precarious employment – formal rights do not equate to actual, lived rights for many of these workers, and more reforms are needed to protect them.

Unscrupulous behavior

The creation of institutional support for temporary workers that facilitates access to the rights and protection enshrined in the LRA and BCEA is critical. This can include unionisation, better monitoring and evaluation by government, campaigns to spread knowledge of labour rights and options at the CCMA, and a range of other interventions. On the part of government, strong monitoring of workplaces is required, along with aggressive prosecution of those abusive employers.

On the opposite end of the scale is pure unscrupulous behavior, firms that are using labour brokers as a way to circumvent basic protections. Workers may be forced to work long hours without breaks, at unjust pay, in unsafe workplaces. It is possible that workers operating under these conditions are doing so willingly, but the whole point of labour protections are to protect workers who are compelled by necessity to accept the worst of working conditions. Workers operating under these conditions have greatly reduced capacity to organise or complain, meaning that when the abuse hits a point that is dangerous, they have no mechanism to challenge their situations.

Informalisation is often a means to abusive ends. The abuse can range from simple infringements – such as excessive working hours and inadequate breaks – to more serious wrongdoing – such as a denial of maternity leave (an extremely important issue given its large impact on family wellbeing and gender equality) and dangerous working conditions.

Abusive behavior is not a distinct phenomenon from either of the other two: it can occur in short-term hires, for permanently temporary staff, or for permanent staff. But it is facilitated by the lack of legal protections that were previously offered to non-standard workers. These protections again stretch beyond formal legal protection, and also include the lack of ability to organise, and the lack of a long-term relationship between employer and employee. It is in the best interests of the employer to foster a positive relationship with their employee, investing in their health, wellbeing and skills.

The importance of reforms

The 2014/2015 reforms make two vital changes. First, by equalising the relationship between permanent and temporary workers, they should eliminate behavior directly targeted at temporary workers. Second, by making it easier both to unionise and challenge workplace employers at the CCMA, purely abusive behavior, including that which would have been illegal before the reforms, can be more easily challenged.

Temporary or contract workers are often disenfranchised from support structures that can help them challenge unfair working conditions. They often do not have physical access to those structures, with little representation in their workplace. This makes it extremely difficult to challenge a far more organised and capacitated employer, particularly when you're already reliant on a precarious position, and are scared to challenge your boss for fear of retribution. Abusive employers generally know that what they're doing is wrong, but feel they can intimidate the employees into accepting their working conditions. This is why the reforms are important.

The three-month limit on hiring non-standard employees effectively ends the common path companies used for getting around traditional safeguards. The main change this brings is that firms now have to be a lot more careful with their hiring decisions, as they will be locked-in to new staff in a way that isn't the case for non-standard employees. If they're hiring someone new, that person will likely be around for a long time, often at higher wages and with more benefits.

The higher cost of employment is actually less of a concern. It may very well discourage companies from employing as many people as they previously did, with this impact more likely for small or new firms, firms making marginal profits, or firm in which wages are a particularly large part of their costs. Generally speaking, however, firms can manage labour costs, and can even choose to pay new hires at different rates, provided this discrimination is based on legally legitimate factors like experience or skills.

The bigger concern is the fact that firms are now more 'locked-into' their workforce. They can't quickly adjust their workforce to respond to a changing market or changing strategies. This can sometimes inflict serious economic damage, particularly during rapid downturns. If an economic crisis hits, firms may need to shed some jobs in order to protect the majority of their workforce. Failure to do so can harm the company, by forcing it to keep paying for staff it cannot use, which undermines competitiveness relative to rival firms, particularly foreign firms that can more easily adjust.

In reality, larger firms are often prepared for downturns, with enough finance to bridge the gap until they can go through the procedures to let people go in a fair manner. The bigger impact is psychological. The complexity of firing makes hiring a bigger decision. A firm's decision maker can easily request more brokered staff during a boom, knowing that the decision doesn't have

many long-term consequences. But hiring permanent staff requires that long-term, fundamental changes occur.

A response to market rigidity

The hiring of full-time ‘temporary’ workers as a response by firms to labour market rigidity is a source of contention in the informalisation debate. Again, workers in these conditions are effectively doing the job of directly employed staff. They are often required to do the same work, under the same conditions as permanent staff – except that they might not have access to the same benefits, the same pay scales, and almost certainly do not have the same level of protection from unfair or arbitrary dismissal.

The debate over informalisation in response to rigidity is a proxy for the core debate over labour market rigidity itself. If you believe that current rules are restrictive, you’re likely to be sympathetic to companies that use informalisation to get around the rules. If you believe the current rules are essential to ensuring justice for workers, then you are likely to see companies that use informalisation as undermining some basic foundational rights that are due to workers. While informalisation is used as a response to labour market rigidity, it is inadequate to debate it in isolation from the bigger socio-economic issues in the South African labour market, such as poverty alleviation and the reduction of inequality.

Given the big gaps in perceptions on the issue of labour market flexibility, there is unlikely to be consensus on the role informalisation should play relative to the broader structure of the labour market. More creative solutions that delink the debate on informalisation from that on labour market rigidity might be called for.

One alternative approach, which could address the concerns of both worker protection and the need for flexibility, would be to allow ‘temporary-permanent’ employment, but (1) equalise factors like benefits and pay, while only keeping hiring/firing distinctions in place, and (2) strengthen the limit on hiring and firing in the relationship between the worker and the labour broker. For example, in cases where a brokered construction worker loses a job, the broker would keep on paying the worker’s salary during the period in which the worker is not assigned to a new job. This would stabilize the income of the worker (even while facing workplace instability), it would incentivise the broker to work quickly to find an alternative placement, and it would allow firms to maintain some level of flexibility. The downside would be additional expenses for labour brokers, which might be passed on to the client in terms of a higher fee charged by the broker. Part of this fee would then probably be set aside to pay for the transition periods in which a brokered worker is not on an assignment.

This compromise would achieve the end of flexibility, but with protections for workers, and enough additional costs to assure that it isn’t abused by brokers or clients. The nitty-gritties of how such a policy could work are beyond the scope of this paper. Future efforts should be made to flesh such details out.

CONCLUSION: THE WAY FORWARD

Implement the reforms

There is a legitimate need for short-term employment. Having brokers arranging short-term employment creates job opportunities for workers and makes companies more efficient. The new regulations seem well placed to prevent many of the worst abuses of which labour brokers are accused, namely the use of permanently-temporary staff, and differentiated wages, benefits and protection between temporary and permanent staff, without undermining the possibility of real temporary placement. The new regulations must be implemented effectively, otherwise calls for an outright ban on labour brokers will resurface, and will be difficult to ameliorate with promises of yet more regulation.

Structural issues in the labour market

While a range of interventions can improve the implementation of recent reforms, and improve the labour broker space more generally, the big unavoidable debate is now on key structural issues in the South African labour market. These issues must be addressed. Unless a compromise is reached between labour and business, that protects workers while ensuring flexibility, then it would be inevitable that new strategies to avoid labour regulations will resurface.

Better monitoring and enforcement

Political debates tend to be about grand ideas and concepts, and the debate over labour broking has not been different. The reforms have institutionalised some central beliefs about the rights of all workers, and are a powerful statement on the way in which government will respond to unfair treatment of workers. But the gap between these grand political debates and the realisation of actual decent work will require a robust focus on practical monitoring and evaluating issues.

As a starting point, Stats SA's quarterly labour force survey should introduce a section that monitors the number of workers employed through labour brokers. Having this data will help us better understand the extent and nature of the issue. Failure to do so would mean that the majority of opinion on labour brokers will be based on either data coming out of industry lobby groups, or vague perceptions of the extent of informalisation. Both can be misleading, and are ill equipped to address such a crucial issue.

Build support structures for non-standard employees

For abusive temporary workers, changes to labour regulations are a beginning. Their struggle is not simply a lack of legal protection, but the need for institutional arrangements that can guide them through the scary and complex process of challenging employers. Non-standard employees very often do not have stable workplaces, access to union representation, or human

resources support in the workplace. Awareness of labour rights remains limited, and will remain particularly weak on the new issues introduced in the reforms, such as the right of workers to approach the CCMA.

Unions can play a big role in bridging the gap in support structures, by bringing non-standard workers into existing union structures. But government must also play a role, first by encouraging labour brokers to communicate the new rights to their workers, and second by providing simple avenues for reporting complaints and problems. While the CCMA is an admirable institution, the decision to approach it is a drastic one, and often not practically open to workers concerned that they may lose their jobs. A more simple reporting mechanism would strengthen government interventions, particularly with regard to abused temporary workers.

Government assistance in job placement

While a lot is made of labour broking being used to circumvent regulations, a significant portion of the market exists simply because employers do not want to undertake the difficult challenge of finding suitable employees. In many countries, government plays a role in connecting workers and firms. Job centres are state-run institutions where job-seekers can register for help in finding work, and be referred to potential employers. Despite helping the unemployed find jobs, they play vital roles in workplace education, the promotion of training programmes, and the working of social security programmes. If the labour broking industry has grown to the extent indicated, and may leave a gap in the market in the wake of new regulations, then perhaps government should advance a system of job centres to fill the gap. Doing so would be clearly in line with government's job creation priorities, and would give the state an active role in the employment services industry.

Strategic use of sector dispensations

The amended Act gives the minister new powers to intervene in the labour market, by issuing sectoral dispensations that exempt certain industries from the new requirements. The process of assessing the need for such exemptions must be ongoing and carefully considered. Certain sectors may have continued need for temporary employment services and, in cases where these industries are not abusive to workers, they should be offered special dispensation to continue operating.

One example of such a case might be Business Process Outsourcing (BPO). BPO covers a wide range of business functions that are performed by an external company, often for an international client, the archetypical example being call centres. The BPO industry makes extensive use of staffing companies that provide new staff on temporary contracts. This is generally not done in an abusive manner. While there are differences in wages and benefits available to temporary and permanent staff, these often close relatively quickly, as most major BPO companies have policies that put temporary staff on a path towards permanent employment.

In this regard, informalisation primarily serves to overcome the uncertainty inherent to recruiting new staff, and to outsource the costs of job search. These efficiency gains are important, because the BPO industry is extremely globalised, with strong competition from other English speaking nations such as India and the Philippines. BPO is a strategic sector that has the potential to employ vast numbers of South Africans in decent work. But it can only do so if there is more flexibility that allows firms to tailor their workforce to the needs of their clients. While some BPO functions will be above the earning threshold and therefore not impacted by reforms, exceptions should be considered for other functions in the industry, key amongst them call centres.

END NOTES

- ⁱ The unemployment rate reflects the percentage of people actively looking for work who cannot find any. It does not represent the percentage of the population without work - that figure would have to include discouraged labour (those who have given up on finding a job), various forms of social labour (such as staying home to care for families), and those outside the working age (the very young and the elderly).
- ⁱⁱ Statistics South Africa, "Vulnerable Group Series 1: The Social Profile of the Youth, 2009-2014, Statistics South Africa. Report No. 03-19-01. <http://www.statssa.gov.za/publications/Report-03-19-01/Report-03-19-012014.pdf>
- ⁱⁱⁱ StatSA. 2016. "Quarterly Labour Force Survey, Trends 2008 - Q4 2015." http://www.statssa.gov.za/?page_id=1854&PPN=P0211&SCH=6621
- ^{iv} Agricultural employment is typically not included in official data on employment, because it fluctuates substantially with changes in non-economic variables like seasons and environmental conditions.
- ^v StatSA. 2016. "Quarterly Labour Force Survey, Trends 2008 - Q4 2015." http://www.statssa.gov.za/?page_id=1854&PPN=P0211&SCH=6621
- ^{vi} World Economic Forum. 2015 "The Global Competitiveness Report 2015-2016." <http://reports.weforum.org/global-competitiveness-report-2015-2016/competitiveness-rankings/>
- ^{vii} Fraser Institute. 2015. "Economic Freedom of the World Report." http://www.freetheworld.com/datasets_efw.html
- ^{viii} Bhorat, H. & Cheadle, H. 2007. "Labour Reform in South Africa: Measuring Regulation and a Synthesis of Policy Suggestions." Cape Town: Development Policy Research Unit.
- ^{ix} Bhorat, H., Cassim, A. & Yu, D. 2014. Presentation entitled "Temporary Employment services in South Africa: Assessing the Industry's Economic Contribution." Cape Town: Development Policy Research Unit.
- ^x StatSA. 2016. "Quarterly Labour Force Survey, Trends 2008 - Q4 2015." http://www.statssa.gov.za/?page_id=1854&PPN=P0211&SCH=6621
- ^{xi} SABPP. 2012. "Position Paper: Contingent work forces and decent work." Johannesburg: SA Board for People's Practises.
- ^{xii} Website of the Confederation of Associations in the Private Employment Sector (Capes), <http://www.capes.org.za/>, accessed: 17/04/2016.
- ^{xiii} COSATU. 2011. "Towards a COSATU Living Wage Conference: A NALEDI Research Report." http://www.cosatu.org.za/docs/reports/2011/naledi_research_paper.pdf
- ^{xiv} Benjamin, P. 2005. "A Review of Labour Markets in South Africa: Labour Market Regulation: International and South African Perspectives." Pretoria: Human Sciences Research Council.
- ^{xv} Please note definitions for firm size differ between the two studies cited in the graph. For the APSO study, the definitions are: Micro (0-10), Small (11-25), Small-Medium (26-50), Medium (51-100), and Large (100+). For the SSETA study, the definitions are: Micro (1-19), Small (20-49), Medium (50-150), and Large (150+).
- ^{xvi} Studies presented as quoted in Bhorat, H., Cassim, A. & Yu, D. 2014. "Temporary Employment Services in South Africa: Assessing the Industry's Economic Contribution." Johannesburg: Capes.
- ^{xvii} Van Eck, S. 2010. "Temporary Employment Services (Labour Brokers) in South Africa and Namibia." PER / PELJ 2010(13)2
- ^{xviii} Ibid.
- ^{xix} Cravin, P. 2012. "COSATU and NACTU memorandum on labour brokering." <http://www.cosatu.org.za/show.php?ID=5917>
- ^{xx} COSATU & Affiliated Unions. 2009. "COSATU, FAWU, NEHAWU, NUM, NUMSA, SACCAWU and SATAWU: Submission on Labour Broking." <http://www.cosatu.org.za/show.php?ID=2237>
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- ^{xxv} "Labour Relations Amendment Act, 2014", *Government Gazette, No 37921, 18 August 2014.* http://www.labour.gov.za/DOL/downloads/legislation/acts/labour-relations/amendments/labourrelationsact_amended2014.pdf
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- ^{xxvii} Borhat, H., Magadla, S. & Steenkamp, F. 2015. "Employment Effects in the Temporary Employment Services (TES) Sector: Post- Regulatory Amendment Affects (A Briefing Note)". Johannesburg: Capes.
- ^{xxviii} Please note figures in totals column do not sum up from the figures in the table. The figures are presented exactly as they are shown in the study.
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