

The Extent and Effects of Casualisation in Southern Africa: Analysis of Lesotho, Mozambique, South Africa, Swaziland, Zambia and Zimbabwe

Research Report for the Danish Federation of Workers

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1. Introduction of scope of research

1.1 Purpose of the Study

This study explores and examines the extent of casualisation in the southern African region formal sector and its impact on workers and the economy. It is based on country studies in Lesotho, Mozambique, South Africa, Swaziland, Zambia and Zimbabwe. The increase in casualisation in the region's labour market is a subject of great controversy. Increasingly casual employees are filling positions that are permanent in nature. Behind employee vulnerability in the region is the high levels of unemployment and accompanying poverty. Poverty has bred a dangerous work environment where many desperate job seekers in the labour force are willing to take any job for survival purposes rather than dignity. This is a big challenge for trade unions in their pursuit to protect and advance workers' rights and foster decent work.

The study attempts to cover the following as per the terms of reference:

- The effects of casualisation on the workforce in each of the countries and sectors nominated.
- The comprehensiveness of national labour legislation in the face of assaults on conditions of work
- The provisions for social protection for all workers.
- The role of international companies in these sectors.

This report aggregates and summarise key issues canvassed in the country reports. The similarity of the challenges facing workers in the region is striking. First, it shows that casualisation is a global phenomenon driven by neo-liberal market restructuring. Second, corporate strategy is similar regardless of the country's level of development. Yet, unions in the region lack a common approach in the same industry or company. Fragmentation and proliferation of trade unions is a major problem in the region.

Casual workers are falling through the cracks of protection by labour laws and social protection. They occupy a precarious position in the working place and society and are effectively a new underclass in the modern capitalist economy. Trade unions are battling to organise and represent casual workers and have to explore new strategies to organise and fight for the rights of casual workers.

This report will ultimately feed into a toolkit to be developed to assist the trade unions in the participating countries to advocate for the strengthening of their labour legislation and in so doing, asserting the strength of trade unions to protect and advance workers' rights.

1.2 Methodology

Because of time and resource limitation two methods of data collection were used. Most countries in the region do not have up to date information on casualisation. Even where data is kept, the subcontractors are not accounted for. Going forward firm level surveys are necessary to supplement aggregate studies. Firm level studies are made more urgent by the fact that aggregate data understates the extent of casualisation. The methods used to collect data were:

- Limited interviews with key informants mainly trade unions and workers (both in casual and permanent employment)
- Literature search; desk review and content analysis of published and unpublished data including policy documents, newspapers, Internet.

Due to these limitations, the report should be considered a baseline upon which further probing is necessary.

1.3 Constraints and Limitation

Time constraint and insufficient budget for the study as such scope and coverage was limited. For instance interviews with individual workers were limited because funding could not sustain prolonged field operations.

Paucity of reliable official statistics on casualisation and other forms of precarious work was another major constraint as such the study had to a great extent depend on trade union/workers testimony as well as reports published by organizations other than the government.

It also took time to conclude contracts with organisations that undertook the analysis in several of the countries. However, it is remarkable that the report has been pulled together at such notice and within the given time constraints.

1.4 Report Outline

The report begins with a theoretical outline on how to define and measure casualisation. This is followed by the analysis of three sectors, namely Wholesale and Retail; Public Sector and Agriculture. The sectors were chosen on the basis that industries are canvassed by all Country Reports. The country reports however cover other sectors of the economy like mining and some parts of manufacturing and construction.

The report then teases out the impact of casualisation on workers based on aggregate analysis of the country reports. It concludes by drawing out tactical considerations for the trade union movement in organising and representing casual workers.

1.5 Acknowledgements

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2. Measuring the Causes and Extent of Casualisation

Before laying out the extent of casualisation it is important to unpack what the concept entails. Traditionally, casual labour referred to work conducted for defined period and during peak business period. Casual workers will be called to supplement full time workers in times of high business activity, particularly in retail. Most labour laws in the region still rely on this definition of casual work.

The rise of atypical workers demands a re-look into what it means to be a worker as well as the concept of work itself. The report chooses an elastic definition of casualisation to refer to non-standard and non-permanent employment relations such as temporary work; fixed term contracts, seasonal work and outsourcing/subcontracting. It is also important to make a further distinction between casuals that are employed directly by the company or those that are supplied through outsourcing and subcontracting arrangement. Typically, support services such as cleaning, catering and warehouses and in some cases transport and distribution; security are subcontracted. In some activities the entire or part of the business activity like mining is outsourced blurring the line between 'core' and 'non-core' activities.

Neo-liberal market restructuring globally and in the region is the driving force behind the sharp increase in casualisation. Neo-liberalism seeks to deregulate markets including the labour market to increase labour 'flexibility'. Cheadle (2006) suggest that there are three kinds of flexibility: *employment flexibility* (the freedom to determine employment levels quickly and cheaply), *wage flexibility* (the freedom to alter wage level without restraint), *functional flexibility* (the freedom to alter work processes, terms and conditions of employment, etc and cheaply). In short employers want the freedom to pay low wages; change the number of workers and how and when work is conducted.

The demand for flexibility is tied to the corporate restructuring in many sectors of the economy. Trade liberalization has opened up the local economy to competition from within the region and external competition. Internationally competitiveness is therefore one of the reasons driving casualisation. Historically company concentrated on reducing their labour costs combined with strategies to improve their product to maintain market share. Mergers and acquisition and pressures to maintain shareholder value drive management to hold down labour costs including retrenchments. Foreign capital provides a further impetus towards flexibility of the labour market by demanding lower wage bill and demand relaxation of regulation to increase profits. Against this background companies resort to casual and flexible labour for three reasons: to reduce labour costs; to extend working hours; and achieve easy deployment of labour.

Reports from the five countries notes the steady increase in casual work, gradually replacing full time work. Though, in most cases it is difficult to measure the extent of casualisation due to paucity of data. Researchers tried to conduct firm level surveys but this does not substitute for the national employment data. In cases where data on casualisation was available like in South Africa, the scale

of sub-contracted workers could not be determined. Sub-contracting is not included in the employment data of wholesale and retail.

It is mostly young female workers that are engaged as casuals, especially in the retail industry and without exception in cleaning. In a tight labour market characterised by mass unemployment and few employment opportunities, young women feel compelled to take these jobs. Research shows that access to a job does not provide a ladder out of poverty. The poor wages paid to casual workers trap them in, lift them marginally out of poverty. Young women often lack union or collective organizational experience and are left at the mercy of employers.

While labour laws cover almost all workers, there are serious challenges of enforcement. Government's lack the resources and in some cases the will to enforce labour laws to ensure that workers enjoy the protection granted in law. Often labour laws conflict with government's investment promotion activities and in some countries states have opted to exempt companies from compliance with certain provisions labour laws.

3. Analysis of reports per sector

3.1 Wholesale and Retail Trade

The wholesale and retail sector is located within the services sector of the economy. The sector provides infrastructure and services for distribution of goods from a supplier to an intermediate or a final consumer. The link between trade, catering and accommodation services, also points to the difficulty of defining the sector. In addition to a few dominant groups, the sector is also characterized by thousands of small business operations, concentrated in the informal sector.

In recent years, *franchising* has increased as major retail chains search for more profits in a tight economy. Large retail companies own a number of franchise stores showing tendency toward vertical ownership structure in the sector. Another trend in recent years is the expansion of South African retail chains like ShopriteCheckers into the southern African and other regions of the continent. Globally there is a trend towards concentration in the sector and the region is not exception to this trend. Few companies, often multinationals companies from South Africa, dominate the sector.

The line between wholesalers and retailers on the one hand plus retailers and manufacturers on the other hand are blurring. Large chain retail stores have managed to bypass wholesalers through either manufacturing of own brands or procurement directly from suppliers. For example, large retailers have established their own meat packing business and as such bypass abattoirs and source directly from farmers. This has shifted the balance of forces from the suppliers to the retailer who can set the terms. Wholesalers on the other hand, have increased their sales direct to the public also bypassing retailers.

The industry has pioneered change is supply chain management logistics which has spawned new jobs in logistics management while diminishing direct employment of warehouses etc. Chain stores have established distribution centres, which handle stock procurement and storage. These are central places where the stock of all divisions of a company is stored. From the distribution centres

stock is distributed directly to the stores, and thus eliminates the cost of establishing storages in various areas where other divisions are situated. One of the advantages is stockpile and resale at higher prices to the detriment of consumers. Further, retailers achieve economies of scale by buying large quantities often discounted and sell dearly to consumers.

Retail stores have expanded to provide a variety of services including financial service and specialist retailing is becoming a thing of the past. Large supermarkets sell anything from food to furniture and clothing.

Technological innovations are changing work processes and threaten certain jobs. Technological advances such as bar coding systems have contributed to centralized stock control and management; monitoring movement of goods and service and replace stock on a 'just-in-time basis. This also enables retail companies to collect consumer preferences at the point of sale and transmit to the supplier. The side effect of this labour saving technology is the loss of jobs in the warehousing and logistics section. E-commerce also enables the purchase of goods without setting foot in the shop which also has an impact on direct employment in the retail sector.

Employment has increased in number in the wholesale and retail establishment, but the quality has deteriorated. Labour flexibility is stimulated by company turnaround strategy and to achieve high levels of productivity. The use of casual labour is directly tied to business trading cycle of retail outlets. The rise of extended trading hours initially Saturday and then Sundays intensified the use of casual labour. This was in part a response to relaxation of regulation around Sunday and Public Holiday work.

Casualisation is now so institutionalized that big retailers can staff stores using entirely casual labour including supervision over all extended trading periods. A job that has been outsourced on a large scale is merchandising. Large retailers streamline and design the packing and merchandising centrally and the job has become routine and no longer require skilled individuals to perform. In this respect merchandisers are taking over the jobs of aisle attendants. Consequently not only are the jobs casual in nature there is deskilling process underway.

Job rotation is also used as another means of labour flexibility. However workers are not paid for the extra work nor are they upgraded to recognize increase workload. The consequence of this development is increased workloads for workers. The implications for workers life expectancy and occupational health deserve a separate study.

Cleaning, security and canteen services are also being outsourced in the retail industry. With respect to security there is also evidence of 'in-sourcing' after outsourcing proved counterproductive. Companies may have saved money by outsourcing but also compromise quality as the subcontractor is not vigilant enough to prevent theft.

At the other end of the equation of the wholesale and retail trade is the *hospitality and touring sub-sector*. It encompasses hotels, restaurants, gambling facings, travel and tourism services, sport and recreational facilities; and conservation and leisure. Tourism is considered important for economic growth as potential generator of employment and foreign exchange earnings. This is easier said than done as tourism is complex by nature. One view of touring emphasizes the choices made by the visitor and the voluntary nature of tourism.

In other words, tourism is not a necessary or essential activity. Due to the wide range of purposes, tourism cannot be viewed as a single product to be exchanged. It is rather multidimensional and cuts across various industries. This has consequences for policy, making, information gathering, infrastructure, and the hospitality side of tourism.

Most definitions also emphasises tourism as an international activity, while ignoring local or domestic tourism. A further problem is that some people believe that there is no tourism industry as such. Diverse industries are involved in providing goods and services to tourists and for this reasons it is difficult to define tourism a sector per se. These include food and beverages, banking, accommodation, transport, communication, entertainment, etc.

There is a belief that tourism will contribute towards economic development. This raise questions around political economy, government policy, processes and culture. It also means that further monitoring and study is needed in the following areas:

- The impact of tourist income on developmental needs of the country.
- The role of large transnational companies as opposed to promoting SMEs.
- Policy influences by international interests as opposed to local needs.
- The influence of cultural imperialism on the destination country and its institutions by multinational tourism corporations.

These questions are not being tackled because of a blind faith that tourism will automatically benefit all. In fact, the focus is on international tourist as compared to local tourism. It is very seldom, that issues like exchange rate are factored into account as potential stimulant or inhibitor of international trade. Clearly a narrow focus on international tourism has its benefits but carries the risk of fuelling the episodic nature of the sector. Tourist tend to be sensitive to local political and other developments and a negative incident can plunge the industry into a slump with secondary effects to industry linked to tourism. The spill over effects may include job losses in hospitality and tourism plus related industries.

The sub-sector is characterized by high proportion of part-time and casual employees and substantial numbers of cash-in-hand informal hidden employees. Increased deregulation of labour market and low levels of union density restructuring is changing the composition of the work force. Employment growth is concentrated in insecure and atypical employment and there is evidence of recycling of existing workers in the industry. Companies use the following strategies to hold cost down: retrenchments, outsourcing, numerical, functional and wage flexibility and "in-sourcing".

Retrenchment is straightforward case of a company reducing its workforce, for example Southern Sun International in South Africa reduced workers from 12 000 to 3000 within ten years. The following jobs have undergone substantial restructuring in the hotels through outsourcing: *maintenance, concierge, food and beverage, car hire, cleaning and security*. In-sourcing is when a company sets its own employees in a new contractual relationship whereby they operate as independent entities but perform exclusive services for the parent company. This model has been used by Southern Sun in its housekeeping operations.

The impact on workers includes the following:

- Women are mainly working in the storage rooms, as cleaners or as cooking assistants while men tend to be chefs.
- A normal working day is 8 hours with a 30 minute lunch break.
- Basic wages are well below the poverty line and workers do not receive social benefits.
- Workers have signed contracts but are not given a copy.
- Employers do not provide transport and for women working night shifts this poses serious risks.

3.2 Public Sector

The public sector is broadly defined to incorporate public utilities and civil administration. Government have come under pressure to privatise state owned enterprises, reduce the level of employment and reduce expenditure as a means of cutting the budget deficit. This clearly has direct impact on employment and the public sector has followed the example set by private enterprises. Before considering flexibilisation in the public sector lets consider first its economic role.

The public sector not only sets regulatory framework for private enterprise but also produces public goods and services such as infrastructure, water, electricity, education and defence. Public ownership and involvement was traditionally believed to provide public goods cheaply or to ensure universal access to basic services. This was particularly important to provide goods where market either fail or chose to ignore poorer people. With the onset of market fundamentalism, the pendulum shifted against state involvement in the economy based on the *crowding out effect* and belief that state involvement distorts market.

In most countries the public sector is the main or biggest employer. Even in South Africa where the private sector dominate, a third of formal sector jobs are in the public sector. The pressure on the state to privatize its enterprises and to reduce costs has also changed public sector employment, through retrenchment, outsourcing and greater utilization of temporary work.

The sub sectors that have been affected include health care, education and public works. The reports from Swaziland and Mozambique deal extensively with the question of casualisation in the public sector. In the health sector, the reports note that support services such as cleaning; laundry, kitchen, security are completely outsourced. The rationale is that the hospital core business is to provide health care and in any event outsourcing is cheaper than direct full time employment. Several studies have however found that cost reduction comes at the cost of quality care which affects general health outcomes. Because, hospitals do not control for example laundry and kitchen services, they cannot assure quality food and clean laundry.

In the education sector, temporary teachers are used as a substitute for full time employment. Again, this is a response to budget pressures in the context of falling government expenditure. The Mozambican report shows that schools resort to employment of temporary teachers to circumvent the elongated procedure to approve permanent posts by the central government. Undoubtedly teacher's lack of employment security affects their performance and impact on educational

outcomes. This is particularly serious in cases where prospects of full time employment are non-existent. A teacher with an uncertain future will not invest in further advancement if there is no certainty of returns to such investment. Clearly this holds back the development of the learners and produces learners that are not ready to engage with the world of work.

Many governments have either closed down or completely outsourced their *public works entities*. This has affected medium scale construction and maintenance works as well as management of government fleets and buildings. Government now completely rely on private sector for road building, maintenance and other construction work. In the context of stringent budget infrastructure maintenance further suffers and this impose costs in the economy. Poor roads affect vehicles and ultimately increase the cost of production via increased cost of maintaining vehicles. In the short term government may be saving money but ultimately impose costs on the rest of the economy which are not taken into account.

3.3 Agriculture

In discussing agriculture we must distinguish between large scale commercial agriculture and small scale subsistence agriculture. We will first analyse large scale agriculture followed by a discussion of small scale subsistence agriculture. Agriculture plays a multifaceted role in the modern economy. First, it produces food which is necessary for the sustenance and reproduction of human beings. Second, agriculture provides employment to thousand of people contributing to the livelihoods of the employees and their families. Incomes from agriculture are spent in the rest of the economy and therefore agricultural employment contributes to aggregate demand. Third, profits earned in agriculture can be reinvested in the sector or in other sectors contributing to capital formation in the economy. Fourth and not least agricultural exports are an important source of foreign exchange earnings.

The agrarian economy in the region has undergone significant liberalization and restructuring the sector. Many countries have moved towards a free market in agriculture, liberalized trade, removed subsidies to farmers; and disbanded marketing boards. Liberalisation also promotes exports as a means to earn foreign exchange due to small domestic markets. The effects of trade liberalisation on agriculture labour markets is two fold.

First it encourages capital-intensity to produce on a mass scale to meet global demands. Obviously, this results in labour shedding and increases mechanization. Agriculture is by nature seasonal and occasionally depends on seasonal labour to supplement full time employment. There is however evidence that full time employment is on the decline in agriculture and is replaced by casual labour.

The second effect of export orientation is the promotion of cash crops, which shift production from staples. Such as strategy is successful for as long as international prices are high. When prices decline this necessitated cutbacks in production and employment. International prices of agricultural product fluctuate around a long term decline and short term recovery. Price reductions emanate from a number of factors including overproduction; drop in demand in the north and discovery of substitutes. Countries from the south find it difficult to penetrate markets in the north due to the protective policies in the US and EU. Further, they cannot compete with the subsidised

farm produce of the north. Further, they are under constant pressure to open their own markets to goods from the north.

Against this background it is important to consider the role of subsistence agriculture. Subsistent agriculture is poorly developed and not adequately accounted for in national economic statistics. Yet we know it is important as a cushion against abject poverty, hunger and as an alternative to formal sector employment. In the region failure to deal with the inequitable colonial land allocation means that most subsistence agriculture is located on poor land. Land restitution and redistribution is therefore an important strategy to transform the rural economy by granting farmers productive land or assets. The report from Lesotho shows that subsistence agriculture is a cushion against the effects of retrenchment in mining. Many retrenched workers resort to subsistence agriculture to make a living. However in the absence of a comprehensive land reform and agrarian development strategy these activities will remain marginal.

4. Comprehensive assessment of implications of trends for workers

4.1 Employment Insecurity: the impact of flexibility on workers in the workplace

Restructuring has meant an increase in casualised and subcontracted employment. This leads to differential between permanent, casual and subcontracted workers. There are disparity in the conditions of permanent, casual and subcontracted worker, for example in wages and conditions of employment.

Divisions have opened up on the shop floor between workers in different categories which has affected the ways workers view themselves as workers in their workplace. Kenny (1997) notes that casuals feel detached from their jobs and the same time full time workers have lost enthusiasm for improving their lot. All workers are struggling with uncertainty and rather than unite against the employees they see each other as rivals. Permanent workers feel that casuals are threatening their jobs and casuals feel that permanent workers are not sympathetic to their situation.

4.2 Wage Flexibility

Even in cases where permanent, casual and subcontracted workers worked the same hours during a week, subcontracted workers earned far less an hour, in fact closer to the earning of casuals. Subcontracted and casual workers earned fewer benefits compared to permanent workers. For example permanent workers received benefits mostly in the form of a provident fund and a bonus cheque. Workers in different employment categories are more or less likely to be paid overtime rates. If casual workers work overtime it is not uncommon for employers to reduce working hours to avoid paying overtime.

4.2 Working time and numerical flexibility

Companies use casual workers not only to reduce labour costs but to also expand capacity beyond permanent's normal working hours. Casuals more often worked late and worked on Sundays and

public holidays. This is definitely a strategy to increase total employment but avoid obligations in the law to pay overtime. In addition, casual labour is employment to extend the working hours that would typically be worker by permanents.

Companies in this regard use casuals as a form of numerical flexibility to make up for the off and peak times. They find it easier to hire casuals during peak periods and dismiss them during lean times. This is a mechanism to evade the provision relating to the hiring and dismissal of permanent employees. Research reports show that companies dismissed casuals and subcontracted workers more easily than permanent workers.

4.3 Health and Safety

Health and safety issues were not thoroughly canvassed in the reports to make a strong analysis and this may require special attention in future. However, there is a number of obvious health and safety issues whose impact is however is still unclear. First, casuals are forced to work for long hours sometimes without adequate rest. In one example casual workers work for seven days and get an hour break. However, during peak times, workers indicated that they did not take a break. The obvious impact of long hours doing the same job is repetitive strain; muscular pain; and exhaustion. Ultimately, this affects workers life expectancy which however still needs to be quantified.

Secondly, employers refuse to provide protective clothing and uniforms to save costs. Casual workers either have to share protective clothing among themselves or work without such clothing. This of course poses a danger to the health and safety of such worker and is in clear violation of labour laws. But then again, enforcement of laws is weak due to the perennial problem of capacity of inspectorate and workers' fear to report such abuses.

Because casuals by definition do not get benefits, this means that employers do not contribute to the Compensation Fund. In the event of an accident or death, workers and their dependants are left destitute because they cannot claim for injury on duty or work place acquired diseases. This is compounded by the fact that workers cannot afford private insurance due to the low wages.

A continuous change of jobs is quite risky for casual workers and the companies for which they work for. Every time a worker starts a new job, have to learn safety procedures which require time to understand. The pressure of sub-contractors to deliver on time places an extra burden on worker to follow quick but unsafe work styles.

4.4 Labour market insecurity and Economic Insecurity

The rise of casualisation has changed labour markets in industries that have been studied. First, is the disappearance of permanent jobs and lack of upward mobility for casual workers. This means that the only new jobs available are casuals in nature and many workers have occupied these positions for years. Workers feel constrained by lack of job opportunities in the economy to change to better jobs. As the labour market changes demand for casual and subcontracted employment replaces that for full time jobs. Even more, having a job is not a ticket out of poverty and worker feel trapped in poorly paid jobs due to lack of decent employment across the economy.

The labour market not only reconfigures segmentation on the basis of type of employment, it also reproduces gender and racial inequality. Most casual jobs are held by young women who cannot hope to advance to better jobs. In racial terms, Africans are more likely to be employed as casuals than other groups.

Linked to the issue of labour market insecurity is the impact of casualisation on working class households. Precariousness leads to economic insecurity for both the worker and the family. The worker's ability to survive, and his/her economic position, is dependent not only on herself, but on a whole household full of people notwithstanding the fact that households may not allocate resources equitably. In the event that a worker is a breadwinner and earn below the poverty line, and if there is no other person working or receiving some income then the entire family is placed at risk.

Such precariousness affects a worker's experience of work, how she makes decisions about political action and how she relates to the broader labour market. Differentiation as a result of 'flexibilisation' leads to disparity among households over time. Kenny (1997) argues that there is a qualitative difference in households which have access to a 'good job' – a formal sector, secure job – and households which do not, such as casual workers. Households with casual workers are not only poorer but have fewer resources to assist them in other non-wage means of provisioning.

Access to paid job may prevent the worker's family from starving, it does not provide her with enough income to pay rent or electricity, let alone expand an informal sector business. Most of the reports indicate that workers engage in complementary activities to supplement their meagre income and mitigate the high cost of living. It is in this respect that we should locate the role of social protection and provision of public goods such as water, electricity, health care, transport and so forth. Privatisation clearly increases the price of these public goods and has direct negative impact on household that rely on casualised bread winners.

4.5 Comprehensiveness of Labour Legislation

All countries in the sample have adopted labour laws and have at least signed some of the ILO Conventions. Despite these laws, a substantial number of employees fall outside the regulatory net of traditional labour law. Much of the regulation, based on traditional mode is not suited to these new forms of employment. The second is that the modern labour market is dynamic and labour market regulation is always a step behind. We shall explore the implications of new forms of work on the labour law.

Theoretically labour laws cover all workers, but the fact that labour laws are based on standard employment relationship means that new forms of work fall through the cracks. The definition of employee is in most jurisdictions does not adequately cover casual workers, especially home based workers; and those in triangular employment relationship. In some cases, an employee is defined by the number of hours worked per month; clearly an unscrupulous employer can arrange working time in such a way that a worker never works the full maximum hours defined by law. That means such a worker would not be covered by labour legislation.

Weak enforcement and inspection especially in small companies make it easy for employers to escape the regulatory net. Workers' fear of victimisation and low union density in some of the sectors also added to the weak enforcement of labour laws.

The second major challenge posed by triangulation is the definition of a workplace. A workplace is traditionally defined as a space that an employer provides and is in full control of. Clearly in relations to tripartite relations of employment which one is the work place is a subject of intense debate. Is the office of the subcontractor the workplace or is the firm where workers are deployed a workplace?

Exclusion of categories of workers in labour laws has also been abused to circumvent compliance. For example the South African labour law does not apply to independent contractors. Independent contractors are commercial service providers rather than employees and this is regulated in terms of commercial contracts. Overnight, many workers were converted to independent contractors and labour laws did not apply. A new amendment was introduced in 2000 to curtail this phenomenon. According to this amendment a person is presumed to be an employee and the employer must prove otherwise. This amendment deals specifically with disguised employment in the form of independent contractors who in fact are employees or dependent contractors.

Collective bargaining in law is based on the standard employment relationship. Therefore it tends to cover only full time employees and often companies resist the inclusion of casual workers in the bargaining forum.

4.6 Social Protection

Many countries in the region do not have state pension scheme or have limited social protection provided by the state. In the event that a worker or a person become unemployed or has to leave work due to old age they fall through the social safety net. Casualisation exacerbates this problem because the low wages make it impossible for workers to save for retirement. Under such circumstances a worker does not have social support and have to dependent on other family members or try subsistence farming.

Contributory social insurance scheme are based on an employment relationship, particularly full time employment. Casuals by definition do not have benefit such as medical aid, retirement benefit and cannot afford to take out private insurance. The conundrum facing unions in the region is whether to push for the expansion of the social security net or to expand the definition of employees in the context of casualisation.

5. Identification of tactical questions for engagement by unions

Casuals and subcontracted workers are less likely to be members of the union than permanent workers. This is due to a variety of reasons, particularly affordability of union meetings and so forth. On the contrary permanent workers are members of a union and given their longer job tenure, they had been members for longer periods.

Still, casuals were either former union members or not members at all. In case of the former, casuals withdrew from the unions because they felt that the union was concentrating on full time employees. Those that never belonged to a union are either fearing victimization by the employer or cannot afford paying union dues.

In principle unions are committed to recruit casual workers but find it difficult for several reasons. Unions face the challenge of dealing with fragmentation as it threatens both membership numbers and commitment; it also erodes conditions for which organized labour have struggled for years. Yet, if they are to successfully bring together permanent and casual workers they would have to find a balance and mediate the different interests of the workers.

Unions are based on the standard employment relationship that is full time, for long period with the same employer. Casualisation is an erratic form of employment and poses new challenges to union organizing. Kenny (1999) recommends that unions change workplace organizing by supplementing it with '*community*' organizing. The idea of community organizing is to bring together workers who live in the same community as this has the potential of involving casual workers.

Another challenge facing unions is to empower their local and work place structures. Many unions are centralized organization and resources tend to be located at the head office. Local organizing depends on head office plans and allocation of resources. Work place activism is obviously diminished by too much centralization and workers do not consider themselves as agents of change as everything is escalated to the head office. Clearly, the head office will not be able to understand and respond to every local problem. As such, unions need to find ways to beef their local organizing and workplace structure.

Collective bargaining is one of the pillars of trade unions and it is through collective action that workers can improve their lot. It is however unfortunate to note that casual workers, especially subcontracted workers are not covered by sectoral bargaining agreements. This in fact underscores the need to change bargaining from a one-sided focus on permanent employees to incorporate casual workers. Where unions are strong, they have attempted to incorporate the issues of casual workers using a variety of approaches.

First, is to fight for the inclusion of casual workers in the ambit of the bargaining forum or to extend bargaining by either fighting for statutory determinations or bargaining separately for casuals. Second, unions have scored important victories in certain areas by compelling employers to convert temporary contracts into full-time contracts, particularly in situations where temporary workers are used for more than a year. Third, unions have tried to shape company's procurement policy by insisting on labour standards as one of the criteria that suppliers must satisfy.

Union strategy is still very much national and workplace focused, but the erosion of worker power at the workplace demands new approaches. First, organizing and bargaining can no longer be conducted from a national point of view. Beggar thy neighbour policies or race to the bottom undermine workers conditions in countries with better labour standards by inducing capital flight.

Hence it is now important to act regionally and internationally to counteract the power of employers and mitigate state's failures to sufficiently regulate the labour market. Such an approach

would also lift all workers in the region to an acceptable level and ensure common conditions of employment within the same multinationals. It is therefore important that unions set up regional structures and mechanism for concrete collaboration around organizing and bargaining.

Companies have shown sensitivity towards consumer pressure which in part explains the vogue of corporate social responsibility. Yet, this source of power is often exercised by NGOs with unions largely absent. The experience South Africa in the 80 underlines the importance of exerting pressure at the point of production and sales. As such, unions have to improve their links with, and act together, with community organizations.

This research project has revealed union's lack of capacity to gather information of casualisation trends due to the lack of internal research capacity. In addition, unions lack resources to recruit casual workers need external support to be able to discharge this task.

Fragmentation and proliferation of trade union in the region and within the same sector is a major problem. It further weakens worker power and solidarity and union tend to fight each other than face the employer. It also wastes scarce resources that need should be pooled. For example, international support is wasted on supporting too many unions in the same sector which ultimately has minimal impact in improving workers situation.

6. Appendices: Country research reports

Lesotho

FOREWORD

Lesotho being ranked as one of the Least Developed Countries (LDC) faces a formidable challenge of employment creation in order to achieve Millennium Development Goals (MDCs) adopted by United Nations.

Within the United Nations System, International Labour Organization has evolved the concept of Decent Work Agenda as an overlay of all development efforts towards realizing economic development and social progress. It is within this context that organized Labour in Lesotho addresses the deficit of decent jobs where women and men work in dignity to satisfy their material and spiritual needs.

The problems of high unemployment and underemployment rates coupled with precarious nature of employment, impact negatively on the quality of jobs. An increase in atypical forms of employment has fueled the current phenomenon of casualisation of labour which has manifested itself in a number of forms.

The current international trends regarding definition of employee are indicators of race to the bottom to destroy workers protection and strip workers of their hard earned rights.

We are therefore grateful to the United Federation of Danish Workers (FFF) which has through National Labour and Employment Development Institute (NALEDI) financially supported LECODU – RESEARCH CASUAL LABOUR PROJECT.

We believe the findings will contribute towards building database of Labour Market Information (LMI) which does not exist in Lesotho.

We would like to express our appreciation and gratitude to those who have contributed to the realisation of this report. We hope that their work will further the course in the protection of workers needing protection.

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SECRETARY GENERAL

LESOTHO CONGRESS OF DEMOCRATIC UNIONS (LECODU)

ACRONYMS

ACW	Acceptable Conditions of Work
ADR	Alternative Dispute Resolution
AGOA	African Growth and Opportunity Act
ATC	Agreement on Textiles and Clothing
CEDAW	Convention on Elimination of All Discrimination Against Women
CWS	Civil Works Service
DDPR	Directorate of Dispute Prevention and Resolution
DFID	Department of International Development
ECA	Economic Commission for Africa
FAFO	Fafo Foundation (Norway)
FD	Forestry Division
FDI	Foreign Direct Investment
GDP	Gross Domestic Product
IPC	Investment Promotion Centre
ILO	International Labour Organisation
KLMI	Key Labour Market Indicators
LECODU	Lesotho Congress of Democratic Unions
LCU	Labour Construction Unit
LDC	Least Developed Country
LHDA	Lesotho Highlands Development Authority
LHWP	Lesotho Highlands Water Project
LMA	Labour Market Analysis
LMCA	Lesotho Master Contractors Association
LMI	Labour Market Information
LMIS	Labour Market Information System
LNDC	Lesotho National Development
MFA	Multi Fibre Agreement
MNEs	Multinational Enterprises
NACOLA	National Advisory Committee on Labour
NACOSH	National Advisory Committee on Safety And Health
NES	National Employment Services
NUHFAW	National Union of Hotels, Food and Allied Workers
NURAW	National Union of Retail and Allied Workers
PRSP	Poverty Reduction strategic Paper
RSA	Republic of South Africa
SACU	Southern Africa Customs Union
SADC	Southern Africa Development Community
SCD	Soil Conservation Division
SMEs	Small and Medium sized Enterprises
SMMEs	Small Micro and Medium sized Enterprises
UN	United Nations
USA	United States of America
WTO	World Trade Organisation

EXECUTIVE SUMMARY

The trends that have emerged internationally in the world of work regarding definition of employee have directly and indirectly toward informalisation and casualisation of jobs. These trends among others include increase in disguised employment (independent subcontractors) and a rise in unclear terms of employment. Thus leading to decrease in protection of workers requiring protection.

Traditional statutory definition of an employee is unclear and leave large discretion in courts which adopt various tests-controls, organization, subordination etc and thereby expanding the number or categories of protected workers.

Several factors may be blamed for the prevalence of casualisation of labour despite labour laws provision intended to curtail its incidence. Contributive factors are imponderable in number for example topping the list is the high unemployment and underemployment rates which results in workers earning incomes below internationally stipulated poverty level of at least one US dollar a day. Poor labour law enforcement is another contributory factor. The high infection rates of HIV and AIDS pandemic which causes spouse (especially household bread winners) to die forcing the remaining family members to look for work and take any job at whatever cost in order to survive. Thus adding to the prevalence of 3rd jobs.

The purpose of study is to shed light on the magnitude and complicity of casualisation of labour in the chapter that follow.

Socio Economic Background

Lesotho being classified one of the least developed country (LDC) in the world faces a formidable challenge of unemployment and underemployment.

It has a population approximately 2.1 million growing at the rate of 2.1 % per annum with slightly skewed sex distribution with females outnumbering men by a ratio of 51:49. The majority of people aged 0-19 years comprise approximately 50% of the Lesotho population.

Furthermore Lesotho displays extreme income inequality distribution. The Gini coefficient for Lesotho is 0.66, one of the highest in the world. More than half of all income flows to the richest 10 per cent of the population. The bottom 40 percent of the population receives only seven per cent of the national income. Thus 50% of Basotho live below poverty line and 25% are ultra poor.

The unemployment and underemployment problem is compounded by the shrinking job opportunities in Lesotho, plus the high rate of retrenchments in the RSA mining industry a significant number of Basotho men. In 1990 RSA mine employed 130 000 Basotho men, But at present it is estimated that 60 000 Basotho men work in RSA mines. In the past mineworkers remittance constituted significant portion of rural householder incomes estimated at 42.90%.

Subsistence agriculture in which majority of the population is engaged is characterized by extreme levels of underemployment both in terms of remuneration and work performance. Second to subsistence agriculture in terms of labour absorption is the terms of labour absorption is the informal economy which was in 1999 estimated to employ 130 200 people equivalent to 22 % of the total labour force. Informal sector like subsistence agriculture is best with problems of high levels of underemployment.

Manufacturing is the largest formal employers in Lesotho due to strong investment in textile manufacturing resulting from AGOA initiative. It is currently (2006) estimated to employ 49 233 (over 95 % are woman) which is a recovery from 32 233 workers early in 2006 as a result of phasing out of multi fiber agreement (MFA). Government is the second largest formal employer (including civil service and armed forces), it employees 36710 (March 2005).

The legal framework for the protection of workers in Lesotho

Lesotho has ratified 21 ILO conventions aimed at protecting rights of workers. Included in this list is eight ILO conventions which form four core ILO labour standards voz:

- The right to organize and bargain collectively
- Abolition of forced labour
- Prohibition of discrimination at work
- Elimination of child labour

In addition Lesotho has ratified UN instruments protecting workers

- Non – discrimination covenant
- Economic social and Cultural Rights Covenant
- Rights of child convention
- Convention on Elimination of All Discrimination Against women (CEDAW)

The labour code No. 24 of 1992, which is transposed on ILO International Labour Standards (ILO), and its subsequent amendments is the principal law government terms and conditions of employment, in terms of section 4 (b) and (c) of the labour code all ILO conventions ratified by Lesotho or not are applicable in its interpretation and implementation.

Others legal instrument protecting workers are:

- Workmen’s compensation Act
- Minimum Wage gazettes-published annually after tripartite consultations.

2. Methodology

As information has to be gleaned from various reports not specifically focused on casualisation of labour, desktop methodology is employed in these studies.

2.1 Terms and definitions

The labour code defines a number of terms but does not accommodate CASUAL LABOUR/WORKER in its provisions.

2.2 Structure of the report

The react of this report is divided into eight chapters. Chapter 2 reviews the background literature on casualisation of labour in Lesotho. Chapter 3 to 6 present finding of studies in four nominated sectors.

Chapter 7 makes comprehensive assessment of implications of trends for workers. Chapter 8 is on the identification of tactical questions for engagement by unions. Chapter 9 is conclusions drawn from studies

Review of recent literature on casualisation of labour in Lesotho straws out findings from previous literature against which the findings of the current study can be compared. Clothing and footwear sub sector merits special attention, as it is the largest formal employer in Lesotho. Historically the subsector was first established by firms across the border in the republic of South Africa (RSA), then followed by FDI driven companies of Chinese and Taiwanese origin.

According to available data expansion of garment sub sector as a share of capital formation, FDI flow rose from under 5% between pre-1995 and 1995 – 1997 period. And the share of FDI in GDP increased from 2% to 26% for the same period. The expansion of garment and clothing sub-sector came about as a result of the market opportunities provided by agreements such as AGOA and MFA, Lesotho took advantage of preferential treatment and acquired 34% of the market share of exports from sub-Saharan Africa countries under AGOA.

This noticeable growth was achieved through low labour costs and other sweatshop practice. The industrial relations system in this subsector is of confrontational and adversarial nature due to conflict of cultures of Basotho workers and South East Asia employers. The acceptable conditions of work as a goal in the world of work are in a parlous state in this subsector. Legally provided minimum standards as regards working time, remuneration and health and safety are flouted.

Abuse of legal provisions for training is common. For example, six months training period is cited as one monumental testimony in this respect. Frames are laid off before expiry of six months training period. They are recalled a month or so later to be re employed as trainees and continue being remunerated at trainee rates which are lower than wages received by workers who have completed training.

This situation is further aggravated by minimum wage fixing machinery which despite recommendation of the ILO technical mission in 2000 has not established sectoral bargain councils. The establishment of such councils. Would make job basification and job grading much easier. This practice has led to unskilled, semiskilled and skilled categories of workers being paid at the same rate other practice include compulsory overtime to meet unrealistic targets.

The hospitality subsector comprises hotels, bars and restaurants undertaking-according database still being developed broken down as follows.

Table 1: Subsector	No. Enterprises	No. of employees
Hotels	44	1 214
Bars and Restaurants	281	1 339

Hotels are owned by South-African based MNEs while bars and restaurants are owned by Lesotho nationals. Prevailing condition of work in hotels are more or less acceptable as minimum standards are adhered to by companies. The owner-managed bars and restaurants fall within the pale of SMEs, which usually do not comply with the minimum standards provided by the labour code. Informal nature of employment relationship negatively affects job security of worker employed unclear terms and vulnerable to employers unjustified practices in respect of working time, remuneration and health and safety.

The industrial relations as practice in hotels is more positive as they have embraced collective bargaining as a system of managing conflict at the workplace. Nonetheless casualisation of labour still prevails as hotels contrary to the provisions of the labour code still employ casual labour in the form of scheduled staff that do not enjoy negotiated terms and conditions of work like permanent staff.

In the retail and wholesale subsector the scenario is similar to hospitality subsector in terms of composition and ownership. South African based MNEs constitute small percentage of this subsector as compared to the dominant SME component. Apart from SMEs which are known for their non-compliance with the labour laws MNE's in this subsector have employed casual labour as 'flexes' constituting large proportion on the total workforce.

The construction sub-sector, which grew as a result of spillover effect from Lesotho Highlands Water Project (LHWP) 4 billion mega project. The construction sub-sector became unusually large according for 23% of GDP as opposed to a share of less than 10% in most countries.

An outstanding incident as pertaining to disguised employment (independent contractors) rates to Lesotho Highlands Development Authority (LHDA), which managed LHWP – the case concerns employees dealing with rehabilitation of committees affected by the project. These workers were assigned the status of independent contractors employed by LHDA under terms not similar to other staff. Workers in question referred their case to DDPR concerning animal increments in remuneration of other employees from which they were excluded. The DDPR ruled in favor of workers and the LHDA paid them workers in arrears. In comprehensively assessing implications of trends for workers an attention has got to be paid a number of factors which contribute towards casualisation and normalization of work.

As pointed out earlier the current developments which have contributed to a rise in disguised employment and unclear terms of employment are resultant from prevailing high unemployment and underemployment rates and globalizing international economy. These contribute either directly or indirectly to workers employed under uncertain terms resulting in job insecurity.

Substandard terms of employment increase the majority of the working poor. Hence promotion of poverty reproduction. A number of tactical questions for engagement by unions have been identified. The questions thus identified have to be addressed at national, sectoral and shop floor level.

At national level issues handled through statutory tripartite bodies and as ad hoc committee or other mechanisms demand enhanced capacity of workers representatives so that they are able to play a meaningful role in defense of workers interest. At sectoral level developing appropriate mechanism for negotiating with social partners in a priority. The shop floor level calls for effective participation of workers representatives of workers in day-to-day relationship issues and workers interaction with the management.

In conclusion the following observations can be drawn from the studies.

- Apart from part-time and other forms of visible casual labour prevalence of practices that casual employment need to be taken into account as they seriously affect job security.
- The main problem of casualisation of labour is legal or enforcement. The labour code is transposed on ILO convention and relatively provides minimum standards for protection of worker.

The labour laws enforcement agency and its inspectorate are under sourced in functional, material and human terms. The problem is not exclusively legal but mainly, rests with inspection services for implementation. Unions have a role to play in implementation of labour law and monitoring compliance by employers.

The problem of casualisation is on the increase and tallies many forms as indicated in the afore going paragraphs. The impact of trade globalization has intensified competition multinational enterprises (MNEs) in their quest to maximize profits can move their production facilities to another country at short notice. Hence the “foot loose” nature of capital which has negative effect on employment situation in the developing countries being established horst to FDI providing corporations.

Fragmentation and rivalry being pronounced features of trade monism in Lesotho have contributed considerably to the weakening of unions lacking political clout to assert and defend interests of workers.

CHAPTER 1

1. INTRODUCTION AND SCOPE OF RESEARCH

This research proposes to identify and evaluate the existence of casual labour in our industries in Lesotho and its effects on employment and conditions of work.

A central objective of this research is thus to provide evidence based information that will facilitate the development of strategy for trade unions to advocate for the strengthening of their labour legislation to enable them to protect and advance workers' rights. The research hopes to achieve the following objectives:

- To determine and evaluate the effects of casualisation on the workforce in Lesotho and manufacturing and textile, retail, wholesale and hospitality and construction and building sub sectors.
- To determine and evaluate the comprehensiveness of national labour legislation in the face of assaults on conditions of work.
- To determine and evaluate the provisions for social protection for all workers
- To determine and evaluate the role of international companies in these sectors.

The research will be divided into 11 chapters structured as follows

- Executive summary
- Introduction to scope of research
- Analysis of reports per sector
- Comprehensiveness assessment of implications of trends for workers
- Identification of tactical questions for engagement by unions
- Conclusion
- Appendices: Country research reports

The trends that have emerged internationally in the world of work regarding definition of employee have contributed significantly towards informalisation and casualisation of jobs. These trends, among others, include increase in disguised employment, independent (subcontractors) and rise in unclear terms of employment, thus leading to decrease in protection of workers requiring protection.

Traditional statutory definitions of an employee are unclear and leave large discretion to courts which adopt various tests control, organization, subordination etc- and thereby expanding the number or categories of protected workers.

Casualisation of Labour in Lesotho manifests itself in a number of forms and practices as pertaining to acceptable conditions of employment which run contrary to internationally recognized standards regarding protection of workers' rights both individually and collectively at the workplace.

Several factors may be blamed for the prevalence of casualisation of labour despite Labour laws provisions intended to curb the incidence. Topping the list is high unemployment and underemployment rates which result in workers earning incomes below the internationally stipulated poverty level of at least one US dollar a day. Poor law enforcement by the Labour Administration through under-resourced Labour inspectorate in both human and material terms raises some concern. Weak and fragmented trade unions lacking capacity to engage government and employers in meaningful negotiations through social dialogue at both tripartite and bipartite levels contribute to the scenario. Another contributory factor is HIV and AIDS pandemic which causes spouses (especially household bread winners) to die forcing the remaining family members to look for work and take any job at what ever cost in order to survive. Thus contributing to the prevalence of triangular employment relationship.

The Labour Force Surveys (LFS) conducted by the Ministry of Employment and Labour in conjunction with the Bureau of statistics have not captured the number of workers working under poor conditions resulting in job insecurity. In addition, no indicators have been developed for conditions of work in general. The purpose of this study is to shed light on the magnitude and significance of casualisation of labour in the chapters that follow.

1.2 SOCIO-ECONOMIC BACKGROUND

Lesotho being classified as one of the least developed countries in the world faces a formidable challenge of unemployment and underemployment. It has a population of approximately 2.1 million growing at the rate of 2.1% per annum with a slightly skewed sex distribution with females out numbering men by a ratio of 51:49. The majority of people are young people in that people aged 0-19 comprise approximately 50% of the Lesotho population.

Furthermore, according to draft poverty reduction strategy document almost 50% of Basotho live below poverty line and 25% are ultra poor. The unemployment and under-employment problem is compounded by the shredding of job opportunities in Lesotho, plus the high rate of retrenchments in the RSA mining industry which for a long period employed a significant number of Basotho men. This escape valve is closing as can be noted that in 1990 approximately 130 000 Basotho men were employed in RSA mining industry while at present it is estimated that only 60 000 Basotho men work in RSA mines. In the past mineworkers remittances formed significant rural household incomes estimated at 42.9%.

Subsistence agriculture in which majority of the population is engaged is characterized by extreme levels of under-employment both in terms of remuneration and work performed. Second to subsistence agriculture in terms of labour absorption is the informal economy, which was in 1999 estimated to be employing 130 200 people equivalent to 22% of the total Labour force of Lesotho. However like subsistence agriculture informal sector is also beset with problems of high levels of underemployment.

Manufacturing is the largest formal employer in Lesotho's modern economy due to strong investment in textile manufacturing resulting from the AGOA initiative. It is currently (2006)

estimated that it employs 49 233 (over 95% are women) which is a recovery from 32 233 workers early in 2006 due to phasing out of Multi Fiber Agreement (MFA). Government is the second largest formal employer (including civil service and the armed forces), it employs 36 710 (March 2005).

1.3 The legal framework for the protection of workers in Lesotho

Lesotho has ratified and attempts to adhere to 21 ILO conventions aimed at protecting rights of workers.

- Eight core ILO conventions on which the ILO Declaration of Fundamental Principles and Rights at work is premised.
- The right to organize and bargain collectively
- Abolition of forced labour
- Prohibition of discrimination at work
- Eradication of child labour
- Minimum wage fixing
- Labour inspection
- Occupational safety and health
- Tripartite consultation

Lesotho has in addition ratified UN instruments protecting workers in broad terms

- Non discrimination covenant
- The International Covenant Economic Social and Cultural Rights Covenant
- Rights of Child Convention
- Convention on Elimination of All Discrimination Against Woman (CEDAW)

The Labour Code Order No. 24 of 1992 and its subsequent amendments is the principal law governing terms and conditions of employment in Lesotho. The Labour Code is limited in coverage to the extent that its application does not cover informal sector, subsistence agriculture and self-employed people. As a considerable number of workers are engaged in SMMES activities which fall within the Code's jurisdiction, but are not visible to law enforcement agencies, they are often open to abuse and exploitation by unscrupulous employers who are aware that there is limitation of legal enforcement in these activities.

The Labour Code is currently being reviewed to address gaps and deficits that have been identified in its application and interpretation. Other legal instruments protecting workers in operation are:

- Workmen's Compensation Act (as amended in 1992)
- Labour Code Amendment Order

1.4 Minimum wage gazettes published annually after tripartite consultation

The legal protection notwithstanding, workers such as those covered in these studies might not stand to benefit from legislation for several reasons. The main reason being the weakness of labour market institutions due to maturity level of social partners and deficits in capacities that prevail within both public and private organizations.

1.5 BACKGROUND TO THE STUDY AREAS:

While casualisation of labour is prevalent in Lesotho only four sectors that provide formal employment in terms of Labour absorption and contribution to GDP have been nominated for this study. In addition paucity of data and sporadic way in which labour force surveys are conducted undermine the principle of credibility and relevancy of information at disposal.

1.6 METHODOLOGY

As information has to be gleaned from various reports not specially focused on casualization of labour, **desktop** methodology is employed in these studies. In an attempt to bridge information gaps that exist, collective agreements of unions organizing in various sectors have been accessed. The baseline investigation and individual interviews fall outside the scope of this exercise when taking into consideration terms of reference for LECODU- CASUAL LABOUR RESEARCH project.

1.7 TERMS AND DEFINITIONS

Work

Work is defined in the system of National Accounts as any activity carried out for pay (in cash or in kinds), profit, family or personal gain, including production of goods for own use or consumption through unpaid labour.

Casual labour

The Labour Code does not either in expressed or implied terms accommodate casual labour in its definitions or any section thereof.

Contract of Employment

Contract of employment as defined in the Labour Code means a contract whether oral or in writing, express or implied, by which an employees enters the service of an employer.

Employee

Employee as defined in the Labour Code means any person who works in any capacity under a contract with an employer in either an urban or a rural setting, and includes any person working under or on behalf of a government department or other public authority.

Hours of Work

Hours of work as defined in the Labour Code means the time during which an employee is at the disposal of the employer, exclusive of any intervals allowed for rest during which the employee is not at the disposal of the employer.

Trainee

Trainee as defined in the Labour Code means a person who is being trained by or for an employer, or for employment, under training scheme in any trade or occupation.

Wages

Wages as defined in the Labour Code means remuneration or earnings, however designated or calculated, capable of being expressed in terms of money, made in accordance with the code, and not payable by virtue of a written or unwritten contract of employment to an employed person for work done or to be done or for service rendered or to be rendered.

CHAPTER 2: REVIEW ON RECENT LITERATURE ON CASUALISATION OF LABOUR IN LESOTHO

2.1 INTRODUCTION

This review focuses on the recent literature on casualisation of labour in Lesotho. It focuses in particular on the economic sectors that formally employ sizeable number of workers. It draws out findings from previous literature against which the findings of the current study can be compared.

2.2 FINDINGS

UN Economic Commission for Africa

According to Labour Markets and Employment in Southern Africa Report (July 2003) under wage employment it is stated that as a result of the combination of the supply and demand considerations in the face of the structural factors of underdevelopment and enclave development and growth leads to occupational and job discrimination in favour of men and to the disadvantage of women... they act as a reserve labour force when there are activities that males are reluctant to undertake. As a result women also find themselves in casual insecure and low paying forms of employment in which conditions of employment are severely compromised both absolutely and in relation to international accepted standards.

Lesotho Integrated Framework – Diagnostic Trade Integration Study (January 13 2003)

The report under subheading worker discontent and tensions with foreign investors, government and non-government organizations on industrial relations and conditions needed to promote Basotho to managerial positions.

Commack Trust Report on the Productivity Audit and Training needs analysis for the garment Industry

The report calls for improvement in conditions of employment and promotion of conducive industrial relations environment through employers and unions interaction and mutual trust.

Comprehensive report on US Trade and Investment policy towards sub-Saharan Africa: Implementation of AGOA: The Fourth of Eight Annual Report (May 2004)

States that foreign employers in the industrial zones pay wages below the statutory minimum and refuse to pay sick benefits. Although there is legislation to prevent this, enforcement has been lax.

Lesotho Government Industry Sub sector Study Main Report (January 2002)

The report narrates some practices in industrial relations which is inimical to promotion of industrial peace in the sub sector which is a prerequisite for profitability and productivity

The Directorate of Dispute Prevention and Resolution (DDPR): Report for the period April 2004 – March 2005 & June 2005

The Directorate as an ADR Institution of disputes resolution annually provides statistics of cases adjudicated both by sector and company. Is further classifies employment benefits disputes.

2.2 *Collective Bargaining Agreements*

Collective bargaining agreements between Unions and the companies in their definition of bargaining units exclude workers employed under casual terms who fall through the cracks by being denied to take advantage of collective bargaining as a system of improving and regulating their terms and conditions of employment.

CHAPTER 3: CLOTHING AND FOOTWEAR SUBSECTORS

3.1 OVERVIEW OF THE SUB SECTORS

The garment and clothing sub sector and special clothing subsector merits special attention as it has emerged as the largest formal employer followed by public service (43 600 and 32335). The garment and clothing subsector was first established by firm across the border in the Republic of

South Africa (RSA) then followed by Foreign Direct Investment (FDI) driven companies of Chinese and Taiwanese origins.

Lesotho has successfully build an export – oriented, FDI driven garment sector through offering tax incentives and provision of infrastructure in industrial area enclaves which provided 55 000 jobs (2004).

According to available data, expansion of garment as a share of capital formation, FDI flow rose from under 5% between pre-1995 and 1995 – 1999 periods. And the share of FDI in GDP increased from 2% to 26% for the same period¹.

The expansion of garment and clothing sub-sector came about as a result of the market opening opportunities provided by agreements such as AGOA and MFA which allowed Lesotho's exports to enter US market on a preferential basis so that exports increased by almost 5 fold in 6 years reaching the record figure of US \$ 321 million in 2002.

However, this positive trend was soon reversed as international preferential rules ended in January 2005. Rules of country of origin expired in 2004. AGOA and MFA import quotas rules limiting access to the world importer of garments and clothing were also removed as well as favourable tariff treatment under AGOA which is due to expire in September 2007. Lesotho manufacturers will be required to source their materials from LDC's participating in AGOA or US. Lesotho's competitive edge as manifested by 34% market share under AGOA has been achieved at a price of low labour costs but not productivity gains Annual increases of wages may be misleading in most cases. For example in 2001 the garment sector wages increased by 10 percent in 2001 while the dollar cost fell by 39%. At close scrutiny it can be deduced that real wage cost to firms exporting to the US decreased by 29%.

Lesotho's textile and garments industry has been in severe shock in the past 18 months during the tight competition of the like garment and textile manufacturers located around the world. In January 2005 six factories locked their gates and 5800 workers lost their jobs. The factories in question are shown in table 16 below:

Table 2: Factories that lost their workers in 2005

Factory	No of workers Affected
Precious 6	300
Leisure Garments	300
Modern Textile	500
TW Garments	2205
Lesotho Haps	1305
Vogue Landmark	1240
Total	5840

Later in the year Hong Kong International Knitters locked their factory resulting in 1000 job losses. This brought number of job losses to 6840. 1100 jobs were lost in Maseru while 5750 jobs were lost in the Maputsoe and Ha Nyenye industrial estate. Reasons for these closures can be attributed

¹ See UNCTAD Studies 2003

to the strength of the Loti vis-a-vis the US\$1. It may also be assumed that the expiry of the World Trade Organization (WTO) Agreement on Clothing & Textiles (ATC) may have influenced some owners to shut down and relocate.

Most firms in the manufacture of knitted garments have been forced to retrench staff and introduce working hours. It should be noted that Lesotho Garment and clothing sector participates at the lowest end of global value chain as it comprises Cut, Make, and Trim subcontractor and also Embroidery and Printing sub contractors.

The new FDI has also contributed to a more diverse mix of corporate ownership. Among the largest garment manufactures, 32 out of 59 factories are subsidiaries of Chinese or Taiwanese, fifteen are South Africans and the rest are local firms in the sense that they belong to Chinese who have acquired Lesotho citizenship.

3.2. INDUSTRIAL RELATIONS

The confrontational and adversarial nature of labour relations that persists in the garment and clothing sectors may be ascribed to conflicting cultures of both employers and workers. The Far East employers do not well dispose toward principles of workplace democracy as they come from countries which (until great Asian financial crisis in the late 1990s) had achieved spectacular economic growth not as a result of sound industrial relations systems but through autocracy. The other factor, which further aggravates labour –management relations is the prevalent use of Chinese and other South East Asia supervisors unable to communicate with the workforce. In contrast Basotho workers have Unionism.

Two systems of industrial relations exist side by side in Lesotho. The legal system as provided by the Labour Code and voluntary collective bargaining method. The former is predominant in the garment and clothing subsector and does not augur well for nurturing healthy industrial relations environment, which is a prerequisite for social peace and social cohesion.

Table 3: Statutory Minimum Wages

Clothing, Textile & Leather Manufacturing	Monthly Wages	Weekly Wages	Daily Wages
Textile garment Worker	643.00	160.00	34.00
Textile machine operator –trained	686.00	172.00	36.00
Textile machine operator – trainee	643.00	160.00	34.00

(Source: Labour Code Wages Order, 2005)

3.2.1 *Acceptable Conditions of Work (ACW)*

Though there is lack of international consensus as to what constitutes acceptable conditions of work it is generally agreed within labour movement and its civil society allies that wages, hours of work and health and safety are central to the definition of ACW.

3.2.2 Remuneration

The practice of paying wages below the statutory minimum still crops up time and again². The occupational- based Minimum Wages Gazette as published by the Minister of Employment reflects only three categories of workers as opposed to the surveys report on the status of garment and clothing sub-sector in 2001, which identifies fourteen occupations generally found in all textile factories.

Three occupation-based Minimum Wages Gazettes are set as trainee machinist and general factory worker (an ambiguous classification of job). The minimum wage is applied to all workers irrespective of skill or dexterity required for each operation. The ILO technical support headed by Dr. Catherine Saget recommended establishment of sectoral Bargaining Council. The proposal has been undermined by employer's organization. Job classification and job grading on which remuneration would be based has not materialize.

3.2.3 Working Time

The 45-hour working week as provided in the labour code is being flouted. It is not uncommon to find workers having to work for 7 days a week contrary to the provisions of the Labour Code. It is common to find garment and clothing companies applying for exemption from statutory hours of work asking weekly hours to be extended to 48 hours. In some instances they even inform the office the Labour Commissioner that they are already exceeding the 45 hours working week minimum laid down in the Labour Code.

The Labour Code provides for overtime not exceeding 11 hours in a week from Disputes Prevention and Resolution (DDPR). It is evident that overtime worked in the garment and clothing sub-sector exceeds the minimum provided in the Labour Code. Another unwelcome practice is the compulsory unpaid overtime to achieve targets arbitrarily set by management without consultation or involvement of the workers concerned.³

The Labour Code provides for 24 hour weekly rest without any interruption whatsoever. As the garment and clothing sub sector practices unpaid overtime instances imposes 7 days working week, it denies worker of their rights embodied in Labour Laws.

3.2.4 Leaves

As noted in the comprehensive Report on US Trade and Investment Policy foreign employers in the sub sector refuse to pay sickness benefits to workers during sickness. The DDPR annual report indicates that disputes referred for adjudication always or in most cases apart from unfair dismissal involve claims for unpaid annual leave.

3.2.5 Safety and Health

Due to intensity of task performed in garment factories workers have been experiencing muscular-skeletal disorders. This problem may be attributed to multi-tasking imposed on worker to meet deadlines of orders secured from leading US brand corporations. Instead of upgrading skills of the

² Comprehensive Report on US Trade and Investment Policy May 2004.

³ DFID Main Report – Lesotho Garment Industry Sub sector Study for Government of Lesotho 2002

workforce companies have resorted to increasing work load and increasing numbers of employees without taking into account productivity consideration and other concerns.

The six-month training period has in most cases been abused by employers in the sector. The practice has been to employ workers at low pay as trainees and dismiss them before completion of six-month training period. Then afterwards employ them afresh as training thus cutting labour costs as trainees are remunerated at lower rate than the trained workers.

3.2.6 Conclusions

The practices thus far (as can be deduced from a foregoing paragraphs) have apart from direct casual labour employed at the peak of near full production capacity of the functions, contributed towards casualisation of labour in the sub sector leading to job insecurity.

Chapter 4: Profile of textile sector

4.1 Overview

The rise in FDI and export oriented manufacturing in Lesotho is showing a visible impact on the size distribution of firms operating in the economy. With the rise of the manufacturing industry the number of medium and large scale firms has grown considerably and accounts for an important share of domestic firms, for example more than 500 firms currently use a work force of between 11 and 50 persons, which in the context of Lesotho may be considered medium scale firms. Furthermore according incomplete database, 110 firms employ between 50 and 500 workers, this group may be considered large scale firms. Finally 38 firms – a surprisingly large number - in more samples maintain a workforce of more than 500 each. These firms are large even by international standards.

Finally the new FDI has also contributed to a more diverse mix of corporate ownership. Traditionally, firms in Lesotho were owned by Basotho or South Africans. Today a hint of globalization is visible, with more than 200 firms owned by South Africans, with or without local joint-ventures partners, 40 Chinese or Taiwanese firms, 16 Indian firms and 44 firms belonging to other African nationals. Within the fast growing clothing industry, the change of ownership is even more dramatic. Among the largest garment manufacturers, for example 29 out of 38 factories are subsidiaries of Chinese or Taiwanese firms, two are South African and the rest are local firms.

Table 4: Distribution of Firms and Employment by Sector

Activity Priority Sector	Number of Companies	Total Employed
Stone quarrying	8	67
Meat & Poultry	112	611
Food & Beverages	100	1 936
Garments & Textile	408 (2)	49 233
Of which wool & mohair	8	290

Footwear & Leather	30	3 167
Stone cutting	10	300
Hotels	44	1 214
Sub- total priority	712	56 228
Other sectors		
Agriculture	16	44
Other mining & quarrying	9	8
Other manufacturing	243	1 848
Construction	225	8 300
Retail & Wholesale	2 408	10 884
Bars & wholesale	2 81	1 339
Other services	743	4 941
Sub- total others	3 928	27 567
Totals	4 640	83 795

Data available for 2 322 companies showing 81 327 employed, for all companies a default of 1 was given. Out of 400 firms in textile and garment, 38 are foreign owned factories (which provide bulk of employment in the sector), which the remaining firms.

Table 5: Profile of key sectors in Lesotho

Garments sector Profile	
Market size	296 Million 78 million or equivalent
Number of factories in operation	35
Ownership structure	Taiwan 65% Hong Kong 13% Lesotho 11% South Africa 5% Israel 3% Singapore 3%
Principal Markets	USA 93% Others 7%
Production Characteristics Principal Market Driver	100% CTM (cut make and trim) AGOA

	<ul style="list-style-type: none"> - Total tariff rate quota (TRQ) available 956 715 m² equivalent - Percentage of total AGOA allotment filled by Lesotho 7.6%
Principal Input Sources Employment Impact	China South Korea Taiwan Estimated local workers 32 233 (year 2002) <ul style="list-style-type: none"> - Knitted 57% - Denim Jeans 35% - Woven / Knit Mix 8% Expatriate 1 076 <ul style="list-style-type: none"> - Senior Managers 211 - Supervisors 763 - Clerical 102
Labour Productivity T- Shirts / Person /day)	Lesotho 16 – 20 Kenya 20 – 25

Are usually small – scale Basotho owned enterprise and dress – markers (tailors). In terms of geographical distribution, Maseru contains almost 72 per cent of textile factories followed by Maputsoe and Ha Nyenye, which account for 9 percent of the companies and the remainder being shared among three other districts.

Lesotho successfully built an export-oriented, FDI driven garment sector, which at its peak in 2004 provided 55 000 jobs through offering tax incentives and provision of infrastructure in enclaves. In addition the market opportunities provided by agreements such as AGOA and MFA allowed Lesotho's exports to enter the US market on a preferential basis so that Lesotho's exports increased by almost 5 fold in 6 years, reaching \$320 million in 2002. However this positive trend was reversed at the end of 2004 when rules of origin came into play which require source of inputs to come from another AGOA country or the US and removal of MFA import quotas limiting access of the worlds largest garment exporters to the US. Despite this set back Lesotho has still maintained its lead of being the largest garment exporter, within sub-Saharan Africa countries, to the US.

According data presented in UNCTAD studies as a share of gross capital formation Lesotho FDI flows rose from under 5% to 50 percent between the pre- 1995 and 1995 – 1999 period and the share of FDI in GDP increased from 2% to about 26% for the same period.

4.2 The contribution of textile sector to employment

It has been estimated that textile sector share of total employment ranges between 38% and 45% of formally employed Labour force. Employment in the sector has outstripped public sector employment levels, which up to the year 2000 absorbed majority of internally employed persons. The evolution of distribution of employment in textile sector notably came about as a result of Lesotho being accredited under AGOA for preferential treatment by the US. The increases in employment in the textile sectors were due to exogenous factors but not internal developments in Lesotho economy.

4.3 Job quality in Small enterprises

Increase of employment in the textile sector has not been accompanied by acceptable conditions of work. Casualisation of jobs is rife and impacts negatively on economic, social and psychological well being of workers. Casualisation of employment in textile sector is discussed under dimensions listed below in order to shed light on the gravity of the situation.

Remuneration level: Low level of earnings in the sector have forced workers to join ranks of the working poor as they can not satisfy their basic needs. The statutory wage fixing machinery has failed to implement recommendations of the ILO technical mission, which proposed sectoral approach when determining wages. All workers earn same minimum wage regardless of type of work they perform.

Contrary to the provisions of the Labour Code for 45 hours working week, it is common to have workers toiling for 7 days so as to increase their take home pay. This practice further informalises jobs in the sector and undermines the principle of decent work. There are no fringe benefits or non wage benefits for workers employed in the sector.

Job security: in most instances, workers work for six months and then laid-off afterwards hired afresh as trainees. This practice casualises employment as it brings into question regularity and reliability of work and income.

Non-existence of contracts of employment and / or unclear terms of employment deprives workers of a sense of long-term stability.

Social protection: In the absence of social security policies and laws workers are exposed to untold hardships when faced with exigencies.

The Labour Code provides for severance pay on termination of employment relationship, calculated as two weeks salary for each completed year of continuous service. It does not provide for pension or dependents benefits.

The Labour Code further provides for sickness leave of up to six months. The non-contributory nature of this benefit deprives workers income during illness and convalescing period.

The Labour Code further provides for 12 weeks maternity leave (six weeks before birth of a child and six weeks thereafter) but payment of wages during the period is discretionary. The Labour Code provides for daily one hour lactation without loss of wages for women workers over a period of three months on return to work after maternity leave.

Working conditions: The Labour Code provides for occupational health and safety at the workplace. Workplaces having 20 or more workers are required to have joint management and workers forums. Firms in textile sector have not complied with this provision. In addition factories are required to have full time inspection officers.

The textile sector is becoming notorious for environment hazards by depositing untreated waste into streams and dams. The Workmen's Compensation Act requires employers to ensure their workforce against occupational accidents and diseases.

Workers are eligible for compensation on sustaining injuries at work suffering partial or permanent incapacity and death. They receive once off lump sum. There is no pension or survivors benefit.

Human resource development: The CTM mode of production in the sector acts as a barrier for workers to acquire skills. This is further aggravated by hierarchical settings of the firms whereby lower and middle management positions are occupied by expatriates. thus, putting brakes on vertical and horizontal mobility of workers.

Training for single tasks is on the job. There are no provisions of education and training opportunities and prospects of promotion and incentives for improvement.

This further aggravates the current situation of having unskilled literate Labour force in Lesotho.

Management and organization: As there are four trade unions organizing in the sector workers are unable to speak with one voice. Rivalry and disunity has been a pronounced feature of trade Unionism in Lesotho. This weakens the bargaining power of workers in the textile sector. This development is further compounded by anti-union attitude of East Asia entrepreneurs.

Low trade union membership density is testified by low unionization rate currently standing at 13 000 out of the workforce numbering 40 000.

Two employer's organization's operate in the sector: ALE which is a blanket organization straddling a number sectors and LTEA which is industrial in structure. The employer's organizations in the sector seem only to be engaged in disputes at the DDPR and Labour Court or Labour Appeal Court. They fail to address broad issues pertaining to industrial relations. This may be attributed to their lack of capacity in dealing with dynamics of the world of work. Their legalistic approach to workplace issues has retarded development of collective bargaining in the sector. By their activities employers' organizations indirectly promote caualisation of Labour in the sector.

4.4 SUMMARY AND CONCLUSIONS

From the foregoing paragraphs an imponderable number of questions crop up. But observations have got to be limited to few issues that are of paramount importance.

At macro level it is indisputable that among sub-Saharan African countries, Lesotho stands out in its ability to take advantage of opportunity offered by AGOA and MFA. The question that arises is whether Lesotho's comparative advantage in garments is artificial or natural.

Secondly, the issues to be addressed are how does creation of jobs in the sector contribute towards PRS objectives and MDGS. One wonders as to how casualisation of Labour relates to poverty alleviation. Jobs quality cannot be sacrificed for employment in 3D jobs.

Social partners and workers in particular have to stem the tide of casualisation by meaningful measures and mechanisms geared towards achieving strategic objectives of decent work.

Trade unions have to overcome fragmentation so as to be a representative of workers in the sector. Trade unions have got to improve their capacity in order to grapple with complex socio-economic issues at both sectoral and national levels.

Promotion of social dialogue holds the key to development of sound industrial relations system. Thus establishing industrial peace which a pre-requisite for socio-economic development of Lesotho.

CHAPTER 5: HOSPITALITY SUB-SECTOR

5.1. INTRODUCTION

The database of 4 600 firms (2004) still being developed shows distinctive distribution of firms and the workforce across different economic activities. While the database remains unfinished with information gaps and partial coverage the following features of Hotels Bars and Restaurants subsector can be observed.

Table 6: Hotels, Bars and Restaurants Sub sector

Sub sector	No. Of companies	Total Employed
Hotels	44	1 214
Bars and Restaurants	281	339

Though the workforce is small in comparison with other sectors/sub sectors, the importance of Hotels, Bars, and Restaurants sub sector as one of the leading foreign currency earners cannot go unnoticed. The ownership in this subsector is diverse with hotels being predominantly owned by South African based multinational companies and the bars and restaurants being owned by Lesotho nationals thus comprising a substantial portion of SMES. In the latter precarious nature of employment leading to casualisation of labour have its roots in the unclear terms of employment arising from oral contracts of employment.

5.2. ACCEPTABLE CONDITIONS OF WORK (ACW)

In the bars and restaurants minimum standards provided by the Labour Code as pertaining to working time, minimum wages and leaves are not complied with as evidenced by disputes referred to the Directorate of Disputes Prevention and Resolution (DDPR). According to DDPR report (2005) dismissal disputes (unfair dismissals) accounted for 21% and employment benefits disputes (severance pay, leave, notice pay, wages, underpayments, overtime, weekly rest days, allowances, etc.) comprised 79% of the total.

Table 7: Wages in Hospitality Sector

Sub sector	Monthly	Weekly	Daily
Hotel	779.00	195.00	41.00
Restaurant & caterers	758.00	190.00	40.00

5.2.1 CASUAL LABOUR

The South African based multinational companies employ casual labour under different guises during peak period of tourists inflow. This development has come to light when a union organizing in the sector, namely, National Union of Hotels Food and Allied Workers (NUHFAW) after obtaining qualifying majority for recognition was negotiating with Sun International management.

The company could not accept scheduled employees” being part of the bargaining unit as they were temporarily employed under terms and conditions differing from those of permanent staff. The workers employed as scheduled staff do not enjoy agreed terms and conditions of employment between the Union and the company.

5.2.2 CONCLUSIONS

The SMEs status (Small in size and geographically dispersed across the country) makes it impossible for unions to achieve level of critical mass in terms of union density. Collective bargaining under these circumstances can only practically be implemented at sectoral level. The other drawback is that employers in this subsector have no organization specifically serving their interests except a blanket employers association straddling a number of economic activities and sectors.

The Statutory Wages Advisory Board is not able to address sector specific issues. It is therefore deemed expedient to have sectoral bargaining councils as recommended by ILO technical mission.

CHAPTER 6: RETAIL AND WHOLESALE SUBSECTOR

6.1. INTRODUCTION

According to FAFO SA (2002) service-led economy has transformed employment practices, led to a new wave of casualisation of employment relations and changed the foundation of industrial relations practices and labour movements. Southern Africa is one of the regions that have high rates of poverty and employment. In most Southern Africa the type of service sector that is dominating requires low-skilled or semi-skilled workforce. It is also one of the sectors where workers are paid low wages and the working hours are long.

The rise of atypical employment in the form of temporary and precarious work contracts has contributed towards the introduction of casualization. Restructuring has promoted the employment of casuals as opposed to permanent employees as a cost –cutting measure by employers. Temporary and contingent workers do not enjoy social and other fringe benefits as part of their employment contracts. Employers also use some tactics so as to prevent these workers from joining the unions. Numbers are always unreliable due to work statistics on potential membership as well as lack of registration of actual membership.

Quantity does not always equal quality, and studies into retail sector in South Africa show that the sector has grown through casual and subcontracted employment (Clarke 2000 and Kenny 2001). In Lesotho the use of casual workers has been rife in many of the retail, wholesale and hotels. A few examples have been drawn from some retail, wholesale and hotels in Lesotho. The following businesses use casual labour extensively namely, Shoprite, Cash build and Maseru Sun (NURAW, NUHFAW and Sun International).

According to my informant Shoprite has workforce of about 7000 employees. Out of this number only about 300 are on permanent contracts while the balance of about 400 are employed as casual workers referred to as flexi-time employees. Each casual worker works for a maximum of three hours per day and a maximum of three days per week. They work within a cycle of six weeks. In this cycle each casual worker is brought back into the system after six weeks. This seems to be the trend in all the companies that use casual workers. They are called by different names in different companies. Lesotho Sun calls them scheduled workers and Lesotho Brewery refers to them as temporary workers.

Kenny argues, "The use of casual labour is a general trend in the retail in South Africa" (Kenny 1998:25). It could be argued that the retail sector internationally has increasingly employed casuals. Research shows that the use of casuals in the South African retail sector started in the 1980s. Valodia insists that this was a result of the consumer demand, which pushed for store hours to be extended (Valodia 1989 in Kenny 1989). Working hours in the retail sector have extended to include opening on weekends and public holidays. Many of the retail stores have started to open twenty-four hours a day.

The retail and wholesale subsector is heterogeneous in composition as relating to size and mix of ownership. Most of the enterprises are sole proprietorships dominated by Basotho followed by South African based multinational companies chain stores and (lately) retail outlets owned by Far East nationals.

Table 8: Retail and Wholesale Trade

Sub sector	No of Companies	Total Employees
Retail & Wholesale	2408	10 884

Majority of these enterprises fall within SMEs category (hard to distinguish from owner-operator informal economy entities). South African based multinationals form a small segment of retail and wholesale sector.

6.2. INDUSTRIAL RELATIONS

The industrial relations system in SMEs is paternalistic in nature though cloaked under the guise of labour- management partnership. Agreed that the structure of ownership in SMES tends to be less hierarchical as no significant levels of management exist. Relationship between management and labour are informal susceptible to manipulation. The tenets of industrial relations are not intended or pursued in SMES.

In most cases SMEs management has negative attitude towards unions. This practice undermines the principle of freedom of association and right to bargain collectively. South African based multinational has embraced collective bargaining as a system of managing conflict at the workplace.

Most of MNE's except some few anti-union companies have collective agreements with the unions. Multinationals companies are easy to negotiate with for the following reasons:

- They are progressive
- They provide unions with
 - Rights to organize
 - Rights to collective bargaining
 - Higher wages to their employees.

Due to fragmentation and number of unions organizing in the sub sector negotiations are impeded. It is difficult to reach agreements with the Indian and Chinese employers. The employees are not allowed to organize and refuse union membership. Table 5.1 below shows the official status of trade unions in Lesotho:

Table 9: Official Statuses of Trade Unions in Lesotho

Federation	Affiliates	Membership	Total
COLETU	FAWU	10500	13 254
	LTU	1790	
	LUTARU	145	
	DEMOWU	200	
	LEWCAWU	619	
LECODU	LAT	6141	11 989
	NURAW	1702	
	TSAU	683	
	LECAWU	3295	
	CAWULE	76	
	NUTEX	92	
LTU	LEMAWU	PENDING	168
	LESAWU	53	
	LEPHAWU	77	
	LECDAWU	38	
3	15		25311

(Source: Department of Labour: Audit Report for the Year Ending 2005)

Unionization rate in Lesotho remains amongst the lowest in Southern Africa with just above 438 542 workers in formal sector employment only about 25311 were reported to be trade unionists in December 2005. This constitutes about six percent of the formal sector workforce (Department of Labour 2005). Restructuring of work organization, that is, multi-skilling of employees has affected employment in the retail sector.

6.3. ACCEPTABLE WORKING CONDITIONS

In the SMEs the minimum standards as regards working time, remuneration and safety and health are not complied with as it can be observed by number of cases and disputes referred to the labour court and Directorate of Disputes Prevention and Resolution (DDPR)

The DDPR report for the period April 2004 – March 2005 reveals that 127 disputes were referred, of which 86 were disputes concerning employment benefits and the remaining 41 involved dismissal disputes. At close scrutiny it will discovered that employment benefits disputes were in

respect of severance pay, leave weekly rest days and allowances. These are indicators of precarious situation of employment. The remaining 41 disputes of dismissal (unfair and constructive dismissal) confirm non-compliance of employers with provisions of the Labour Code.

The South African based multinationals have shown high compliance with legal provisions and have through negotiated agreements with the unions improved terms and conditions of employment.

It is only few exceptions being Cash build, Shop rite and Ellerines, to name but a few, that have displayed anti-union attitudes and have casual labour in the form of “flexi-time” workers. The casuals in some instances are more than double the number of permanent staff and work for 3 to 4 days a week. This information is sourced from unions organizing in the sub-sector through their collective agreements or disputes for recognition of unions as bargaining agents of workers in terms of provisions of the Labour Code.

In extreme cases workers who have been under the employ of some companies for a period exceeding four-month probation provided by the Labour Code are still working as casuals.

6.4. CONCLUSIONS

The following conclusions can be drawn from the study in respect of retail and wholesale subsector:

- At macro level when taking into account imponderable number of SMEs effective collective bargaining can only be achieved at sectoral level.
- Multiplicity of unions organizing in the subsector weakens the political clout of the unions in advancing interests of their members.
- Weak and non-representative employers associations lack capacity to engage in meaningful negotiations at both tripartite and bipartite level.

CHAPTER 7: CONSTRUCTION AND BUILDING SUBSECTOR

7.1. INTRODUCTION

The Lesotho Highlands Water Project (LHWP) a US \$ 4 billion mega project had a significant impact of Lesotho economy. The construction subsector has through spillover effect benefited enormously from LHWP and has become unusually large, accounting for 23% of GDP (2004) as opposed to a share of less than 10% in most countries. In 2004 there were 225 enterprises in construction subsector employing 8300 workers.

The composition mix of ownership in the subsector is heterogeneous, with large companies (usually from RSA and adjoining countries) undertaking large construction projects and other projects beyond the capacity of constructions companies owned by Lesotho nationals.

7.2. INDUSTRIAL RELATIONS

When LHWP construction was in a full swing in the beginning of last decade the contractors and sub-sectors established Lesotho Master Contractors Association to represent their interests when dealing with the unions and the government.

Wages were fixed through negotiations with contractors negotiations with contractor's organization. This experiment in sectoral bargaining was short-lived as Lesotho Master Contractors Association through certain influences dissolved itself and unions had to negotiate directly with individual companies. But other three ventures had one of them as a clearinghouse for their financial and human resources management.

The industrial relations in the subsector during the construction of LHWP had fair crop of crises which invited intervention but security forces resulting in a number of casualties. A commission was instituted by parliament to make independent findings on the whole episode.

7.3. ACCEPTABLE CONDITIONS OF WORK

After a spate of fatal accidents during the construction of LHWP, Lesotho ratified ILO Convention 167 of 1988 – Safety and Health in Construction Convention in 1998. This ILO Convention and the relevant Recommendation provided a leitmotif for promulgating regulations pertaining to protection of workers in construction sub sector.

Wages negotiated with the union were almost at par with remuneration rates in RSA. (This is one of the reasons that led to the demise of Lesotho Master Contractors Association). At present wages set annually by Wages Advisory Board are erratic as can be observed from occupations listed in the minimum wage gazettes since the demise of negotiated wages at sectoral level:

Table 10: Minimum Wages in Construction Sector

Occupation	Monthly	Weekly	Daily
Construction Machine operator	1400.00	331,00	76.00
Construction Worker	794.00	198.00	42.00

(Source: Labour Code Wages Order, 2005)

7.4. CASUAL LABOUR

As pointed out earlier casualisation of labour can take different forms in tandem with current international trends in defining an employee. This among others includes the following.

- Rise in disguised employment (independent contractors)
- Rise in unclear terms of employment.

The Lesotho Highlands Development Authority is one of the promoters of disguised employment in the form of independent contractors. The employees on payroll of LHDA dealing with rehabilitation of Mohale Dam were assigned the status of independent contractors and a separate regulatory instrument in the form of terms of Reference was developed for their control. On being denied annual remuneration increments enjoyed by other LHDA employees, the affected workers

(so called independent contractors) referred their claim to the DDPR. The DDPR after applying tests as to their status ruled in favour of applicants (employees/independent subcontractors). The salary increments in arrears were paid by LHDA. One as to how hidden employment in the form of independent contractors can be viewed except as casualisation of employment relationship.

Another vivid example is in respect of workers employed by Mohale Construction Company (MCC), Mohale Tunnel Boring Company (MTC) and Mohale Dam Construction Company (MDC) each of which was registered with the Office of Registrar of Companies as an independent venture. From cases adjudicated by the Labour Court, it is common to find a worker employed by MCC, working under MDC being dismissed by MTC while still being in MCC pay roll. The Labour Court had no alternative but to rule in favour of worker/applicant. These practices reflect an element of unclear terms of employment, which borders on casualisation of labour.

7.5. CONCLUSIONS

Emergence of disguised employment and unclear terms of employment fuels casualisation of labour prevalent in the construction subsector which by its very nature is prone to workers being laid off at each stage of construction.

CHAPTER 8: COMPREHENSIVE ASSESSMENT OF TREND FOR WORKERS

8.1. OVERVIEW

8.1.1 Comprehensiveness of Labour Code No.24 of 1992

Lesotho has ratified eleven conventions of the International Labour Organization (ILO). The principles contained in the Labour Code of Lesotho are based on the ILO conventions. Our major concern at the moment is to determine and evaluate whether this code addresses casualisation of labour in Lesotho. However there are a number of loopholes within the code through which employers may escape.

Definition of casual worker is not provided in the Labour Code. This may immediately dismiss the concept of casual labour within the legal parameters. Historically Lesotho has been using casual labour extensively. In order to attempt to alleviate poverty Lesotho has been using casual labour in the road construction projects such as roads and building dams in the communities. During the early infancy of Lesotho's independence people in the rural areas were engaged in the building of roads and dams in their communities.

They were made to work in alternating groups and paid in kind. This programme was however politically motivated in that it discriminated against the members of other political parties. The majority of the participants in the programme were woman hence they were referred to as "Likhofu tse matsoele"

These schemes are still in existence even today. In 1994 the government of Lesotho embarked in numerous employment schemes, inter alia “fato fato” scheme in which community inhabitants take turns in implementing a certain community project such as building community roads. Each group would work for three weeks and be paid with food packages. This group would be followed by a different group and so on. This scheme was referred to as ”Mojeremane”. It was funded by government through Highland Revenue Fund. The other schemes were Labour Construction Unit (LCU), Civil Works Section (CWS), Forestry Division (FD) Soil Conservation Division (SCD). Total number of jobs created by these initiatives amounted to 12305 in 1995. This does not include school feeding schemes. The following Table shows the status of these schemes in terms of employment and contribution rate.

Table 11: Schemes in Terms of Employment and Contribution

Employment Scheme	Numbers	Contribution percent
Food for Work Programmes	3327	
LCU	1756	27
LHRF	7222	14
		59
	12305	100

(Source: Sechaba Consultants: Situation of Woman and Children in Lesotho)

According to gender distribution 59% were males and 41% were females in these schemes. The number of jobs created under these schemes constitutes about 2.1% of the Lesotho labour force. As stated earlier the employment in these schemes is temporary and last not more than six months. Their sustainability is questionable.

The government in as much as the private sector is using casual labour in a different form. In the private sector the main purpose of using casual labour is to boost production and /or extend services. While the participants enjoy the financial benefits, the job is not sustainable. It also goes with the exploitation of the beneficiaries.

The use of casual labour is not stipulated within the labour laws of Lesotho. However; there are conduits through which the employers escape the long hand of the law. Some sections of the Code may be interpreted according to one’s understanding and still abide on the right side of the law. For instance, Section 62(1) of the Code reads as follows “Account of employment may take the form of a contract without reference to limit of time, a contract for one period of fixed duration as a contract to perform specific work or to undertake a specified journey”.

This section may be interpreted as a leeway for utilization of casual labour. If this is the case then casual workers should be in the same wavelength with other contract workers in terms of conditions of employment. Unfortunately this is not the case. They are denied their legal rights within the labour relationship arena. They are people in the standby waiting to be called in when they are needed. Their situation is uncertain. They cannot plan as they are in the mercy of the employer.

The ensuing subsections of Section 62 perpetuate exploitation of the employee. Subsection 4 make reference to contract to perform some specific work or to undertake a specified journey and shall terminate upon the completion of the work or the journey. The employee may be protected by Section (1c).

The big question is whether the current practice among the employers subscribes to this protection. The answer is no. We wish to cite a few examples of companies, which do not subscribe to the law and continue to exploit these workers and this practice remains unabated. In Cash build (Lesotho) casual workers are extensively used. These people are employed for long periods of time and expected to perform as if they were on fulltime basis and permanently employed. When you walk into the company's premises you cannot make a difference between a casual and a permanent employee. However, the difference is obvious in the rights and privileges accorded to each category of employee. A permanent employee has unlimited contract of employment. He/she enjoys the rights and privileges that cannot be enjoyed by a casual worker. For instance, a permanent employee has the right to join a trade union of his choice whereas the casual worker does not enjoy that right.

The other examples are Shoprite Checkers which employs over 4000 casual workers. Sun International also employs a sizeable number of casual workers referred to as scheduled workers. In Lesotho Brewery casual workers are referred to as temporary or part-time workers.

Casualization of Labour in Lesotho is visible in many forms and attempts are made by the employers to legalize it through practices that coerce these casual workers to accept it as a norm and a way of life in Lesotho's industries. However this practice weakens the power of trade unions of organizing and collective bargaining.

From the analysis of reports in the foregoing four chapters trends which have serious implications for workers as regarding casualisation of their employment status emerge. These primarily include the following:

8.2. Rise in the form of disguised employment

The rise in disguised employment in the form of independent contractors is on the increase in some of the sectors.

8.3. Unclear Terms of Employment

The practice by employers in offering unclear terms of employment prevails in all sectors and sub sectors of Lesotho economy.

8.4. Increases in the Number of Workers Employed Under Casual Terms

In some sectors number of workers under ambiguous job titles but not enjoying minimum standards provided under the labour code and negotiated terms is increasing as a proportion of the total workforce in some business entities. This category of workers includes scheduled workers,

flexi-time workers, etc. The current practice by companies of outsourcing and contracting out services previously performed in-house has significantly increased casualisation.

An increase in non-compliance with the provisions of labour laws provisions drives workers into precarious conditions of employment. Thus fuelling casualisation of labour.

8.5. Minimum Standards Provided Under Labour Laws Becoming Maximum Standards

Minimum standards provided under labour laws in the face of achieving competitive edge in the globalising international economy have resulted in subsistence earnings resulting in the increased numbers of the working poor. Thus promoting reproduction of poverty

CHAPTER 9: DETERMINATION AND EVALUATION OF THE PROVISIONS FOR SOCIAL PROTECTION FOR ALL WORKERS

Since casual labour in Lesotho is not anywhere legalized in our Labour Legislation there is no social protection for casual workers. The only benefit they enjoy is the impromptu wages they receive for their labour

CHAPTER 10: DETERMINATION AND EVALUATION OF THE ROLE OF INTERNATIONAL COMPANIES

10.1. Background Information

The economy of Lesotho had been described as a dependent economy because one half of its GNP was derived from South Africa and domestic consumption consisted of imported goods. Government policies since independence (1966) had sought to reduce the reliance of the economy on imports and factor income from abroad. However, development efforts during the past four decades have brought about significant changes in the country's dependence on external resources.

Development in the investment environment brought about positive economic spin-off for Lesotho. For the first time in history the LNDC through its assisted projects became a number one employer with an aggregate of 44 000 jobs created.

Attractiveness and flexibility of markets dictated the direction of trade and investment in exports led economies. African Growth & Opportunity Act (AGOA) has been a clear demonstration of this notion for Lesotho. In 1999, for example, South African Customs Union (SACU) accounted for 54% of Lesotho's manufactured exports while the United States accounted for 46%. There was however, a paradigm shift in the direction of Lesotho's export as a result of Lesotho's certification under AGOA initiative. In 2003 the US accounted for 80% of these exports while SACU accounted for 19%.

10.2. Creation of Employment Opportunities

Through the initiative of LNDC, Lesotho produces 26 million pairs of denim jeans annually. 8 factories which collectively employ 15000 workers produce these jeans. Formosa Mill a vertically integrated denim manufacturing mill produces its own yarn and more than 7000 tons of denim fabric annually is available in Lesotho. Almost 98% of all Lesotho made jeans are sold in the USA.

The estimated amount of knitted garments is 70 million. These garments are produced by 34 factories which collectively employ 28000 workers. Lesotho export-oriented textile and garment firms employ about 40 000 workers-about 36 400 workers on a full-time basis and about 3 600 workers on a temporary/casual basis.

10.3 Firms In Industry And Their Origin

Lesotho has a total of 59 firms located in Maseru, Ha Nyenye and Mafeteng. Most of these firms are foreign-owned. The following table shows the factories alliance.

Table 12: Factories Alliance in Lesotho

ORIGIN	NO OF FIRMS	PERCENTAGE
Taiwan	32	54
China	2	3
South Africa	15	25
Malaysia	1	1.7
Mauritius	1	1.7
Singapore	1	1.7
Lesotho	7	11.9
TOTALS	59	100.0

(Source: LNDC)

According to the table above 54% of the firms are owned by Taiwan, 3% are owned by China, South Africa owns 25%, and Lesotho owns 12%. Most of retail, wholesale furniture and some hotels outlets originate from South Africa. Presently the Investment Promotion Centre (IPC) is in the process of tapping the market in South Africa as it remains untapped as a source of investment inflow into Lesotho.

10.4 Economic Benefits

10.4.1 Employment Opportunities

Lesotho's foreign companies employ in excess of 40000 workers though the number fluctuates from time to time. However, ICFTU has observed that foreign employers in the industrial zones pay wages below the statutory minimum and refuse to pay sickness benefits. Although there is legislation to prevent this, enforcement has been lax. Large companies observe minimum labour standards and seem prepared to negotiate collective bargaining agreements with unions, although small companies regard unions with more skepticism.⁴

10.4.2 Contribution to GDP

The clothing and textile industry contributes about nineteen percent of the country's GDP. In 2002 it was estimated that almost 74 percent of Lesotho's total exports were textile and garments. Almost all of Lesotho's garment exports go to the USA. Small amounts are exported to South Africa, Botswana, Kenya, Madagascar, Mauritius and Jordan. In 2001, Lesotho exported more than US\$217 million worth of textiles and apparel to the USA. In 2002 US\$321 million were exported, in 2003 US\$392 million, in 2004 US\$456 million. Lesotho remains the largest Sub-Saharan African (SSA) exporter of garments to the USA.

CHAPTER 11: IDENTIFICATION OF TACTICAL QUESTIONS FOR ENGAGEMENTS BY TRADE UNIONS

Trade unions are destined to play a pivotal role in the industrial relations. The following areas are tactical questions that need the attention of trade unions:

□ Assertive organizing of workers in these industries

In Lesotho there are approximately 438 642 workers employed in various industries. Membership of trade unions is a drop in the ocean. In order that organizing may be successful and meaningful there is a need to train the organizers so that they can professionally approach the employers with dignity, authority and diligence. It should not seem as if organizers are begging. It is within the rights of workers to join unions of their choice.

□ Alternative endeavours for workers

Employment is a temporary measure to economic recovery. A person is not employed all his/her life. At one point or the other a person will have to quit the employment for one reason or the other. When he or she leaves the employment will he or she be ready to face the challenges of the world?

Some skills acquired from the world of work may be useful outside the work environment but the question is who will need those skills and how practical will they be in the real world? For that reason there will be a need to prepare the workers for economic activities so that they can engage meaningfully in the economic projects that may advance him/her economically and socially.

⁴ 2004 Comprehensive Report on US Trade and Investment Policy Towards Sub-Saharan Africa and Implementation of the African Growth and Opportunity Act May 2004.

Workers can be trained in various economic projects such as, catering, woodwork, grasswork, plastic work, to mention just a few.

❑ **Involvement in the running of existing companies**

Any company cannot survive without the contribution of workers. Workers are trained to do certain functions in the company. It is important for the workers to involve themselves in the running of the company. In some countries trade unions have taken over the administration of the company by adopting the ownership of the company or go in partnership with the company proprietors.

Taking over of the T-shirt companies in Lesotho would be as easy as 1, 2, 3. Members and trade unions can work out strategies on how to go about it.

❑ **Merger and Inter-union cooperation**

Lesotho is a small country but multi-unionism weakens the union movement. Competition for membership in a company is a common phenomenon. This situation needs to be rectified urgently if we want to create strong representative unions. Indeed there is no need for three federations in a small country like Lesotho.

❑ **Training of trade union leadership in:** Capacity building, Organizing and strategic planning.

Training is the key to the success of any endeavour. Trade unions are not exception to this common belief. You cannot know something until you know you don't know.

Training of leadership in capacity building is the key to the development of trade unionism in Lesotho. Trade union as an organization must establish vision, mission statement and objectives. If you do not have a direction to your destination any road will lead you there. It will be a trial and error situation. Organising is the backbone of any trade union organization. It is imperative to offer a continuous training to the leadership and membership of trade unions.

❑ **Assisting Casual workers**

Trade unions must be mindful of the fact that casual workers are employees like all other employees and they need help. There is what we may refer to as long-term casuals. These are those who have been employed for more than six months and yet they are still considered as casual workers. These workers need assistance from trade unions.

❑ **The labour law**

The present labour code was made in 1992. There are developments in the labour relationship that need to be incorporated into the code. The case at issue is the casual workers. Trade unions are the driving force in the amendment of any labour law. Trade unions know and understand the needs of workers and are in a better position to suggest workable amendments.

In addressing challenges posed by current developments in the labour market unions should be effectively functional in dealing with casualisation of labour and other emerging themes in the world of work at national, sectoral and workplace levels. At national level the unions should through enhanced capacity be able to grapple with complete socio-economic issues. And in addition unions should advance and protect workers rights in statutory tripartite bodies and ad hoc committees for policy formulation and law reform.

The effective participation of unions in these bodies dealing with the following topical issues is deemed expedient

11.2 NATIONAL ADVISORY COMMITTEE ON LABOUR (NACOLA)

NACOLA statutorily established is mandated to advise the Minister on a number of issues including the following.

- Conditions of work
- ILO Conventions to be ratified
- Review of labour laws
- Employment policy formulation
- Receiving reports of National Employment Services (NES)

The defining feature of NACOLA like other statutorily established bodies is tripartism. The proposals proffered by the unions should be supported by well-researched information.

11.3. MINIMUM WAGE ADVISORY COMMITTEE

Minimum wage Advisory committee advises the minister on periodic adjustment and review of minimum wages for all or selected categories of workers representatives on this Board should be equipped with relevant skills and have adequate information to participate meaningfully in deliberations and decision-making process.

11.4 NATIONAL COMMITTEE ON SAFETY AND HEALTH AND WELFARE (NACOSH)

NACOSH is mandated with the task of advising the Minister on formulation of relevant regulations and policies regarding occupational health and safety. Workers representatives were able to participate effectively in the formulation of workplace HIV/AIDS code that was grudgingly accepted by employers. The code has been passed by the parliament as an amendment to the labour code.

However, unions have got to be vigilant as to its implementation at the workplace. Other ad hoc tripartite committees Unions have to develop their participation role in other specialized committees which are established to address specific issues.

Workers representatives in ad hoc committees should be able to articulate workers concerns and make decent work agenda to occupy center stage. At sectoral level Unions should advocate for the implementation of ILO Advisory Technical Team recommendation for establishment of sectoral bargaining councils which are bipartite negotiating forums for determination of minimum wages and other conditions of employment at sectoral level.

Unions should stand fast against employers tactics currently intended to derail negotiations at this level and deferring on issues or proposing discussions on issues to be resumed or re-run in the minimum wage Advisory Board. At company or shop floor level unions should advocate for trade unions organizational rights and effectively combat unit-union employers. Unions should extend number of workers covered by collective agreements by recruiting casual workers and other atypical workers employed under unclear terms and also including them in the bargaining units.

Collective bargaining should be one of the priorities of the unions as it is the very reason for existence of unions. Unions should conceptualize outreach programmes for workers in the informal economy working out a living under appalling conditions. Unions should work towards transforming coping and survival strategies activities in the informal sector into decent and fairly remunerated jobs.

CHAPTER 12: CONCLUSION

From the foregoing paragraphs a number of conclusions can be drawn regarding casualisation of labour in Lesotho. Lesotho is a small country enslaved within the boundaries of South Africa. For decades it has been a reservoir of cheap labour for South African mining industry.

Lesotho's economic recovery has been a result of both South Africa and the international community. The textile and garment industry has boosted the Lesotho's economy to better heights especially post-1998 destruction. Employment status has improved due to various projects initiated by the Lesotho National Development Corporation (LNDC).

The first is whether the problem of casualisation of labour is legal or enforceable. Casualisation of labour is here to stay in Lesotho and the situation needs to be attended to by both the government and the labour unions. Labour laws need to be amended to accommodate this new phenomenon.

When taking into consideration relevant International Labour Standards and the provisions of Lesotho Labour Code, workers are protected in the sense that the latter instrument does not accommodate casual labour in its provisions. Protection thus offered is further buttressed. By sections 4 (b) and (c) of the labour code which makes all ILO conventions and recommendations whether ratified by Lesotho or not are applicable in the implementation or interpretation of the Labour Code.

The problem is therefore not legal but rests with labour inspection for implementation. Enhancing the capacity of labour inspection in financial, material and human resources terms is one of the priorities. But the role of Unions in monitoring implementing labour law through appropriate

regulations is also crucial for compliance with the provisions and standards set in the labour code and other enabling legislation.

The problem of casualisation of labour is rampant and takes many forms.

- Open casual labour
- Disguised employment in the form of independent contractors
- Unclear terms of employment
- Abuse of training and / or probation period.

The problem has been observed by social partners and adjudication institutions such as Labour Court and the Directorate of Disputes Prevention and Resolution (DDPR). The problem arises as a result of a number of factors. In the highly competitive world economy neo liberal policies advocated International Financial Institutions, force enterprises in their endeavor for survival see reduction of labour costs by whatever means as their first move in maintaining their competitive edge.

The multinational corporations in their quest to maximize profits relocate their production facilities at short notice or none at all. Alternatively leading brand companies can without notice switch their sourcing activities. In order to become competitive for winning orders from lead brand corporations, garment and clothing sub contracting companies reduce their costs by paying starvation wages.

The footloose nature of capital and just-in-time leading brand corporation order demands have contributed immensely to non-compliance with labour law. Fragmentation and rivalry have been pronounced features of unionism in Lesotho. This has led to weakening negotiating power of the unions and seriously eroded or undermined their role as the representative voice of workers.

Unions in the region have already recognized the value and the importance of cooperation among themselves. Some people from the labour movement argue that regional cooperation is good and healthy for the unions for the simple reason that workers are faced with the same problem – globalization.

In conclusion we want to propose that the economic recovery of Lesotho is dependent on all the stakeholders, that is, employers, employees through their trade unions, the community and the government.

12. APPENDICES: COUNTRY RESEARCH REPORT

1. Lesotho Private Sector Development Start the World Bank
Repaired by agate E Pawlowska 30 June 2004
2. Lesotho Integrated Framework Volume Diagnostic Trade Integrating Study
13 January 2003

3. Lesotho Garment Industry Sub sector (Study funded by Department for International Development) January 2002
4. The directorate of Dispute Prevention and resolution (DDPR)
5. Report for the period April 2004 – March 2003 June 2005
6. UN Economic Commission for Africa Labour Markets and Employment in Southern Africa. July 2003
7. 2004 Comprehensive Report on US Trade and Invest Policy towards sub-Saharan the Africa and Implementation of the African grown and opportunity Act May 2004
8. Labour Force Survey 1999 Ministry of Employment of Labour Bureau of Statistics.
9. FAFO SA: UNI and the Service Sectors Workers of South Africa, Discussion at UNI-Conference in Johannesburg 7-9 November 2002.
10. Report on the global Union Federation (GUF) Forum 12-14 July 2006, Protea Hotels, The Lakes, Benoni, and SA.
11. LNDC:Annual Report 2002/3
12. LNDC: Investors' Guide
13. Central Bank of Lesotho Vol XXIV No 4 Quarterly Review December 2006.
14. LNDC: Annual Report 1987/8
15. Developing a Research Paper
16. Mark Bennet in Herbert Jauch/Rudolf Traub-Merz "Lesotho's Export textiles & Garment Industry" The future of the Textile and Clothing Industry in Sub-Saharan Africa, Fredrick Ebert Stiftung International Conference, 2006.
17. UNICEF Lesotho Situation of Women and Children in Lesotho (Update).
18. Lesotho Government Printers Labour Code No.24 of 1992.
19. Lesotho Government Printers Labour Code Wages Order, 2005
20. Lesotho Government Printers Labour Code Amendment Bill 2000.
21. 1996: Population Census Statistical Table Volume II.

Appendix 1: LESOTHO MANUFACTURING PORTFOLIO

Table 13: JANUARY 2004

Year	Company	Origin	Product	Employment	Markets
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1978	Loti Brick	Lesotho	Bricks	155	RSA/LS
1980	Lesotho Milling	RSA	Agroproducts	235	Lesotho
1980	Lesotho Brewing	Lesotho	Beverages	340	Lesotho
1981	Lesotho Umbrella	RSA	Umbrellas	84	RSA/EU
1984	Lesotho Steel Products	Lesotho	Steel	20	RSA/LS
1985	Lesotho Motor Engineering	RSA	Auto Parts	20	Lesotho
1986	Lesotho Haps	Taiwan	T-shirts	1400	RSA
1987	CGM	Taiwan	Jeans	1888	USA
1987	LPC	Lesotho	Pharmacy	100	RSA\LS
1988	Lesotho Bakery	RSA	Bread, confe	136	Lesotho
1989	Lesotho Hinebo	Taiwan	T-shirts	1014	USA
1989	Super Knitting	Taiwan	T-shirts	806	USA
1990	C & Y Garments	Taiwan	Jeans	1950	USA
1990	Kiota Electronics	RSA	TV's	285	RSA
1994	Sun Textile	Taiwan	Pants/T-shirt	1014	USA
1995	Basotho Chicks	RSA	Chicks	4	RSA/LS
1995	Lesotho Fancy Garments	Taiwan	T-shirts	2500	USA
1995	Springfield Footwear	RSA	Shoes	1276	RSA
1996	United Clothing	Taiwan	Jeans	1811	USA
1996	Vogue Landmark	Taiwan	T-shirts	1142	USA
1996	J & S Fashions	Taiwan	Skirts/T-shirt	580	USA
1997	BA Tex	RSA	Kidswear	272	RSA
1997	Shining Century	Taiwan	T-shirts	1100	USA
1997	Carca Footwear	RSA	Shoes	597	RSA/UK
1997	Procom	RSA	Soles, uppers	77	RSA
1998	MU Plastics	Taiwan	Plastic	8	Lesotho
1998	Maluti Textiles	Taiwan	Jeans	500	USA
1999	Lekokoaneng	Lesotho	Sandstone	14	Lesotho
1999	CeeBee	Lesotho	Jeans	332	RSA
1999	Precious Garments	Taiwan	T-shirts	3878	USA
2000	Tzicc	Taiwan	T-shirts	1975	USA
2000	Presitex Clothing	Taiwan	Jeans	2700	USA
2000	Hong Kong Int Knitters	Taiwan	T-shirt	1049	USA
2000	Tai yuan	Taiwan	T-shirts	945	USA
2000	Hippo Knitting	Taiwan	T-shirts	1300	USA
2000	Reflex Footwear	RSA	Shoes	353	RSAUSA
2001	P & T Garments	Taiwan	T-shirts	2695	USA
2001	Nien Hsing	Taiwan	Jeans	2295	USA
2001	C River	Taiwan	T-shirts	805	USA
2001	King – Ang	Taiwan	T-shirts	900	USA
2001	E-River	Taiwan	T-shirts	416	RSA
2001	Maseru E Textile	Taiwan	T-shirts	430	USA
2001	Chainex	Taiwan	T-shirts	70	USA
2001	N River	Taiwan	T-shirts	562	USA
2001	Export Unlimited	RSA	T-shirts	307	RSA/USA
2002	Lesotho Carton	Taiwan	Paper carton	55	Lesotho
2002	Wonder Garment	Taiwan	T-shirts	330	USA

2002	Raytex Garments	China	T-shirts	520	USA
2002	Humin Jeanswear	RSA	Jeans	249	RSA\USA
2002	TW Garments	Malaysia	T-shirts	833	
2002	Five – Eight	China	T-shirts/swea	220	USA
2002	Global Garments	Taiwan	Jeans	1790	USA
2002	Santi Kon	Taiwan	T-shirts	700	USA
2002	JW International	RSA	Workwear	240	USA\RSA
2003	Ever Unison Garments	Taiwan	T-shirts	1400	USA
2003	Alleycat Lesotho	RSA	Jeans	650	USA
2003	Astoria Bakery	RSA	Bread, conf	50	Local
2003	Sweatsun	Mauritius	Garment	370	USA
2003	Baneng Lesotho	Singapore	T-shirts	600	USA
Total Jobs				48 347	

APPENDIX 2: TRADE UNION AUDITED REPORT FOR THE YEAR ENDING 2005

Name of Federation	Affiliates	Membership
LECODU	Lesotho Association of Teachers (LAT)	6141
	National Union of Retail & Allied Workers (NURAW)	1702
	Transport, Security & Allied Workers (TSAU)	683
	Lesotho Clothing & Allied Workers (LECAWU)	3295
	Construction & Allied Workers Union of Lesotho (CAWULE)	76
	National Union of Textiles (NUTEX)	92
COLETU	Factory Workers Union (FAWU)	10500
	Lesotho Teacher Trade Union (LTTU)	1790
	Lesotho University Teachers & Resarchers Union (LUTARU)	145
	Drivers, Earth moving Workers Union (DEMOWU)	200
	Lesotho Wholesale & Catering Workers Union	619
LTUC	Lesotho Brick Making & Allied Workers Union	Pending
	Lesotho Metal & Steel Allied Workers Union	53
	Lesotho Pharmaceutical Corporation Workers Union	77
	Lesotho Commercial Distributive & Allied Workers Union (LECDAWU)	38
Total=3		16
		25311

(Source: Lesotho Department of Labour 2005)

6.2 Mozambique

Introduction

This section analyses the extent, determinants and effects of casualisation in Mozambique. Mozambique has different labour regime for the public and private sector and the analysis will therefore investigate casualisation in both the public and private sector. Relevant literature and limited interviews were conducted to compile this report.

As can be expected the research experienced obstacles. Access to information in the public sector was extremely difficult, especially in the education Ministry.

The report begins with a conceptual framework to define casualisation in the Mozambican context. It then, analyse the extent of casualisation in the public sector and private sector. Labour legislation is an important tool to protect vulnerable workers the report assesses the application and coverage of labour laws in both the public and private sector. This is followed by a discussion of social protection to gauge the extent to which casual workers have a social safety net. HIV and AIDS is recognised a major threat in the region, the report explores its impact on social protection. The report would be incomplete by not addressing the role of foreign companies. In the next section we explore the role foreign companies as one of the factors driving casualisation in Mozambique.

Conceptual Framework

Definition of Casual Work in the Mozambican Context

Casual work encompasses a type of employment whether regulated by written or verbal contract, in which the employment relationship is not durable but for a defined period of work. Ordinarily, the contract is used to accomplish defined tasks for a defined period.

The inquiry is not only theoretical but has practical ramifications. We are interested to understand the criteria applied by the law and regulator to distinguish casual from permanent employment. The main signifier of casual work is the duration of the employment relationship and the type of tasks to be performed. Thus casual work can be defined as work for a fixed duration and defined tasks to be performed. The concept should be understood in its wider context. For example employment of worker to load and offload ships has no lasting scope of service yet legislation allows a work contract to last a maximum of period of 2 years, subject to one renewal.

Implicitly an employment contract can last for 4 years, even though work is not performed on a continuous basis. This means that the duration of a casual contract can be for a short or long duration. Thus, we it is possible to find casual employment whose tasks last for days, months or even long periods of up to two years. In extreme a casual contract can last up to an interpolated period 15-20 years. This interpolated contract take two forms. In one form the contract lasts between 10-15 years but is reviewed annually.

The causes of Casualisation

Before economic liberalisation through the Economy Reform Programme⁵, casual work was found in pre-determined sectors. In those days the extent of casual employment was very low because fixed permanent employment was protected by law.

A substantial number of workers lost their jobs due to economic liberalisation and privatisation of state assets. Economic stagnation and obsolete equipment fuelled retrenchments as companies sought to curb or contain labour costs. It also during this time that casualisation intensified in the economy.

Casualisation in the Mozambican Economy

Casualisation in the Private Sector

Casualisation is concentrated in agriculture⁶, international cargo terminals, manufacturing, construction, transport, domestic service and informal sector. Seasonality of production, and work and demand patterns, drive companies to rely on temporary and casual work. For example, soda and beverage manufacturing peaks during summer. When there is increased demand accordingly employment also increases during these peak periods.

The informal sector also has a large degree of casual employment. People making a living in the informal sector are those who have lost employment. They are 'employed' as employees of counter huts, bars, driver, collectors and other tasks. Private sector employment is low as a proportion of total employment – around 0.016%.⁷

The uncertainty of business constitutes the strong reason to hire casual workers. To foreign companies the uncertainty is of a double nature. First, they share the same uncertainty faced by national companies. In the second instance they have to adapt to culture, economy and laws of the host country. As such, they are reluctant to engage full time employees during the initial years of operation.

Foreign companies also rely extensively on expatriates rather than enter into long term employment contracts with local labour. Casual labour also provides much needed flexibility without high financial and social commitments. The downside of casual employment is both the worker and the employer are reluctant to invest in skill formation which negatively affects productivity of the workforce.

⁵ Constitution of the Republic of 1990. Though the reforms have started in 1989, they became pronounced with the adoption of this Constitution.

⁶ Inquiry Report to the farmers of Zambezi Valley, 24 September 2004, Promotion of Agriculture Center (CEPAGRI); PES Report 2006 2nd term, July 2006. Based on this two report it can be concluded that agriculture has the highest rate of casual workers. For example sugar plantation 41.4% of the workers are casual. In cotton, maize, tobacco the number of casual workers are 21%, 14% and 9% respectively.

⁷ National Institute of Employment and Vocational Training, January-June 2006.

Casualisation in the Public Sector

Health

Casualisation is driven by two main reasons in the health sub-sector, namely the elongated process to appoint new staff and the need to supplement the workforce during periods to fight epidemics such as malaria, cholera and other diseases.

Table 14: Labour in health subsector

Year	Casual Worker	Permanent Staff
2005	1,568	20, 838
2006	3,388	21,276

Source: Ministry of Health Database

It's evident from the table above that casual work almost doubled in between 2005 and 2006, while the permanent workforce increased modestly during the same period. Mozambique has chronic shortage of health personnel, especially nurses and supplements the workforce with casuals. For example there are 11 000 nurses for a population of 19 million inhabitants which translates to a ratio of 1: 1,727.27.

Education

The education sub sector is the biggest employer of casual labour for three reasons. First most of the teachers are still undergoing training; second is the growth of the number of schools and third is the delays in appointment of teachers. This leads to a shortage of teaching staff when the number of schools is increasing thereby encouraging use of casual labour. Poor pay also fuel exodus of teachers from the public school system in search of better pay in private schools.

Notwithstanding up to date data on teachers, the table below shows dependency on casual labour. Out of a total of 1705 teachers in the public sector in 2004, a 1000 were permanent and 705 or 41% were casuals. The total teaching increased by 240 to 1,975 attributed to the increase in permanent teachers of around 180 compared to 90 casuals. Moonlighting is also prevalent within the public sectors. Some of the casuals are employees of other government departments. On the other hand private schools depend highly on casual teachers as illustrated in the table below.

Table 15: Casual Teachers

Sector	2004		2005	
	Staff	Casual	Staff	Casual
Public	1,000	705	1,180	795
Private	188	623	209	877
Total	1,188	1,328	1,389	1,672

Source: National Directorate of Statistics – Annual Report

Labour Legislation: Application to the Private Sector

In terms of Article 6 of the Labour Law an employer is permitted to recruit and utilise casual workers for certain reasons that may arise. Such employment can be of a longer but intermittent duration – that is workers will be recalled as and when they are required. This relationship can now

be managed through a specific contract that establish the terms of the relationship between the employer and the worker.

Mozambican labour laws tend to lean towards permanent employment but article 9 of the Labour also permits utilisation of short term contracts under defined exceptional circumstances. The precise circumstances giving rise to a short term contract include task of a short duration, seasonal jobs or to substitute permanent worker for defined period.

It should be noted however that the law does not distinguish between long and short term contracts on a number of grounds. First all contracts have to be in writing, dated and signed by both parties in terms of article 7 of the labour law. Second, the period to invalidate the contract is six months counted from the date of signing in terms of article 12. Third, workers rights acquired during the validity of the contract are safeguarded. Such rights shall expire after a year as a result of a breach or termination of the contract in terms of article 13. The right and duties stipulated in a contract do not differ whether the contract is short or long term which are regulated in Chapter 2 of the law.

Having said this, however, there are some distinctions between long and short term contracts. The law stipulates that no written contract is necessary if contract will not exceed ninety days in terms of clause 2 of Article 7. As such, the protection afforded workers are relaxed if the contract does not exceed ninety days. Article 7 clause 4 seems however to suggest that an employer is subject to all legal consequence even if a contract is not reduced to writing. Given the confusion that often arises from unwritten contract and the implicit injunction that employers remain legal responsible for workers, it has become common rule to have a written contract. This is also important to avoid responsibility in case of a dispute.

Equality of treatment between short and long term contract is based in three reasons. First exceptional rules should be a device used to become general rules. Second, labour laws were enacted in the first instance to protect workers and the third reason is to ensure stability of employment.

Labour Legislation: Application to the Public Sector

State employees are covered by a different labour law regime as stipulated by article 2 clause 3 Labour Law which provides that “specific regulations shall govern the employment of state employees. In terms of Article 21 of State Personnel Staff Rule the employment relationship in the state is constituted through appointment title. However the process of approving staff establishment is very slow and a mechanism to hasten appoint in case of vacancies is regulated by article 34. This can be interpreted to allow the appointment of casual workers as a means to circumvent the right appointment process in the state sector. A fixed term contract to perform defined tasks is permitted by Article 34.

The process and grounds upon which a casual worker is appointed differs from the private sector. All sub sectors have their own mechanism including the deputy position (Article 85) substitution (article 86) or accumulation of function (article 87). As such, a casual worker would not be hired to temporarily substitute for a permanent worker that is for one reason or other is indisposed from rendering their services. Often casuals are utilised to minimise uncertainty and costs for the state.

There are no substantial differences in the duties or tasks performed by a permanent and casual worker in the public sector. Nevertheless both type of jobs enjoy different rights under clause 2 of Article 34 which provides “the contract...don’t grant to the casual employee a quality of the state personnel staff.” Even though both types of employees earn similar wages, right to vacation however there is a large differentiation in social benefits.⁸ A permanent worker contributes to social protection, pension fund and is entitled to death subsidy, funeral subsidy, subsistence pension, and single person yield tax (IRPS)⁹ and others while the only deduction from a casual worker is a single person yield tax. As such a casual worker does not have any social benefits even though he/she performs the same tasks as a permanent worker. It is not rare that a worker will work for 20 years as a casual teacher for example, but have no benefits at the end of their contracts.

Attacks on Workers Rights

Termination of employment contract in the private sector is invalid if a court found that were baseless, then an employee shall be reinstated or and compensated an amount equal to the remuneration payable between the date of termination and reinstatement according to clause 2 of Article 71 of the Labour Law. In the event that the grounds for terminating the contract were illegal, then compensation will be doubled according to clause 4 of Article 71 of Labour law.

If an employer delays to deduct and pay contributions for social protection 1% *interest* will be charged in terms of clause 2 of Article 21 of Law no.5/89 September 18 combined with clause 1 of Article 44 of Ministry Diploma no.45/90 of 9 May. In the case of outstanding payments of arrears for social protection contributions the Ministry can issue a demand for payment in terms of clause 1 of Article 202 of the Labour law. In most, cases however, collection is delayed if the size of the debt would result in the closure of the company. For that reason, the protection institute prefers negotiation over enforced collection. In addition, interest payment can be waived if an employer applies for a pardon and pay their debts within a fixed period.¹⁰

In the event of violation of health and safety legislation an employer will pay a fine of up to ten minimum wages for each worker in terms of Article 214 of the Labour law. An employer is also criminally liable if they fail to comply with the social protection legislation and legal diplomas in terms of Article 40 of Decree no.46/89 of December 28. Against this background it’s worth noting that labour law does not differentiate between long or short term contract in the event of contravention of the laws. In practice however, as shown in table below, the intended goals are not achieved in the even of a contravention, because of poor inspections and enforcement.

Table 16: Enforcement of labour laws

Description	2004	2005
Inspected companies	2,935	3,124

⁸ Process no93/05, Decision no63/05 – 1st Section. In this understanding, the decision of the Administrative Tribunal in these matters has renouncing to the common tribunal the resolution of conflict arising from the casual employee’ contract.

⁹ Decree no.20/2002 of 30 July, approves the CIRP and Ministry Diploma no.229/2002 of December, where IRPS - means single person yield tax, and CIPS – as single person yield tax code

¹⁰ In supplement SAVAVA Journal of 23 June 2006: in social Protection Magazine no.10 January/June 2006, p.3. “Assured Credibility levels in Social Protection.”

Employees covered	83,732	94,381
Contraventions verified	3,178	4,381
Prosecutions	800	1,230
Not prosecuted	2,378	3,151

Source: National Directorate of Statistics – Annual Report, pp.50-4

The data in the table shows a very worrying phenomenon regarding enforcement of labour laws. Out of 3,178 contraventions only 800 or 25% were prosecuted in 2004, leaving a whopping 2,378 not prosecuted. The situation in 2005 is no better in that only 28% of the verified contraventions were actually prosecuted. Increased number of contravention 4,381 compared to 3,178 is alarming and creates a climate of impunity among employers and despondency among workers.

The wheels of the judiciary also grind very slow (as shown in table below) frustrating the enforcement of labour legislation. The table shows a very big backlog in the judicial system in settling labour matters. For example out of a total of 76 000 in 2004 only 9 292 or 12% of cases were closed compared to 17,336 out of 74 000 in 2005. This is attributed to a chronic shortage of personnel in the Mozambican justice system.

Table 17: Criminal Process

	2004	2005
Total	75,999	74,465
Pending	53,357	41,848
Entered	13,350	15,281
Closed	9,292	17,336

Source: National Directorate of Statistics – Annual Report

Social Protection

Public Sector

Employees are required to contribute 7% of their salary for pension fund in terms of clause 1 of Article 248 State Personnel Staff Rule (SPSR).¹¹ Casual workers in the public sector are not covered by provision of this law and therefore rely on the provisions of the general labour law. In practice however, this does not happen.

Private Sector

In terms of Article 182 of the Labour law “all workers have the right to social protection according to the financial conditions and resources of the development of the national economy.” Coverage extends to citizens and foreign national that have permanent residence in the country in terms of clause 1 of Article 184 Labour Law. It follows from this that an employer has to register workers as failure to do so is a contravention of the relevant legislation.¹² However, casual employees are excluded from coverage.

¹¹ This is contrary to the general labour law where employees contribute 3% of the wages and the remaining 4% is contributed by the employer in terms of Article 3 of Decree no. 4/90 of 13 April 1990.

¹² Article 214 Labour Law states that “fines shall be payable for violations of the rules established in this law and other labour legislation.”

A worker benefits from the pension fund if they have been registered in the system for at least thirty years and paid contributions for twenty five years. If a worker satisfies these conditions they are entitled to retire regardless of their age. As such a worker can only benefit if they have been registered for thirty years and have made about 300 contributions. Therefore even if a worker has a long term contract if they do not satisfy these conditions they will not benefit from retirement fund.

The rules are however different in case of a disease, death or disability. In case of a disease clause 1 of Article 2 of Decree no.46/89 of December 28 stipulate the following conditions. First, at the time a worker is admitted to hospital s/he should have made contributions for six consecutive or interpolated months during the previous twelve months. Second, a worker should complete twenty days of work during the last two previous months from the beginning of the inability.

With regard to disability pension, article 9 of the same decree stipulate first that a worker should have been registered with at the Social Protection Institute for at least five years before the disability. Second they should have contributed equivalent of 30 months during the last five years before the disability. In relation to subsistence allowance a worker should have been registered for six month and made 3 months equivalent of contributions before death benefits are paid out.

It goes without saying that casual workers are not covered by these provisions as they cannot comply with the stipulated period of registration and contribution. Given the temporary nature of these jobs casuals cannot complete the minimum limits of instalments deemed necessary for old age pension. Both employers and the Social Protection Institute are reluctant to deduct contributions from casual workers. Their arguments rest on two assumptions. First is that the law was not intended to cover casual due to the temporary nature of employment. The second reason is that it is not practical to deduct the contributions as casual workers would not fulfil the minimum conditions. Employers also complain that deductions from casual workers are an administrative nightmare for the human resource personnel.

According to an inquiry report released in August many employers do not deduct contributions for retirement for casual employees.¹³ Still some employers contribute to the social protection system as a precaution and to protect their reputation according to the same inquiry report. Nevertheless voluntary contributions are encouraged in terms of article 189 of labour law which can cater for casual workers. Poor education regarding this voluntary measure and low incomes discourages contributions on a voluntary basis by casual workers.

It is plausible that casuals should be able to contribute in social protection schemes of a shorter duration such as disability, diseases and death. In addition the database should be changed to maintain a worker's record in the social protection institute regardless of the employer. Such portability will enable a casual worker to maintain contributions even when they change the employer. However by law article 28 of law no.5/89 of 18 September casual, domestic workers and seasonal workers are excluded from the social protection system as well as employers not employing more than ten workers.

¹³ Inquiry Report of 14 and 18 August.

Considering that formal employment is scarce it is curious that the social protection system continues to be premised on permanent and long term employment. It is now time to revise the law to take into account of the reality that many people work in the informal economy. Government is currently engaged in labour law reform to revise existing laws. One of the proposals in the revised labour law is to include the self employed in the social protection system. One of the big gaps of the revised labour law is that they still exclude casuals from the social protection system. In fact the proposals retain the current regime regarding the duration of contribution and period of registration. The 30 year rule has been halved to 15 years of contributions or 180 contributions.

To conclude, casual workers are excluded from the social protection system which is largely based on the assumption of the standard employment relationship. Continue exclusion of casual workers undermines government commitment to fight poverty. Exclusion of casual workers from the social protection system affects their families. In case of death of casual worker his/her dependants do not have subsistence allowance.

The Role of Trade Unions in Protecting Casual Workers

Trade unions' role to defend workers rights has been brought into sharp relief by the liberalisation of the Mozambican economy. Trade unions are called upon to defend both the rights of permanent and casual workers in the current context of a general assault on workers rights. However, the union movement faces many challenges in its attempt to organise all worker but more specifically casual workers.¹⁴

First, casual workers change jobs more frequently and are thus difficult to organise into a single union. Second, these workers cannot afford union due to their low pay. Third, unions are perceived to concentrate their efforts on permanent workers and less on casuals because of the difficulties in organising non-permanent workers. At time there is a perception that unions are an extension of management for example when they relay information that should be communicated by management. As a result, in some cases casual workers do not distinguish between the union and management. For that reason, they would rather use services of professionals like lawyers to handle their grievances.

The Role of Foreign Companies

The liberalisation of the Mozambican economy since 1989 has heightened the role of foreign companies in the country. The enactment of law no.3/93 of June 24 facilitated the entry of foreign investment in Mozambique in sectors such as mining, construction, industry, energy, beverages and agriculture. New forms of businesses were also introduced such as franchises, leasing and engineering. The entry of foreign companies also introduced new habits, attitude and business cultures.

¹⁴ Inquiry Report of 16 August. This is a reflection of Organizacao dos Trabalhadores de Mozambique – Central Sindical (OTM-CS).

For example foreign companies were introduced the utilisation of casual labour on a large scale and demand more labour flexibility. To that end foreign companies have agitated for reforms of the labour legislation. This led to mass retrenchments starting from 1991. Nonetheless, foreign companies are treated **at (no preposition?)** the same as local companies and clause 1 of Article 4 of Law no.3/93 of 24 June provides that “in the exercise of carrying out their activities, foreign investors, employers and workers will enjoy the same rights and be subject to the same duties and obligations applicable to nationals in accordance with the legislation in force in the Republic of Mozambique.”

It is for this reason that foreign companies have agitated for reform of labour laws and have played a pivotal role in influencing the state to embark on a labour law reform project. One of the changes proposed in the law reform is to amend provisions related to the utilisation of fixed term contracts. Clause 4 of Article 42 of the proposed labour law provides that “big, middle and small companies can freely celebrate contracts to a fixed period of time, in the first ten years of their activity, when it’s related to a first employment worker, and the employment contract must not last less than two years.” A special category of fixed contracts for uncertain period is also proposed for small enterprises in terms of the clause 3, Article 42 of the proposed law reform.¹⁵

Conclusion and Recommendation

Liberalisation of the economy has propelled the emergence of casual work and other forms non-standard type of employment. It completely changed the society from a centrally planned socialist oriented one to a free market economy. In the labour market there was a dramatic shift from full time permanent employment to a flexible labour regime of casual and informal sector employment. Yet, the labour laws have not evolved to speak to this reality of informalised work – it still operates on the assumption of permanent full time and lifelong employment.

These economic changes undermine government stated goal of secured employment. Furthermore, with the privatisation of state owned enterprises and reduced role of the state, government is no longer in a position to influence the direction of the economy. Power has now shifted to the private sector. New employment opportunities are hard to come by and the Mozambican economy is heavily dominated by the informal sector. For that reason government high level control of contractual procedure around employment contracts has to be adapted. A large number of job seekers cannot employment despite the high rate of growth recorded in the recent past.

The union movement on the other hand is focused on defending existing permanent workers or attempt to convert short term contracts into long term contracts. Still, unions do not have a specific organising strategy for casual workers as they concentrate mostly on permanent workers. Casual workers on their side are reluctant to join unions partly because they feel alienated from trade union or because they cannot afford membership fees.

The entry of foreign companies has heightened casualisation in the Mozambican economy. Foreign companies have agitated for reforms in the labour law and government is currently piloting changes that would make it easy to companies to utilise casual labour.

¹⁵ Micro enterprise is defined in the Labour Law Project as that one that has employees not exceeding 10. Hence foreign companies that employ fewer than ten workers can benefit through this initiative, independently of the amount of their investment, fixed at US\$5000 in terms of clause 1 of Article 6 of Decree no.14/93 of 21 July.

Definition of casual worker in the public sector is very controversial. It does not follow the standards set in the general labour law and a worker can be designated as casual even though they have worked for more than 10 to 15 years in the same job, for example teachers.

The social protection system is still based on the standard employment relations of permanent and long term employment. As such, those with fixed term contracts or are defined as casuals are excluded from the system. Given the intermittent nature of casual employment workers are unable to meet the minimum requirements to contribute for at least 30 years and register for at least 25 years to benefit from retirement. Even where the time period is short, say five years, for both economic and administrative reasons, casual workers still find it difficult to access the system even for voluntary contributions. Families are left destitute in the event that a casual worker contract a disease, dies or is left disabled as they cannot access the social protection afforded full time workers. Against this background, we make the following recommendation to mitigate the economic and social circumstances of casual workers:

Recommendations:

- Casual work should be legally protected especially in the context of flexibility given to companies with respect to labour hire and utilisation. The law should be changed to provide specific protections to casual workers.
- Social protection legislation should be changed to cover those in temporary and short term contracts. A system to provide cover at the end of the workers useful life should be developed to cover workers during retirement. Workers should be allowed to make contributions irrespective of the employer and these contributions should be protected and used as a mechanism to extend coverage to casual workers. The social protection institute should be more active in applying the law especially in cases of contraventions by employers.
- Trade unions must adapt their organising strategies and have a specific focus on casual workers

Bibliography

Note: This bibliography is a translation of the original in Portuguese. If the original titles are deemed necessary they can be provided.

1. CORDEIRO, António Menezes, “Labour Law Manual”, Almedina - Coimbra, 1994.
2. MONTEIRO, António Lemos, “Labour Law”, 11^a edição, Almedina – Coimbra, Dezembro de 1999.

LEGISLATION

1. Constitution in force of 22 of December 2004
2. Constitution of 1990
3. Law N^o8/98 –“Labour Law” of 20 of July
4. Law N^o15/91
5. Decree N^o14/87 of 20 of May”State Personnel Staff Rule”

LEGISLATION OF SOCIAL PROTECTION SYSTEM

1. Law N^o5/89 of 18 September “Law of Social Protection”
2. Law N^o8/2001 of 7 July “Changes in n^o1 of Art. 28 of Law 5/89 of 18 September”
3. Decree N^o 17/88 of 27 December Creates the Social Protection Institute”
4. Decree N^o46/89 of 28 December”Approves the Social Protection Regulation”

5. Ministry of Labour Dispatch of 31 of January 1990 “Establishes the Procedure of payment for Social Protection”
6. Decree N°4/90 of 13 April “Approves the amount of contributions”
7. Ministry Diploma N°45/90 of 9 May “Approves norms of procedures of Social Protection”

LEGISLATION ON INVESTMENT

1. Law N°13/93 of 24 of July “Law on investment”
2. Decree N°14/93 of 21 of July”Regulation of the investment Law”
3. Decree N°16/2002 “Code of Fiscal Benefits”

DOCUMENTS

1. Labor Law Project
2. Social Protection Law Project

MAGAZINE AND NEWS PAPER AND TELEVISION

1. Social Security magazine N°10 January/June 2006
2. Savana News paper supplement year XII N°650 de 23 Junho 2006 – Maputo.
3. STV – national television broadcast
4. TVM – national television broadcast.

South Africa

The Effects of Casualisation on South African Workers

1. Introduction

South Africa has through a remarkable transition from apartheid and has registered progress in building a new society. It is now a relatively stable democracy governed by one of the liberal constitutions in the world. Much has been said and written about the progress made in the last twelve years since the democratic breakthrough.

The purpose of this paper is to analyse the nature of the post apartheid labour market in South African. It goes without saying that the labour market has also undergone profound change since 1994. The removal of racist laws in the world of world has 'deracialised' the labour market and opened up opportunities that were previously denied to blacks. The subject of this paper is the evolving nature and quality of employment in the South African labour market. Specifically, the paper is concerned with the extent and impact of casualisation on workers and trade unions in the South African context.

The paper relies extensive on what has been written on the topic and also analyses official data on employment and unemployment. The budget was limited and it was not possible to conduct interviews or primary research. Nevertheless, the paper offers a glimpse into the nature of casual employment in the post apartheid labour market. The key findings are that casual employment is on the rise yet trade union strategies and labour regulation is trailing behind. As such, casuals are poorly organized and fall through the cracks of both labour regulations and social protection mechanism. The rise of casual employment has dramatically increased insecurity in the work place among workers and has shifted power to employers.

The paper starts of by providing a general overview of the South African labour market by analyzing employment and unemployment trends for the last five years. It is followed by a conceptual framework that grapples with how we define and measure casual work. This is followed by sectoral analysis of casual work in agriculture, construction and wholesale and retail. South Africa also has a raft of progressive labour labours, the paper first summarises the key provisions of the labour code and assess the extent of coverage, loopholes and enforcement of labour laws.

The key finding is that casual workers are not effectively protected by labour laws for a number of reasons. Poor organization among casuals means that they cannot act together to claim their rights. Certain exclusions in the law have been abused to convert employment contracts into commercial ones. Third, poor capacity of labour inspectorates results in poor enforcement. Ultimately, it is the powerlessness and vulnerability that affects casual workers' ability to claim their rights.

2. The South African Labour Market at a Glance

Even though South Africa is described as a middle income country, because of the size of the economy and per capita income; it however has high inequality, poverty and unemployment. Since 1994, the country has gone through profound political, social and economic change.

Institutionalised and statutory racism was eliminated and a new democratic constitution has been put in place. The economy has been restored to positive growth – reversing two decades of negative and at times economic stagnation. Re-prioritisation and deracialisation of public expenditure has seen improvements in government social delivery and transfer of income to many poor households. New opportunities for upward mobility for black professional have now opened.

However, this progress is weighed down by the persistently high poverty, unemployment and inequality. The labour market was a key site of control and social engineering by the previous regime and is marked by high inequality in terms of gender, race and geography. Below we provide a summary analysis of employment and unemployment trends in the last five years.

Total employment rose by 10% between 2001 and 2005, and it is evident that this was due to about a quarter increased in informal sector employment. Formal sector employment increased modestly by 14% during the same period, combined with steep decline in mining and agricultural employment. Sectors that realized positive employment growth (in order of growth) are:

Table 18: Changes in employment: Sept 2001-Sept. 2005

	2001 (thousand)	2005 (thousand)	% change
Formal Employment(excluding agriculture)	7, 027	7, 987	14%
Informal Employment (excluding agriculture)	1,967	2,462	25%
Total Employment	11,181	12,301	10%

Source: Labour Force Survey

Sectors that realized positive employment growth (in order of growth) are tabulated in the table below. If we include the period up to March 2006 overall employment increased by 544 00 new jobs. However the quality of jobs has declined: casual employment is replacing permanent employment and most of the new jobs are low paid and insecure.

Table 19: Sectors with employment gain, 2001-2005

	2001(thousand)	2005(thousand)	Change(thousand)
Wholesale and Retail Trade	1431	1805	374
Finance	948	1217	269
Construction	337	580	243
Community Services	1818	1972	154
Manufacturing	1393	1442	49

Source: Labour Force Survey

South Africa faces high levels of unemployment and the unemployment rate has remained entrenched above 20% since increasing from 16% in 1994. As depicted in the table below unemployment (as measured by the strict definition) declined marginally by 4% and the

unemployment rate dropped by modest 2.7% from 29.4% in 2001 to 22.6% in September 2005. Slight drop in unemployment correlates with the modest increases in total employment, nevertheless unemployment remains high.

Table 20: Unemployment: 2001-2005

	2001	2005	% change
unemployed	4665	4487	-4%
Discouraged workers	2994	3312	11%
Unemployment rate	29.4%	26.7%	-2.7%
Male unemployment rate	25.8%	22.6%	-3.2%
Female unemployment rate	33.8%	31.7%	-2.1%

Note: unemployment measures the strict definition.

Source: Labour Force Survey, September 2005.

Women, especially African women are the hardest hit by unemployment, as shown in the table; their unemployment rate was higher than for males during the two periods. Youth unemployment is also persistently high – 75% of the unemployed are under the age of 35 years.

The strict definition does not provide the entire picture of unemployment in South Africa. If we use the expanded definition, the number of unemployed people rises to 8 millions, i.e. if we take into account the number of discouraged workers. The absolute number of discouraged workers increased by 11% from 2.9 million to 3.3 million between 2001 and 2005.

3. Conceptual and Context of Casual Employment

3.1 *Defining Casualisation*

The growth of casual labour is not in doubt, the debate turns around how it is defined and measured? Neither is it a new phenomenon as employers have used non-standard employment for decades. However, it is the scale and quantum of casual labour that is unprecedented as we shall show below. The dilemma arises partly because of the traditional definition of ‘employee’ which is based on a fulltime and life time permanent employment with one employer. The implication of casualisation for labour law will be addressed further below. Borat and Hinks (2006, p.11) articulates the difficulty of defining casualisation by point out that “defining casualisation in a labour market is problematic. Issues of hours of worked, type of employment contract, who pays the employee, non pecuniary benefits and whether working in the formal or informal sector mean several definitions can be adopted.”

The traditional model of employment (permanent full time employment with one employer until retirement) is steadily giving way to less stable (and often vulnerable) forms of employment (Cheadle, 2005: p.4)

For the purpose of this paper we shall use the definition suggested by Borat and Hinks (2006) which itself draws from Theron et al (2000) and Mhone (1998) when defining a casual worker. This also a definition used for purposes of gathering statistics on the labour market in the Labour Force Survey. In this regard casual worker is defined as anybody that works in the informal sector

(employee or self employed) or a formal sector employee with a casual, temporary or seasonal employment contract or a part-time formal sector employee.

In a word, casualisation captures the phenomenal growth on non standard employment globally. A plethora of terms have been deployed to define and account for the growth of this type of irregular employment contract. For example Theron (2005) notes that the ILO has used terms like disguised employment or triangular employment relationship to define the emergence of sub-contractors, independent contractors, home based 'workers all manner of 'informalised' work. Based on the literature on the subject we make the following distinctions within the whole rubric of casual employment.

First, are the workers directly employed by a firm on a casual, season fixed term or temporary basis. Historically these contracts were used to supplement the work force during period of peak demand like holidays and so forth. However in the current context, casual employment is steadily replacing permanent employment for reasons that we will explore below. The second type of casual labour is of the triangular employment relationship in which a labour broker supply labour to a firm. The definition of employer in this relationship is tenuous and demand new forms of regulation. For instance, if a firm contracts a labour broker to provide workers does it then assume the responsibility of employer or are these workers employers by the subcontractor or labour broker? Workers often identify with a firm in which they have been deployed even though they are employed by the labour broker, especially in cases whether deployment is for an extended period of time. In this case what constitutes a workplace is a vexed question for regulators and for workers.

The third type of casualise labour is one characterized by dependent economy relations disguised and treated as commercial contracts. Independent contractors and home based workers fall into this category of atypical worker. The dilemma facing scholars and regulators is whether to characterise this as employment or a commercial contract, if the latter is deemed to the case then labour legislation has no place.

Earlier it was noted that casualisation is not new however the utilization of workers on short term contract to avoid a standard employment relationship (SER) is new (Theron, 2005). It is further important to distinguish between three types of casual labour. That is those employed directly by the firm or company, second those that are supplied by a labour broker; and third those that are ostensibly defined as independent contractors. The notion of temporary employment may suggest intermittent contract, yet anecdotal evidence suggests that there are cases of people employed on a continuous temporary basis in worse cases for 20 years. It is obvious in such a case that the labour is required but the employer is not willing to pay the cost of permanent employment.

3.2 Factors driving casualisation of labour

The growth of atypical employment is attributable to externalization, casualisation and informalisation (Cheadle: 2005). Still, is generally accepted that the process is driven by ideological and economic imperatives. At the ideological level, employers use casual labour to weaken unions and impose 'flexibility on the work force. This definitely shifts the balance of power in favour of the bosses as they confront a fragmented labour force, more so one that they can easily dispose of. Tied to this is the economic rationale of holding down labour costs as a strategy to increase profits and in response to increase global competition. In this regard some employers took advantage of

the loopholes in the labour laws by converting employment contracts into 'independent contractors.

Market liberalization has changed the structure of the labour market (Webster: 2005). The labour market is being polarized into various layers which simultaneously increase insecurity and broaden the scope for cheap labour. A section of the population is connecting' with the global economy and another is disconnecting. This is a global phenomenon; it is not just something which in South Africa has come as a result of the shift away from apartheid. Differentiation is producing zones of exploitation, incorporation and marginalization in the South Africa labour market as a result of corporate restructuring. The core zone is made up of full-time and permanent employment with trade union and labour rights in the formal sector. The non-core zone is characterized by casual and atypical employment still in the formal sector. The periphery is made up of informal work and the unemployed. For a full exposition of the concepts and their implication of social cohesion see Webster and Von Holdt (2005).

Were likely to hire fewer workers in response to post 1994-labour legislation (Bhorat and Hinks p.19); further analysis by firm size and likelihood to employ casual. Cost of retrenching workers p.22 fuelling casualisation

The changes in the labour market have two fundamental consequences. First is the re-segmentation of the labour market along the permanent-casual nexus, as more workers are incorporate as casuals in the formal economy. In this regard the apartheid work order is being re-imposed under qualitatively different conditions. Second, labour itself is being restructured altering the very basis of worker solidarity and common action. The rise of casualisation threatens unions as they have not been successful to organize this layer of the workforce.

4 Measuring the Extent and Prevalence of Casualisation

4.1 Casual and Permanent Employment Trends

The growth of atypical labour has been so steep that some have questioned whether these forms of labour should continue to be called atypical. This is borne out by the figures shown in the table below. Casual employment declined between 1999 and September 2001 from 37% to 23%. However it has risen consistently since then to around 28% of total employment in March 2006. Permanent employment increased by a paltry 4% or 249 000 jobs between September 2001, while casual employment increased by 38% or 772 jobs during the same period. These figures however masks the growth of subcontracted workers, independent contractors and home based worker as there is no reliable data provided.

Table 21: Permanent and Casual Workers, 1999-2006

Type employment	1999		Sep.01		Sept.05		Mar.06	
	Number (thousand)	% share of total	Number (thousand)	% share of total	Number (thousand)	% share of total	number (thousan d)	% share of total
Permanent	5680	63%	6753	77%	7038	72%	7002	72%
Casual	3279	37%	2008	23%	2742	28%	2780	28%
Total employment	8959	100%	8761	100%	9780	100%	9782	100%

Source: Borhat and Hinks OHS calculations for 1999, 2001-2006 calculated from the labour force survey

According to Borhat and Hinks (2006) casual employment is concentrated among low skilled employees. In contrast highly skilled individuals were likely to in permanent jobs. This is reflected in the table below which shows the proportion of permanent and casual employment by skill level. The majority of permanent employees were skilled around 48% in 1999 and 46% in 2003. The proportion of unskilled workers among casual increased from 18% in 1999 to 22% in 2003., whereas the proportion of skilled workers among casuals dropped from 20% in 1999 to 18% in 2003. Race gender, education level, occupational group and unionization rate influence whether a worker will be casually employed or not (Borhat and Hinks: 2006).

Table 22: Casual and Permanent Workers by Skill, 1996-2003 (non-agricultural sectors workers)

Type of Employment	1999		2003	
	Number	Share of total	Number	Share of total
<i>Permanent Employment</i>	5680267	63.7	6398805	61.7
High-skilled	1,859,649	21	2,073,143	20
Skilled	2,419,269	27	2,673,247	26
Unskilled	1,401,348	16	1,650,416	16
<i>Casual Employed</i>	3,278,835	37	3,966,038	38
High-skilled	330,849	5	357,511	3
Skilled	1,309,093	15	1,286,413	12
Unskilled	1,638,893	18	2,322,113	22

Source: Borhat and Hinks, 2006.

Sectoral analysis indicates that construction, wholesale and retail trade and agriculture have the highest proportion of casual workers. A number of case studies also point to increased casualisation and out-sourcing employment in mining, call centres and clothing sectors (Klerk et al 1991; Standing et al; 1996; Kenny and Bezuidenhout; 1999; Webster and Omar; 2003; Barrientos and Kritxinger; 2003; Klerck; 1994, Du Toit, 2003). For this paper we shall look a bit more on agriculture, construction and wholesale and retail.

4.2 Casualisation in Agriculture

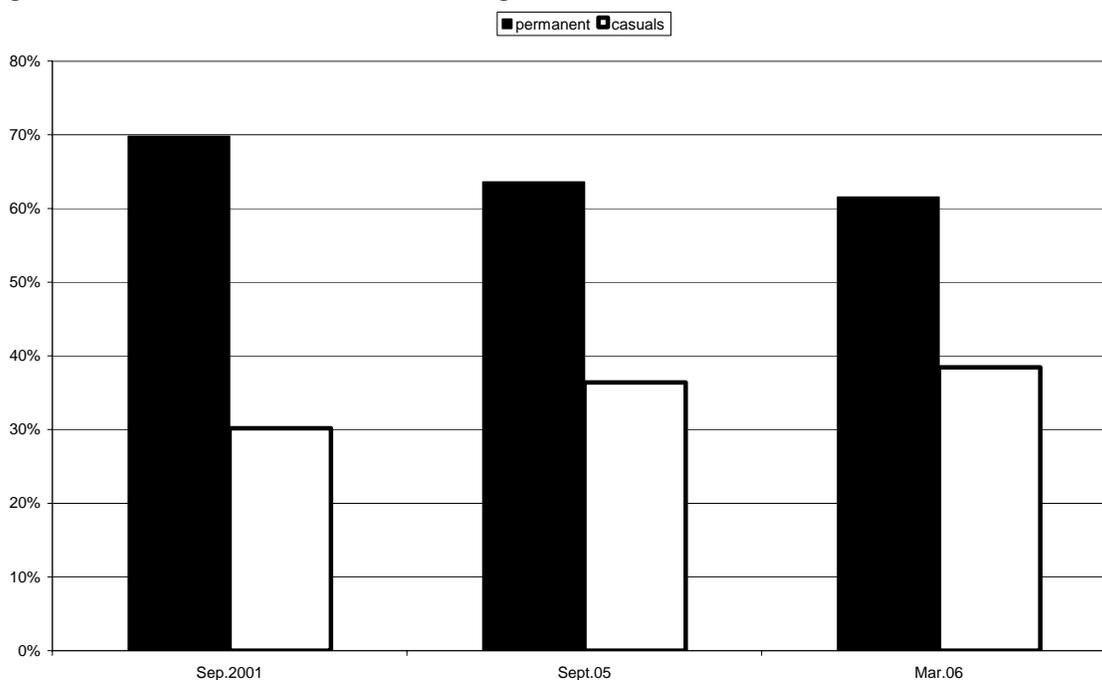
Unlike many countries in the SADC region, agriculture in South Africa plays a minimal role, contributing less than 3% on average in the GDP between 2001 and 2005. Agricultural output rose by 6% between 2001 and 2005 showing that the sector remains resilient in terms of output performance. Total agricultural employment declined by 24% between 2001 and 2005 and on average constitutes fewer than 10% of total formal sector employment. Agriculture, which is supposed to be labour-intensive has however, shifted toward increased mechanization. Table 3 below examines agricultural output and employment between 2001 and 2005 and show the disjuncture between growth in output and drop in employment.

Table 23: Agricultural output and employment

	2001	2002	2003	2004	2005	Change	
output	32,588	44,179	40,889	37,946	34,441	1,853	6%
Share of total	3%	4%	3%	3%	2%		
employment	766	866	853	841	833	-187	-24%
Share of total	10%	11%	10%	8%	7%		

Source: output figures calculated from the SARB Quarterly Bulletin and Employment figures calculated from the Labour Force Survey.

The chart below shows a dramatic decline in permanent employment combined with the sharp increase in casual employment. Permanent employment dropped by 20% compared with the 15% increase in casualisation between September 2001 and March 2006. Agriculture by nature is seasonal which partly explains the high levels of casual labour. Still it is apparent that the sector is less dependent on permanent employment in the context of decline in total employment. Permanent employment declined from 70% of total agricultural employment to 62%. On the other hand casual employment as a share of total agricultural employment increased from 30% to 38% in 2006.

Figure 1: Permanent and Casual Workers in Agriculture, 2001-March 2006

Source: Calculated from the Labour Force Survey

Agriculture is not only shedding total employment, it is also increasing relying on poor quality jobs. Union density in agriculture is under 8% and this means that workers do not have power relative to employers. This reflected by the poor working conditions as illustrated below, which analyse the proportion of workers with written contract and paid leave. A high number of workers in agriculture i.e. 63% did not have access to paid leave compared. Furthermore, around 95% of

workers in agriculture did not have access to medical aid. Written contracts were evenly spread between those that have it and those without such contract.

Table 24: Access to paid leave and written contract, March 2006

Condition of employment	Yes	no	share of total		total
			yes	no	
written contract	332	337	50%	50%	669
paid leave	256	434	37%	63%	690
medical aid	32	639	5%	95%	671

Source: calculated from the labour force survey, March 2006.

A. Case Study of the Sugar Industry

Overview of the Sugar Industry

Unless otherwise indicated information on the sugar industry is derived from the website of the South African sugar association.

The South African sugar industry is one of the world's leading cost-competitive producers of high quality sugar. It is a diverse industry combining the agricultural activities of sugarcane cultivation with the industrial factory production of raw and refined sugar, syrups and specialised sugars, and a range of by-products.

Its people are the driving force behind this modern industry with its production of an estimated average of 2,5 million tons of sugar per season. About 50% of this sugar is marketed in the Southern Africa Customs Union (SACU). The remainder is exported to numerous markets in Africa, the Middle East, North America and Asia.

The South African sugar industry makes an important contribution to the national economy, given its agricultural and industrial investments, foreign exchange earnings, its high employment and its linkages with major suppliers, support industries and customers.

Based on revenue generated through sugar sales, in the SACU region and world market exports, the South African sugar industry is responsible for generating an annual average direct income of R6 billion.

The South African sugar industry contributes an estimated average R2 billion to the country's foreign exchange earnings on an annual basis.

There are approximately 47 000 registered sugarcane growers who annually produce on average 22 million tons of sugarcane from 14 mill supply areas, extending from Northern Pondoland in the Eastern Cape to the Mpumalanga Lowveld. More than 45 500 are small-scale growers, of whom 23 471 delivered cane last season, producing 11,16% of the total crop.

With the growth of economic development and empowerment of previously disadvantaged people, a growing number of black farmers are continuing to enter sugarcane agriculture on farms made available at market-related prices by the major milling companies.

There are 1 729 large-scale growers (inclusive of the more than 341 black emerging farmers) who produce 79,14% of total sugarcane production. Milling companies with their own sugar estates produce 9,7% of the crop. This percentage of the total crop produced by these miller-cum-planter estates has decreased in recent years and is likely to continue to do so as the companies promote more black farming development.

The milling sector of the industry employs upwards of 12 000 people in 14 sugar mills and at the companies' administration offices in KwaZulu-Natal and Mpumalanga. Five mills are owned by Illovo Sugar Ltd; four mills are owned by Tongaat-Hulett Sugar Ltd; two mills by Tsb Sugar RSA Ltd, one mill by UCL Company Ltd, one mill by Umvoti Transport (Pty) Ltd, and one mill by Ushukela Milling (Pty) Ltd. The two Tsb Sugar RSA Ltd mills are located in Mpumalanga province and the remainder in KwaZulu-Natal province.

Four of the mills are known as "white end" mills and produce their own refined sugar. Raw sugar produced by Tsb Sugar RSA Ltd is exported via the sugar terminal in Maputo. Raw sugar produced at the remaining mills is routed to Durban where it is either refined at the central refinery of Tongaat-Hulett Sugar Ltd or stored at the South African Sugar Association Sugar Terminal prior to export. Diversity is the key factor in today's highly integrated sugar milling operations and the mills produce a range of other products such as ethyl alcohol and furfural and its derivatives, although these activities are outside the industry partnership.

Employment and Working Conditions

The sugar industry makes an important contribution to direct employment in cane production and processing, and provides indirect employment for numerous support industries in the three provinces where sugarcane is grown – KwaZulu-Natal, Mpumalanga and the Eastern Cape – in sectors such as fertiliser, fuel, chemical, transport, food and services.

Direct employment within the sugar industry is approximately 85 000 jobs. Direct and indirect employment is estimated at 350 000 people and includes employment in rural areas. In addition there are approximately 47 000 registered cane growers. There are approximately one million people dependant on the sugar industry.

Recent research conducted for the Danish Federation of Workers on the South African Sugar Industry on industrial relations and working conditions make the following findings:

- Wage negotiations are separated into those for agriculture (farms) and those for manufacturing. For that reason, there is strong resistance by millers to extend the scope of the National Bargaining Council Sugar for Sugar Manufacturing and Refining Industry (NBCS-SMRI) to include farm workers.
- Trade union density is concentrated within permanent employees within the four companies that are party to collective bargaining. Illovo reports a union density of 82% of permanent employees, however this falls to 33% of 36,798 employees, when seasonal employees are included. Tongaat-Hulleets reports trade union density of 60%, also among permanent employed, with approximately 20% union density among all 27 000 employees. Although

many women are employed in land preparation and chemical task, unionisation is very low for women on farms.

- Employment and working conditions strongly depend on environment, yields and biological resources. Yield and density of cane that need to be cut varies from a low of 65 t/ha to 100t/ha in Swaziland and Mpumalanga. South Africa has less flat land allocated to cane growing, which makes its less susceptible to mechanisation than for example, Swaziland.
- Government sets minimum wages for agriculture but employers have the freedom to vary work task within the minimum legislated work time. This places higher occupational health and safety strain on workers and also highlights light milling companies' shift away from direct responsibility for health care on farms creating a distance in responsibility through outsourcing to small and medium scale growers or using cane contractors.
- Working conditions differ dramatically from estate farms, private farms and smallholder's farms. Conditions tend to be relatively better in estate farms than on the other farms. Estate farms are relatively easy to organise and have a direct link to the manufacturing value chain, whereas there other farms have tenuous link with manufacturing which undermines workers solidarity.

4.3 Casualisation in Construction

The construction industry has experienced a boom since 2001 realising substantial increases in both output and employment (see table 5). Total output increased by 49% between 2001 and 2005, driven by construction of residential property for the rich. Construction also saw a record improvement in total employment which increased by 72% during the period under review. The quality of employment has rapidly declined as shall be shown below. Still, construction's contribution to total GDP is around 2% and its share of total employment is 5%.

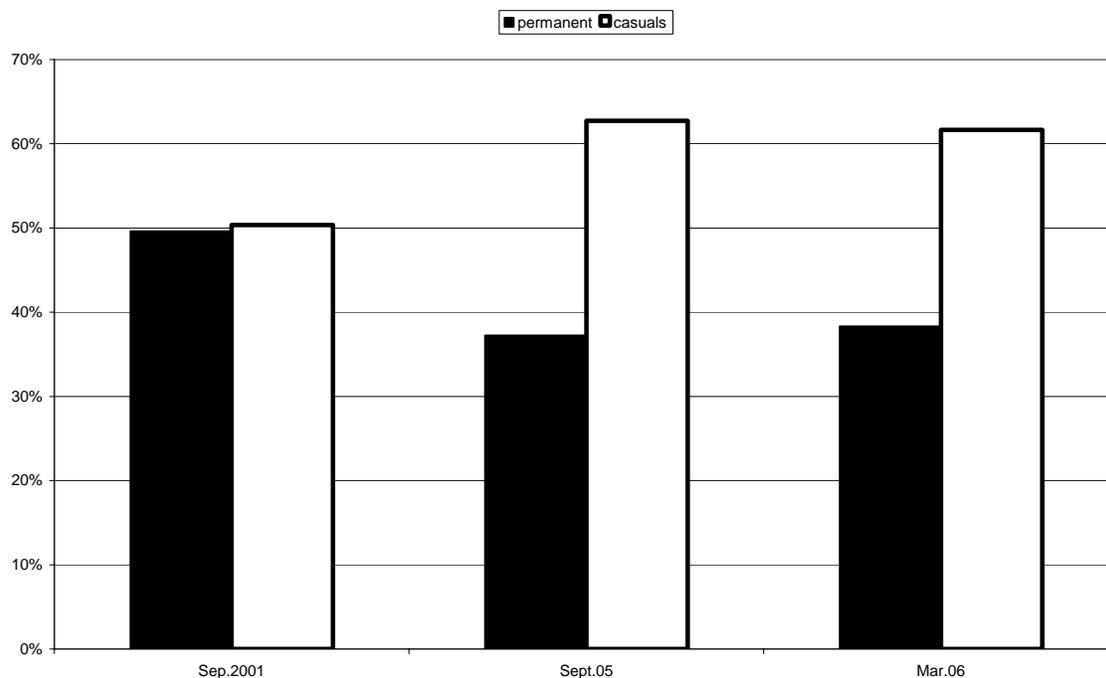
Table 25: Construction output and Employment 2001-2005

	2001	2002	2003	2004	2005	Change	
						total	%
Output	22,416	24,119	26,947	29,182	33,400	10,984	49%
Share of total output	2%	2%	2%	2%	2%		
Employment	337	327	358	372	392	243	72%
Share of total employment	4%	4%	4%	5%	5%		

Source: output figures calculated from the Reserve Bank Quarterly Bulletin and Employment figures calculated from the labour force survey.

Permanent jobs have dropped substantially from 2001 to 2006 and are replaced by casual jobs, making construction the only sector in South Africa to rely heavily on irregular employment (see chart below). Permanent employment increased by 22% between 2001 and 2006 but the share of full time employment shrunk from 50% of total employment in construction to 38% in 2006. In just five years casual employment replaced full time employment in construction, increasing by a whopping 93%. Casual employment now constitutes the bulk of employment in construction at around 62% of total employment. This means that the sharp increase in employment in construction is driven by exponential growth of casual employment.

Figure 2: Permanent and Casual Workers in Construction, 2001 to March 2006



Source: calculated from the Labour Force Survey

Table 6 below shows that workers in construction are being given a raw deal due to the poor conditions of employment. A vast majority of workers in the sector do not have written contracts; paid leave and medical aid benefits. This in part is explained by the drop in union density which decreased from 22% to 14%. As a result workers are at the mercy of the employers and the precarious and unstable nature of the jobs intensifies workers' vulnerability and susceptibility to employer power.

Table 26: Conditions of employment in construction, March 2006

Condition of employment	Yes		no		total thousand
	Thousand	thousand	Yes	No	
written contract	328	342	49%	51%	670
paid leave	205	466	31%	69%	671
medical aid	59	614	9%	91%	673

Source: calculated from the Labour Force Survey, March 2006.

4.4 Casualisation in Wholesale and Retail

The wholesale and retail sector has enjoyed an unprecedented boom on the back of sharp increase in consumer spending. Total output increased by 51% between 2001 and 2005 and total employment also increased by 26%. The sector's contribution to GDP has remained virtually unchanged at 13% in contrast to the contribution to total formal employment which increased from 18% to 21% in 2005.

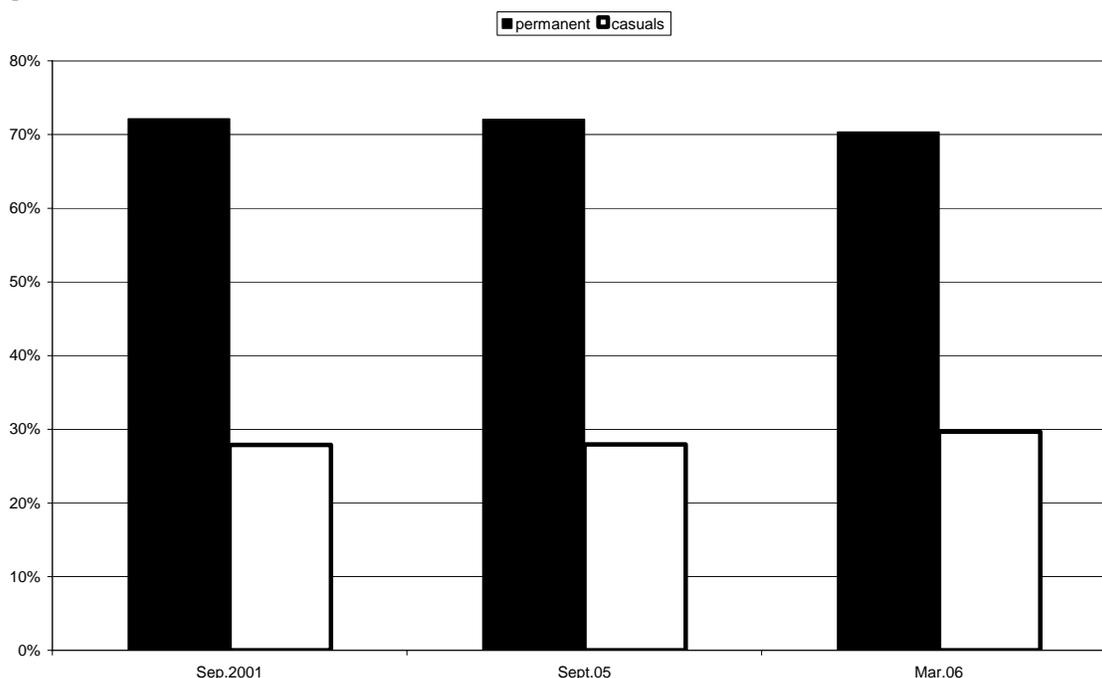
Table 27: Output and Employment in Wholesale and Retail

	2001	2002	2003	2004	2005	change	
						total	%
Output(million)	130,387	143,095	157,728	175,570	197,252	66,865	51%
Share of total	13%	12%	13%	13%	13%		
Employment (thousand)	1431	1353	1519	1648	1805	374	26%
Share of total	18%	17%	19%	20%	21%		

Source: output figure calculated from Reserve Bank Quarterly Bulletin and employment figures from labour force survey.

The proportion of permanent and casual workers in wholesale and retail have remained almost unchanged. However, the share of casual employment increased between September 2005 and March 2006 to around 30%. Overall, permanent employment increased by 29% compared with 41% of casuals. The underlying trend is the steady increase in casual employment which has not reached 30% of total employment.

Figure 3: Permanent and Casual Workers in Wholesale and Retail, 2001 to March 2006



Source: calculated from labour force survey.

Overall a significant number of workers in the sector have written contracts and paid leave. This is in stark contrast to the high number, 80% without medical aid. Despite a slight increase from 19% to 23% union density remains relatively low in the sector.

Table 28: Working conditions in wholesale and retail trade

Conditions of employment	yes	no	share of total		total
			Yes	no	
written contract	1310	526	71%	29%	1836

paid leave	1070	759	59%	41%	1829
medical aid	365	1479	20%	80%	1844

5. Labour Law Coverage and Gaps

5.1 An overview of the labour law framework

Workers have gained new rights and protection under the new dispensation, yet for many these laws are as good as non-existent as we shall show. The constitution and a raft of labour laws provide the legal framework setting work these workers' rights. The Bill of Rights entrenches various rights that impact on the formulation of labour market policy and labour law. This includes the right to equality, freedom of assembly, labour rights, and access to courts and administrative justice. However these rights are capable of being limited by a law of general application if they are reasonable and justifiable in an open and democratic society based on human dignity,, equality and freedom (Cheadle: 2006,p.5). In addition there are several labour laws which we shall briefly explain.

The Labour Relations Act was the first major labour law passed in post apartheid South Africa. The Act set out to regulate labour rights set out in the Constitution. It contains several provisions dealing with organizational rights; collective bargaining; dispute resolution; the right to strike; and protection against unfair dismissals. The LRA marked a major advance for organized labour by setting out organisational rights and laid the basis for workers participation in the workplace. Further, it created new institution for settling disputes, the Commission for Conciliation Mediation and Arbitration. The LRA also promotes centralized and sectoral bargaining and create a legal framework for the establishment of bargaining councils.

The Basic Conditions of Employment Act was promulgated in 1998 and repealed the 1983 Act and the Wages Act of 1957. The act set the floor or minimum conditions of employment which are extended to all workers except the army and independent contractors. The Act also set minimum condition with respect to working time (45-hours per week); maternity and other leave, and it applied to all employment contracts. Significantly the minister is granted power to issue sectoral determinations, which are important to set minimum standards where bargaining councils are weak or to cover vulnerable workers that have no bargaining power.

The Employment Equity Act, enacted in 1998, prohibits unfair discrimination on a number of grounds. To that end, it shifts the burden of proof to employers to show that their actions do not constitute unfair discrimination. Any designated employer, i.e. those employing more than 50 workers are required by law to implement affirmative action measures and to report progress to the department of labour. The Skill Development and Levies Act set out a framework for work place training and skills development financed by a levy on payroll.

The Occupational Health and Safety Act provide deals with occupational health and safety in the whole economy while the Mine Health and Safety Act is geared towards mining. The National Environmental Management Act complements workplace health and safety by granting workers the right to refuse dangerous work. Compensation of occupational injuries is regulated in terms of the Compensation for Injuries and Diseases Act.

Labour gained a purchase on policy development through the enactment of the Act and establishment of the NEDLAC. In this regard organized labour is granted statutory power to shape major socio-economic policy and legislation.

Against this background, it is apparent that South Africa has a comprehensive framework for regulating industrial relations; and to protect workers against unfair and arbitrary powers of employers. In practice however, many workers do not enjoy these rights partly due to weak enforcement and gaps in the existing legislation.

5.2 New forms of work and Labour Laws

A substantial number of employees fall outside the regulator net of traditional labour law. According to Cheadle (2006, p.4) “new forms of employment has two consequences for labour market regulation. The first is that much of the regulation based traditional mode is not suited to these new forms of employment. The second is that the modern labour market is dynamic and labour market regulation is always a step behind. We shall explore the implications of new forms of work on the labour law.

In theory laws are capable of being imposed on all workers, but the fact that labour laws are based on standard employment relationship means that new forms of work fall through the cracks. Theron (2005) notes that the standard employment relationship is based on several assumptions which do not cater for the new forms of employment. The first, assumption is that employment is full-time and a worker has one employer. Proliferation of intermittent employment and triangular employment relationship has ruptured this assumption.

The notion that works on the premises of the employer is the next assumption in the standard employment relationship. This again is questionable in the context of externalization of employment relations. The third assumption is that employment is permanent or ongoing, and as shown above casualisation is increasingly replacing permanent jobs.

The exclusion of independent contracts; self employed and informal worker created a legal loophole that was exploited by unscrupulous employers.¹⁶ Overnight, many workers contracts were converted into ‘independent contractors’ transforming the relationship into a commercial contract outside of the ambit of labour laws. This meant that these workers were not entitled to protections and benefits of the labour law. In reality these people were disguised employee or dependent contractors. Take the case of owner-drivers for instance. They were tied to providing a service to one company and had limited scope to expand their business to other companies. At the stroke of a pen companies saved both the labour costs and the costs of maintain fleet which were now imposed on the ‘owner-drivers).

¹⁶ C.f definition of employee in the Basic Conditions of Employment Act, the Skills Development Act, the Employment Equity Act, and the Unemployment Insurance Act. All these Acts define an employee as a “person, excluding an independent contractor, who works for another person or for the state and who receives, or is entitled to receive any remuneration; and (b) any person who in any manner assists in carrying on or conducting the business of an employer.” Curiously no definition of an independent contractor is provided. These definitions departed from the definition of employee in the Compensation of Occupational Injuries Act, which explicitly includes casual employees, labour brokers, and domestic workers.

This prompted the amendment of the LRA and BCEA in 2000 creating a presumption that one is an employee unless the employer can prove otherwise. This provision is not only technical and legalistic; it really does not provide adequate protection to the workers. Further the Constitutional Court has expanded the definition of employee to include those engaged in work relationship akin to an employment relationship (Cheadle: 2006).

Externalisation or outsourcing further blurs the boundaries between employment and commercial contracts. It further complicates the responsibility of employers in law and in practice. The company that procure workers from the labour broker effectively determine the level of remuneration and working conditions to employees. Even though the employer (i.e. subcontractor, labour broker) assumes the legal risk of employment, the 'client' call the shots by determining the work to be done and the terms on which workers are employed to do so (Theron:2006). As such the contract of employment between the nominal employer and workers is de facto irrelevant.

Apart from issues relating to the definition of employee, is the meaning of the 'workplace'. The legal definition of workplace in terms of the LRA is a place or places where the employees of an employer work, with the proviso that if employees work in more than one place, all places where they work constitute the workplace. Externalisation poses new difficulties for what the workplace means. Theron (2005) notes that externalization changes our understanding of workplace as the physical and social space in which the relationship between workers and their employer is located. For instance, in the case of franchising and homework it is not the nominal employer that controls the work place. Franchises licence often stipulates what can and cannot be done ultimately this determine the conditions of work for employee in the franchise. For home worker it is the company that placed the order that determine the nature of work for example setting tight targets and quality and other specifications.

Externalisation not only dilute the standard employment relationship, it also shift away from the employment relationship altogether. As such, it hollows out the labour law which are premised on existence of an employment relationship. Further trade union organization is also premised on the existence of an employment relationship. Third employment relationship is the basis for social insurance such as medical aid, retirement benefit and unemployment insurance.

Enforcement of labour law is weak largely because of the lack of capacity and the overburdened labour inspectorate. As a result the department of Labour is hampered by lack of capacity to carry out proactive inspection. The fact that certain aspects of externalization like homework are clandestine compounds the problem. Workers often do not report cases for fear of losing their jobs or victimization.

In short, the various contractual and institutional forms of these kinds of new employment mean that many workers do not fall within the common law conception of contract of employment and accordingly are not subject to protective reach of labour legislation. Some fall within the definition but their employment is so precarious, indirect or informal that they become invisible for recruitment into trade unions or for protection through law enforcement (Cheadle: 2006, p.28)

Finally we consider the impact on collective bargaining. Unless unions include protective clauses for casualised employees, the bargaining power of these workers is virtually non-existent. While collective bargaining is notionally possible between a labour broker and its employees, the nature

and form of employment militates against it. The employees work on a fragmented basis and their terms are determined by the contract between the broker and the employers. The only form of collective bargaining that will give those workers a voice and will provide a level of protection is sector level bargaining. Collective agreements should apply to all forms of dependent work (Cheadle:2006, p.29).

Growth of atypical employment, have made the retention and extension of sectoral bargaining even more imperative if current labour market policy is to remain true to some of its main policy objective namely the promotion of collective bargaining (Cheadle p22)

6. Social Protection

South Africa has two forms of social protection one based on the employment relationship and transfers from the state. In the employment relationship, social protection takes the form of contributions to retirement and unemployment insurance. However, there is no universal provision for retirement savings and many low-income workers are excluded from the system. All employers are required to contribute to the Unemployment Insurance Fund which provided contingency insurance against unemployment. The problem with the UIF is that it is based on short term unemployment and only provides cover for a period of nine months.

As noted earlier, social protection is premised on the existence of an employment relationship. Where employment relationship is tenuous like in the case of externalization the contributions to retirement and UIF are not forthcoming. In fact, companies resort to casualisation of labour and convert workers into independent contractors to avoid contributing to retirement and UIF as a means of holding down labour costs.

Compared to other countries in the region South Africa has one of the biggest social protection system. This includes state old age pension, child support grant and host of other social grants. In addition, government provide free amount of water and electricity and free health care for children under the age of 6. However millions fall through the crack, especially if they live in household earning income deemed higher than the means test. As such, million of South Africans between the ages 14-65 years do not have social protection and depend on support by other family members.

As noted earlier, contributory scheme are premised on an employment relationship. Against this background, the key question is whether to extend the legal definition of an employee or to extend social security coverage.

7. Impact of Casualisation on Workers

Casualisation is further segmenting the labour market and work place. Anecdotal evidence suggest a growing polarity between those in full time employment with the employer and those in casual employment; and there is a polarity between those employed by the employer (both full time and casual) and those employed by other employers (contractors and labour brokers) (Cheadle: 2006). The obvious disparity is the difference in pay and conditions of service between full time employees and casual employees in the same company. Full time employees typically belong to a union and have better pay and benefits plus working conditions. Compared to full time employees, casual employees receive lower wages and have no benefits such as medical aid, retirement.

Casualisation has increased the job insecurity of all workers by placing downward pressure on the conditions of the permanent workers. Permanent workers live with the fear of losing their jobs and the benefits that come with such a job. On the other hand, casual workers also live with the fear of losing their jobs and become susceptible to management pressure. The work place is become a veritable place of fear – fear to lose jobs.

The meagre wages earned by casual workers are not sufficient to support their families. In the context of high living cost several studies (Bezuidenhout 2005, Mosoetsa 2005, Van de Westhuizen, 2005) indicate that workers supplement their income by moonlighting in the informal sector or participating in cash generating activities. The second, fundamental effect of casualisation and its attendant low wages is to shift the burden of care and social reproduction onto the household. A worker who previously had medical aid benefit has to pay out for health care out of the pocket once they lose this benefit. In a way casual labour is now the source of cheap labour for capital across the South African economy. Workers activities to supplement their income are an indirect subsidy to capitalist in the same way that women unpaid reproductive was a disguised subsidy for capital.

8. Trade Union Strategy

Overall union density in South Africa is around 36% and the country has one of the most dynamic trade union movement. Except in few cases, the trade union movement is not succeeding to recruit and retain casual workers for several reasons. First, is the intermittent and shifting nature of casual work. This is particularly the case of subcontracted workers who shift from one workplace to another. As such, trade union face with serious difficulties to access workers especially in triangular employment relationship.

Second, is the fear by casual workers themselves to associate with unions because they do not want to lose jobs. Employers often threaten workers with that they will lose their jobs if they join unions. This applies to all workers but has been intensified with respect to casual workers.

Third is the form of organization. Industrial trade unions emerged in the context of standard employment relationship and are finding it hard to adapt their organization to deal with irregular employment. This is reflected in their fee policies which are based on a regular stream of income. A casual worker who earns very little to begin with is unlike to part with a fortune to maintain union membership. Theron (2005) also argues that unions have adopted a centralized form of organization that makes it difficult for to respond to local needs.

It is however important to note initiatives by some of the South African unions to confront the challenges of casualisation. Trade union response is centred around recruitment and bargaining. On the recruitment front some of the unions are making steady progress but lack adequate resources to sustain such efforts. On the bargaining front unions have tried to regulate outsourcing through collective agreements. The National Union Mine Workers has reached an agreement with the Chamber of Mines to stop subcontracting of mining. SACTWU on the other hand has succeeded to bargain for pay rates for home based workers. The question is whether these gains are implemented or have employer found ways to circumvent them, for example by sourcing cheap imports elsewhere.

The SACCAWU strike in Shoprite Checkers was historic and unprecedented in South Africa. The strike was prompted by the company's unwillingness to comply with sectoral determination, particularly as regard wages and conditions of employment for casuals or flexi-timers. For the first time the union took up the grievance of casual workers and all workers joined in the fight which was ultimately settled in favour of the workers.

9. References

1. Bezuidenhout, A. 2006. Maria's Burden
2. Bhorat, H and Hinks, T.J. 2006. Changing Patterns of Employment and Employer-Employee Relations in Post Apartheid South Africa.
3. Cheadle, H. 2006. Regulated Flexibility: Revisiting the LRA and the BCEA, concept paper unpublished mimeo: University of Cape Town.
4. Du Toit, A. 2003. 'The externalization and casualisation of farm labour in Western Cape horticulture', Cape Town: Programme for Land and Agrarian Studies, University of Western Cape, Research Report 16.
5. Kenny, B and Bezuidenhout, A. 1999. 'Contracting, Complexity and Control: An Overview of the Changing Nature of Subcontracting in the South African Mining Industry', the Journal of the South African Institute of Mining and Metallurgy, July/August, pp.185-192.
6. Klerck, G. 1994. 'Industrial Restructuring and the Casualisation of Labour: A Case Study of Subcontracted Labour in the Process Industries', South African Sociological Review, Vol 7(1), pp.32-62.
7. Mosoetsa, S. 2005. *The Consequences of South Africa's Economic Transition: The Remnants of the Footwear Industry*, Webster, E. and Von Holdt, K. (eds). Beyond the Apartheid Workplace: Studies in Transition, University of Kwa Zulu Natal: Durban.
8. South African Reserve Bank. 2006. Quarterly Bulletin: June 2006, no.240.
9. South African Sugar Association, www.sugar.org.za
10. Standing, G., Sender J. and Weeks, J., 1996 Restructuring the Labour Market: The South African Challenge: An ILO Country Review, Geneva: International Labour Organisation
11. Theron, J. 2005. *Employment is not What it used to be: The Nature and Impact of Work Restructuring in South Africa*, Webster, E. and Von Holdt, K. (eds). Beyond the Apartheid Workplace: Studies in Transition, University of Kwa Zulu Natal: Durban.
12. Van der Westhuizen, C. 2005. *Women and Work Restructuring in the Cape Town Clothing Industry*, Webster, E. and Von Holdt, K. (eds). Beyond the Apartheid Workplace: Studies in Transition, University of Kwa Zulu Natal: Durban.
13. Watkinson, E and Govindsamy, A. 2006. Sugar Workers and the South African Sugar Industry – A Report to the International Union of Food.
14. Webster, E. and Von Holdt K, (eds) 2005. Beyond the Apartheid Workplace: Studies in Transition, University of Kwa Zulu Natal: Durban.

Swaziland

List of abbreviations

ACCIWU – Allied Commercial, Catering and Industrial Workers Union
 ANC – African National Congress
 CAWUSWA – Commercial and Allied Workers Union of Swaziland
 CMAC – Conciliation, Mediation and Arbitration Commission
 CTA – Central Transport Administration
 CWU – Communication Workers Union of South Africa
 EFA – Education for All
 EPZs – Export Processing Zones
 ESAPs – Economic Structural Adjustment Programmes
 ESRA – Economic and Social Reform Agenda
 GDP – Gross Domestic Product
 GNP- Gross National Product
 IMF – International Monetary Fund
 IRALE – International Research Academy for Labour and Education
 ISAPs – Internal Structural Adjustment Programmes
 MNCs – Multi-national Corporations
 NDS – National Development Strategy
 SFTU – Swaziland Federation of Trade Union
 SFL – Swaziland Federation of Labour
 SIPA – Swaziland Investment Promotion Authority
 PEA – Public Enterprises Agency
 PEU – Public Enterprise Unit
 PSMP- Public Sector Management Programme
 PUDEMO – People’s United Democratic Movement
 SOEs – State-owned enterprises
 SACCAWU – South African Commercial, Catering and Allied Workers Union
 SACU – Southern African Customs Union

SCAWU – Swaziland Commercial and Allied Workers Union
 SEB – Swaziland Electricity Board
 SHIAWU – Swaziland Health Institutions and Allied Workers Union
 SNA – Swaziland Nurses Association
 SNACS – Swaziland National Association of Civil Servants
 SNAT – Swaziland National Association of Teachers
 SPEED – Smart Programme on Economic Empowerment and Development
 SPTC – Swaziland Post and Telecommunications Corporation
 SPTC-WU – Swaziland Posts and Telecommunication Workers’ Union
 SWSC – Swaziland Water Services Corporation
 SwaziTel – Swaziland Telecommunications
 SwaziPost – Swaziland Postal Services
 US – United States of America
 WB – World Bank
 WTO – World Trade Organisation

RESEARCH FRAMEWORK

Research Hypothesis

“Casualisation; The Neo-Liberal Restructuring of the Swazi economy and its impact on workers and the poor.”

Approaches/Methodology of Research

- a) Approaches used in the research: a combination of two approaches has been used in the research and these are surveys and available data.
- b) Tools used: with particular reference to surveys, questionnaires and person –to-person interviews have been used as tools.

Scope of the Research

The research starts with a general overview of the Swazi economy as well as its responsive character to the overall neo-liberal restructuring, specifically from the external pressure of international pressure, as well as multi-national corporations (MNCs), in a majority of cases.

The sectors identified are the following;

	Sector	Rationale
Public sector	Construction and public works Education Health	These are the key sectors that demand immediate attention , also because they seem to have been attacked by casualisation and restructuring
State Owned Enterprises	Communications(Swaziland posts and telecommunications)	In the background where even the PEU is undergoing a restructuring process into being called the PEA, the public enterprise named is an example

		of the basic services to be provided by a government, but are under attack from restructuring.
Private sector	Commercial and Retailing	This sector shall be identified to assess the level of damage of the neo-liberal agenda as this is one sector of the whole economy that provides employment to a majority of manual and unskilled labour

Further it goes into detail to identify and isolate particular sectors where such external pressure is observed and felt, with particular detail in the following areas:

- Effects of casualisation
- The national labour to show Swaziland's responsiveness in matters of industrial interests.
- Provisions of social protection for all workers and the poor in the country.
- The role of the international companies (largely MNCs)

Challenges of the Research

Unfortunately, the following observations have been made by the authors in relation to the extensive and detailed nature of the research, and these are:

- Time: the unavailability of sufficient time to cover the research has, to some extent, compromised the detail of the research report because the author's only participatory action research would go a long way into unearthing even implicit variables and concepts. The time factor has rendered the research purely academic.
- Resources: in attempting to ensure extensive coverage of identified organizations, individuals, institutions and /or labour departments as respondents, the question of resources has come to bear after some serious limitations or hindrances in financial and other terms were prevalent.
- Literature availability: there is very little or very thin literature is available that could be of utmost importance in relation to the given research topic. This is also a general problem in Swaziland, even in other topics.
- Documented evidence in this research was not available: The management in the commercial sector and the state owned enterprises were not willing to cooperate in terms of interviews, statistics and documented evidence on casualisation.

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Executive Summary

A lot of jobs are being sacrificed because of neo-liberal programmes in the form of restructuring of the Swazi economy. As a result, a bulk of the workforce has been removed from core permanent and formal employment into being casual, flexible and informal jobs and relationships in the shop-floor. A lot of quality jobs have been lost due to this restructuring.

Casualisation has assumed mainly two forms:

- Diminishing core of workers in permanent employment.
- Flexibility of workers especially in the commercial and retail industry, resulting in job insecurity and high levels of economic exploitation.

The process of casualisation presents major challenges for the labour movement, in general, and trade unions in particular in organizing casual workers in their variant forms. The major challenge is both to represent the interests of the economically vulnerable and to provide support for them to find ways through which they can sustain a livelihood.

An equally important goal for unions is to foster solidarity between casual and full-time labour. Whilst unions must develop the capacity of resisting the casualisation of existing jobs wherever possible, they also need to concentrate on fighting to improve the working conditions of casual workers, and building solidarity across the workforce.

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CHAPTER ONE – INTRODUCTION and GENERAL OVERVIEW

1.1 Introduction

*“Restructuring and globalisation are twin weapons wielded by a capitalism struggling to recover its raison d’etre, its very essence – **profitability**... for all its technological innovations, globalisation is the renewed attempt to impose and extend the rule of capital on a world scale”.*

- *Internationalism versus Globalisation*

From the above quotation, it is clear that capitalism at its advanced stage currently faces a serious crisis. Capital, by its very nature, tends to jump over borders and requires the state machinery to facilitate this process of mobility in all ways. Herein is a crisis because; firstly, by all accounts capitalism is struggling to recover its essence- profitability, and secondly, it is an attempt renewed after failure to coercively impose and further extend its rule on a world scale.

Capitalism had an earlier period of rapid expansion in the nineteenth century, when Britain, the “workshop of the world”, ruled the waves. Though its rule had been shaken before, the international reign of the sterling really ended in 1914, with the outbreak of the First World War. A lot more other incidents like the Bolshevik Revolution in the former Soviet Union, the Great Depression; the rise of fascism and the Second World War necessitated the intensification of capitalism on a scale unheard of before.

The new international monetary system, introduced at Bretton Woods by the Western powers in 1944, was supposed to eliminate the two major evils of the past; nationalism, by providing a new international framework, and speculation, by allowing state controls over international capital movements. The collapse of this structure in the early 1970s made room for globalisation. Therefore, globalisation is a response to the crises mentioned above. Faced with the declining rate of profit on one hand, and the crumbling of a monetary mechanism resting on the absolute, unquestioned hegemony of the United States, on the other, capital took to the offensive on two fronts – restructuring and globalisation. Below, therefore, is the definition of globalisation:

Globalisation is the restructuring of the global economy to generate more profits for business and its main features are:

- *A more integrated global economy*
- *An increased corporate power*
- *Relative decline in investment in production*
- *Changing role of the state*

- *New methods of production* (A publication by COSATU, FEDUSA and NACTU, 2001)

In the holy name of globalisation, nations are consistently preached at to “open up” their economies, to “liberalise trade”, to ensure “flexible labour standards” and “generally create an environment conducive private sector development”, all being part of scriptures in the crusade seeking to expand capital exploits and ventures right across the globe. On the receiving end of these and other neo-liberal campaigns, have largely been economies of the South (particularly poor Africa and Asia, including Latin America).

To show the link between the economy and power, it is important to briefly clarify the role of the Bretton Woods institutions – the International Monetary Fund, the World Bank and the World Trade Organisation) in pushing and ensuring success of this crusade. Politicians and their financial advisers, in the spring of 1944, met at Bretton Woods in New Hampshire to attempt to restore capitalist order throughout the largest market-driven portion of the globe. Moreover, they sought to prevent another big slump (one had taken place during the Great Depression in 1929-1932), which was a great economic calamity and could prove fatal for the entire *laissez-faire* economy.

One of the Bretton Woods institutions, the IMF, is a lender to member countries, at a rate of individual countries’ contributions towards the establishment of the fund. The IMF ensures that it pursues a changed policy of liberal change (named the neo-liberal restructuring) by means of a package that it uses to compel recipient countries to accept before being granted a loan. Such a package is called the Economic Structural Adjustment Programmes (ESAPs), which basically puts across clear terms and conditions for the granting of a loan.

All three institutions (IMF, WB, WTO) are involved in the mission to ‘globalise’ the world for purposes of escalating the levels of trade by means of propagating for the opening up of economies, opening up markets in other countries, moving capital across the globe at very high rates, relegating the state machinery to being merely a security and law and order arm, then ultimately pushing to the periphery domestic in favour of foreign produce. Consequently, in the whole process of this neo-liberal restructuring the casualisation of workers leads to a process of underemployment and temporary employment. Casualisation, like globalisation, therefore, a strategy pursued by employers, centred around increasing profits and control. It benefits employers by increasing their control over all workers and lowering wage and benefit costs per worker (Rees, 1999).

1.2 Casualisation and Women

Casualisation has a negative effect on women, because of the loss of benefits, irregular and uncertain hours of work, more risky work, lower wages and difficulties in organizing. Furthermore, factors such as the lack of job security and favouritism in allocation of working are common, and this may make women more vulnerable to sexual harassment.

Internal Structural Adjustments

The Swaziland Government has, with relatively minimal external pressure and influence, committed to reforming its economy. This reform is located within a broader restructuring of both the private and public sectors; a framework the government itself refers to as an ‘Internal Structural Adjustment Programmes’ (ISAPs). It was on the 27th of August 1999, when the Swazi Government released its 2022 Vision, the National Development Strategy (NDS). This 25 year macro-economic

plan provides a long-term framework within which short and medium action programmes would be formulated. The vision forming the basis of the plan is:

“By the 2022, the kingdom of Swaziland will be in the top 10% of the medium human development group of countries founded on sustainable economic development, social justice and political stability” (Swaziland Government, 1999, page 2).

In essence, the NDS is in every respect a structural adjustment initiative that the government of Swaziland has voluntarily (outside pressure) ventured into. It changes the role of the state – including government – to that of creating an enabling environment to ensure greater local and private investment; where public enterprises must be privatized (commercialized or sold out); the cost recovery principle for the provision of public services is established; and in general, the market principle is introduced into most aspects of state and social life.

Accompanying all the above is the transfer of public-owned enterprises into private hands (privatization); the sale of certain public departments or units (out-sourcing); the cutting down of the number of employees (retrenchments) and the promotion of flexible worker hours (casualisation).

Central to this study is the analysis of the trends of privatization, out-sourcing and casualisation on the general Swazi economy, basing discussions on the international context and developments. The study goes further to assess the impact of this process of restructuring the economy in line with market interests on the labour force in the country, in the context of national labour legislations. The existence or unavailability of the social security scheme in Swaziland shall also be explored, to ascertain whether social safety nets are available or not to cover up the rest of the Swazi poor who are not necessarily wage earners. All analyses is moving towards action, as the study will, after analyzing the role of international companies in the restructuring of the economy, further identify tactical areas that remain challenges to unions.

1.3 International Developments

The world economy, according to most economists and academics, as well as their analysts, is on an averagely expanding rate, thanks to a myriad of factors. They argue, the global economy experienced a marked improvement in 2004 as it expanded by 5.1 percent, showing the fastest growth rate in nearly 30 years after a modest growth of 4 percent in 2003. Against such an encouraging background, however, is the seriously disappointing reality that accompanies such growth rates: the continuously deepening poverty, misery and destitution of the larger majority of the people of the world (above 2/3 of the global population).

Substantially however, such statistical figures, being a numerical approach, do not mean anything to the greater majority of the suffering people of the world – who are workers, the unemployed, rural and urban people, students, youth, women, the physically challenged- as it has not translated into an improvement in their living conditions. This can be seen in 80% of the world GDP is consumed by only 20% of people in the whole world mainly from France, USA, Britain, Japan, Italy, Germany and Russia. Moreover, income of the richest 6000 people in France is between 2000 to 4000 times the earning of a factory worker in that country. At a bloc level, the G7 alone spent over \$1.6 trillion a year on advertisement (mainly to keep and maintain shares) as against ever expanding world poverty. Of the 202 world countries, only 7 rule the world and they produce 67.5% of world GDP (*The South African Economy in its global context, Mapaila, 2006*).

Wealth remains centralized in the hands of a few developed nations, largely controlled by a tiny, male-dominated and white class and being regulated in the interests of a few giant monopolies. About 5 percent of the world's richest individuals own about more than 70% of global wealth.

The United States and China have, particularly since 2003, become leading players in the global growth process, which has been considered a recovery. The GDP growth rate in the US economy is currently estimated at 3.5%, underpinned by solid productivity growth in 2005 and it is projected to be the highest in the G7. However, in that country 45.7 million people or 12.5% of the population subsist on relief measures, a picture showing a huge economic disparity.

Meanwhile, in Asia the China economy grew strong and recorded the fastest annual GDP growth rate of 9.5 percent. This has certain implications for China since it now shall have to improve more on its growth rates, after having performed in such a way that it was considered to be in a process of recovery. Moreover, China being a populous country in the world and with no capital shortage has the highest rate of capital accumulation. Investment in that country accounted for 42 % of GDP in 2003 and the oblivious lending of the Chinese banks have a propelling contribution to the trend. China's exports grew by a third to approximately US\$ 63.8 billion in December 2004, taking up markets from other developing countries. A recent, in Swaziland, case was the closure of about nine (9) companies out of twenty-seven (27) ceased operations by December 2005 (*Swaziland Investment Promotion Authority, June 2006*).

Notably, however, China provides for what we call "social wage", where the welfarist state is responsible for the subsidization of basic services and commodities, like education, health, transport, basic foodstuffs and communication. This is responsible for closing the rich/poor divide. The media is responsible for spreading campaigns that labour should be at competitive rates in order to invite investment, but what is not considered by them in the whole issue is that in relative terms the lifestyle of the workers of the Chinese workers is far improved than most workers in the world, given the intervention of the state in subsidy terms.

In Africa, a similar trend of positive growth has been recorded. In 2005, Africa achieved one of the highest economic growth rates in the period since the past decade, with real GDP estimated to have increased by 4.5 percent. This growth is attributable to the high commodity prices, the global economic recovery, increased oil production and better agricultural output. Monetary and fiscal policies have been relatively tight in recent years, with most countries maintaining single or low double-digit rates of inflation. In the external sector, the continent achieved a current account surplus of 1.2 percent of GDP in 2004, following deficits in those consecutive years.

1.4 Regional Economic Context

In economic terms, a lot of relative stability in the Southern African region has been brought about by the South African economy, accounting for 50 percent of the GDP of the region. Developments in South Africa are said to have translated into an accelerated growth of real GDP in recent years, primarily driven by strong exports of manufactured goods, metals and minerals, and a relatively strong world demand, despite the adverse impact of the strong Rand on exports. The South African economy is said to have established the right macroeconomic fundamentals, as evident through the favourable monetary policy with low inflation, which has allowed for lower interest rates and provided the foundation for economic growth. In addition to the favourable macro-economic environment, economists say, diversified financial markets, flexible monetary policy and healthy public finances also endorsed a favourable environment for trade and industrial development.

The investor attraction advantage of Mozambique, Lesotho, Botswana and South Africa place Swaziland at a very unfortunate disadvantage, hence a declining investor confidence and Foreign Direct Investment in the country.

1.5 Overview of the Swazi Economy

Being a small economy in the lower middle income country category, Swaziland faces a serious challenge of high income disparities. Poverty remains one of the challenges facing the tiny kingdom (with an area of 17 440 km²), where 69% of the population lives under the poverty line of E71-00 (about US\$10) per month, as against the bulk of the wealth concentrated in the hands of a tiny (largely royal) minority. The Gross Domestic Product (GDP) of Swaziland is US\$ 2,521 million, with a population of about 1, 161, 219 (2003 statistics) – 60% of these being people under the age of 25 years – and a Gross National Product (GNP) per capita of US\$ 1,240. In the period between 2000-2004 Swaziland has had an average annual real GDP growth of 2.5 percent, growth that was much lower than the average of 3.7% for 1995-1999, (Central Statistics Office – 2003).

According to the Swazi Government, growth in the Swazi economy has largely been hampered by natural disasters specifically drought and other risks related to market access, the appreciation of the exchange rate, competition in the global market and declining prices of agricultural commodities.¹⁷ The economy grew by 2.6 % in 2003, presenting a slow down in growth from the 2.7 % recorded the previous year. In this scenario is a serious down turn in economic performance, demanding an equally focused and clear commitment to reversing the trend towards improved economic performance/upswing (Budget Speech, February 2006).

The stability exhibited in the Rand/Lilangeni exchange rate against other major trading currencies during the year had a positive impact on inflation outcome.¹⁸ As a result, domestic inflation recorded an annual average of around 4.8% in 2005 with the highest inflation rate recorded at 6.3 % in October 2005. This rate is higher than the average inflation rate recorded in the year 2004. In light of the favorable monetary environment (with low inflation), particularly in the first two quarters of 2005, the Central Bank of Swaziland reduced its policy rate (discount rate) by 50 basis points in April 2005 to 7%, and that rate has been maintained throughout 2005 to January 2006 (Budget Speech, February 2006).

1.6 Historical Developments: Trends in Economic Restructuring

Swaziland was once a British colony, where in 1968 the colonial masters handed over power to a relatively tiny royal family under King Sobhuza II, (who was until then called a Paramount Chief). In 1973, Sobhuza II banned political parties, claiming they sowed seeds of division among Swazis, ruled according to unwritten law and custom, in conjunction with partially elected Parliament and an accompanying structure of published laws and implementing agencies.¹⁹ Even now, his son (King Mswati III) still has all powers vested in him, maintains political parties, meetings and processions banned as enshrined in the 1973 Decree – and he has the authority to issue such decrees that carry the force of law, and exercises this authority with the introduction of the 1998 Administration Order.

¹⁷ The price of sugar in international markets, being Swaziland's major export product declined due to the introduction of a Sugar Protocol in European markets, mainly by the European Union.

¹⁸ The Swazi currency, Emalangeni, is pegged to the South African Rand (R) since Swaziland, Lesotho and South Africa are in the Common Monetary Agreement.

¹⁹ The King's Order-in-Council of 1973 (King's Proclamation) is a decree that banned all political formations, thereby centralizing all legislative, executive and judicial powers with the monarchy itself.

In economic terms, Swaziland has a free market economy with relatively little government intervention. The economy is largely agro-based, but has gradually been transformed by means of an expanding (on a constant basis) manufacturing sector. This is clearly expressed by the Economic Review and Outlook 2004/05 – 2007/08 when it says:

“As much as agriculture is the bastion of the economy in terms of spread activity, employment, poverty alleviation and inputs into the manufacturing sector, the latter remains the largest contributor to GDP.”

1.7 Export-oriented economy

Undoubtedly, the Swazi economy is largely reliant on the neighboring South African market economy, for both exports and imports. The economy relies heavily on the export sector, especially on wood pulp, soft drink concentrates and beverages, timber, citrus fruits and sugar which are composed primarily of large firms with mostly foreign ownership. The document quoted above continues to note in this regard:

“...however, the production of manufactured and processed goods such as sugar and sugar based products, soft drink concentrates and beverages, wood pulp, timber and paper still responds entirely to demand in external markets... Revised National Accounts figures reflect that the manufacturing sector contributed 35.2 % of GDP at factor cost in 2003,” (Swaziland Government 2004/05 – 2007/08).

Table 1: Expenditure on Gross Domestic Product 1997/98-2003/04

		1998/99	1999/00	2000/01	2001/02	2002/03	2003/04	Average Share of GDP
Agriculture	137.1	148.1	141.0	128.4	128.2	133.8	9.1%	
- Crop Production on SNL	40.2	41.4	29.5	28.7	22.3	21.1	2.0%	
- Crop Production on ITF	80.2	87.4	91.2	86.6	92.8	98.1	6.0%	
- Other Agriculture		16.7	19.2	20.2	13.1	13.1	14.5	1.1%
Forestry		16.8	17.1	17.4	17.9	18.2	18.6	1.2%
Mining		22.8	19.6	15.1	12.1	13.4	10.7	1.0%
Manufacturing	500.3	506.7	513.4	518.9	527.8	535.9	34.6%	
Construction	72.8	81.1	88.9	102.4	105.6	103.6	6.2%	
Wholesale, Retail, Hotels & Restaurants	144.6	156.0	163.8	172.1	183.1	189.7	11.3%	
Transport & Communication	75.3	80.4	86.5	88.5	88.8	91.2	5.7%	
Banking, Insurance, Real Estate etc.	101.5	105.0	110.5	110.9	122.1	129.9	7.6%	
Owner-occupied Dwellings	35.2	35.8	37.2	39.1	40.2	39.7	2.5%	
Government Services		223.5	228.4	237.4	242.5	243.8	250.5	15.9%
Other**		68.8	71.6	68.9	71.9	74.2	80.2	4.9%
Total GDP at Factor Cost	1398.6	1449.8	1480.2	1504.7	1545.4	1583.9	100.0%	
Annual GDP Growth Rate	3.3%	3.7%	2.1%	1.7%	2.7%	2.5%	-	
Indirect Taxes Less Subsidies	277.0	283.3	289.8	295.6	305.7	314.6	n.a.	

Total GDP at Market Prices	1675.6	1733.1	1770.0	1800.3	1851.1	1898.5	n.a.
GDP per Capita (E)		1743	1752	1738	1718	1717	1711

Source: Central Statistical Office

Note: * Preliminary

** Imputed bank service charge is weighted and distributed in all the sectors

Relying largely on South Africa, the Swazi economy also faces serious problems as it is on the receiving end of monetary and fiscal action of her neighbor. Such financial linkages between South and Swaziland are facilitated by the fact that from the four (4) banks that comprise Swaziland's banking system, three (3) – holding some 80% banking system assets – are South African. These banks' liquidity is managed through their respective head offices. Moreover, such a regional domination by the South African economy is expressed by 50% of the regional GDP that is held by that country. (*IMF-Swaziland Statistical Appendix [SM/06/28], January 26, 2006, page 5*).

Over the years, since the early 1990s the Government of Swaziland has embarked on a clear neo-liberal restructuring process that affects not only the systemic shaping of the Swazi economy, but more importantly its outlook, service delivery, interests and focus. This has happened by means of privatization of state assets like firms into being either partially or wholly owned by private (largely foreign) hands, selling away of units/departments from government ministries into privately run non-core governmental functions (out-sourcing) or the consequent commodification of basic services, which then become the basis for profitability. Multi-national Corporations (MNCs) are largely behind this trend of competing in these Swazi economy components that are for sale.

From the point of view of the Swazi Government (Development Plan 2004/05 – 2007/08), the process for transformation and reform taking into account the changes brought about by globalization and the increasing pace of trade liberalization started in the 1990s. Such initiatives include: the National Development Strategy, which provides a long term framework for development from 1997 to 2022; the Smart Partnership Economic Empowerment and Development (SPEED), the Public Sector Management Programme (PSMP), and establishing a Revenue Authority. Overall, these initiatives focus inter-alia on restraining government expenditure, seeking additional sources of government revenue, increasing the efficiency of the public sector, enhancing foreign investment inflows, liberalizing the economy, privatizing state assets (parastatals), expanding non-traditional exports, improving and upgrading the country's infrastructure, reducing unemployment and reducing poverty.

Examples include the 1991 privatisation and transformation (restructuring) of the Swaziland Water and Sewage Board under the Ministry of Natural Resources and Energy, into being called the Swaziland Water Services Corporation (SWSC). The obvious result was a transfer from accessing free and subsidized water and sewage services into a commodified basic necessity. The concept of 'all-round open' community taps is non-existent now as somebody should be responsible for paying for any water that moves through.

Overall revenue has been increasing at an average of 10% between 1999/00 and 2003/04, and a 29.4% for 2004/05. A sizeable amount of this came from the SACU receipts, sales tax and personal income tax. The improvement for 2004/05 is mainly due to enhanced tax collections, and the remarkable E700 million from SACU receipts. In terms of shares, SACU receipts have continued to dominate revenue receipts. Between 1999/00 and 2004/05 this component had a share of 50% of the total revenue including grants. The least contributor to revenue is the grant component, which

has an average of 4% over the same period. Company tax had an average increase of 8% over the six-year period, despite a 15% decline observed in 2000/01, partially due to the revision tax rate from 37.5% to 30% and closure of some companies since 2000 to date. On the other hand personal tax has increased by an average of 17%, and this component has remained significantly higher than company tax in absolute terms throughout the period. In 2004/05 personal tax was 110% higher than company tax (Ministry of Finance and the Ministry of Economic Planning and Development).

Increase in individual/personal tax (17%) as compared to a mere 8% increase in company tax is a direct off-shoot of the neo-liberal restructuring of the economy through inviting/attracting investors at the expense of the worker.

Since government has already identified policies to be pursued to diversify revenues, it is of utmost magnitude that they are operationalised speedily, effectively and efficiently to avoid an economic downturn. Fiscal policy remains the only instrument for government to maintain macroeconomic stability, a condition that is vital for growth, investment promotion, and improved standards of living the Swazi population, according to the macro-economic direction of the country, as enshrined in the 25 year National Development Strategy (NDS).

1.8 Public Expenditure

Total government expenditure increased by an average of 16% over the period spanning 2000/01 to 2004/05, which shows a real increase in expenditure. In 2004/05, expenditure is estimated to have grown by 33% compared to 2003/04 figures. This has continued to pose problems in the past years since it inflates the base for recurrent expenditure. Whilst all expenditure components increased in real terms, increases in personnel and goods and services were the highest. Between 1999/00 and 2004/05, an average of 37% of recurrent expenditure went into salaries, and goods and services took 25%. Personnel expenditure alone is estimated to be close to 60% of total recurrent expenditure, which government considers too costly, particularly after advises from the World Bank and International Monetary Fund (WB and IMF).

Expenditure by Economic Classification

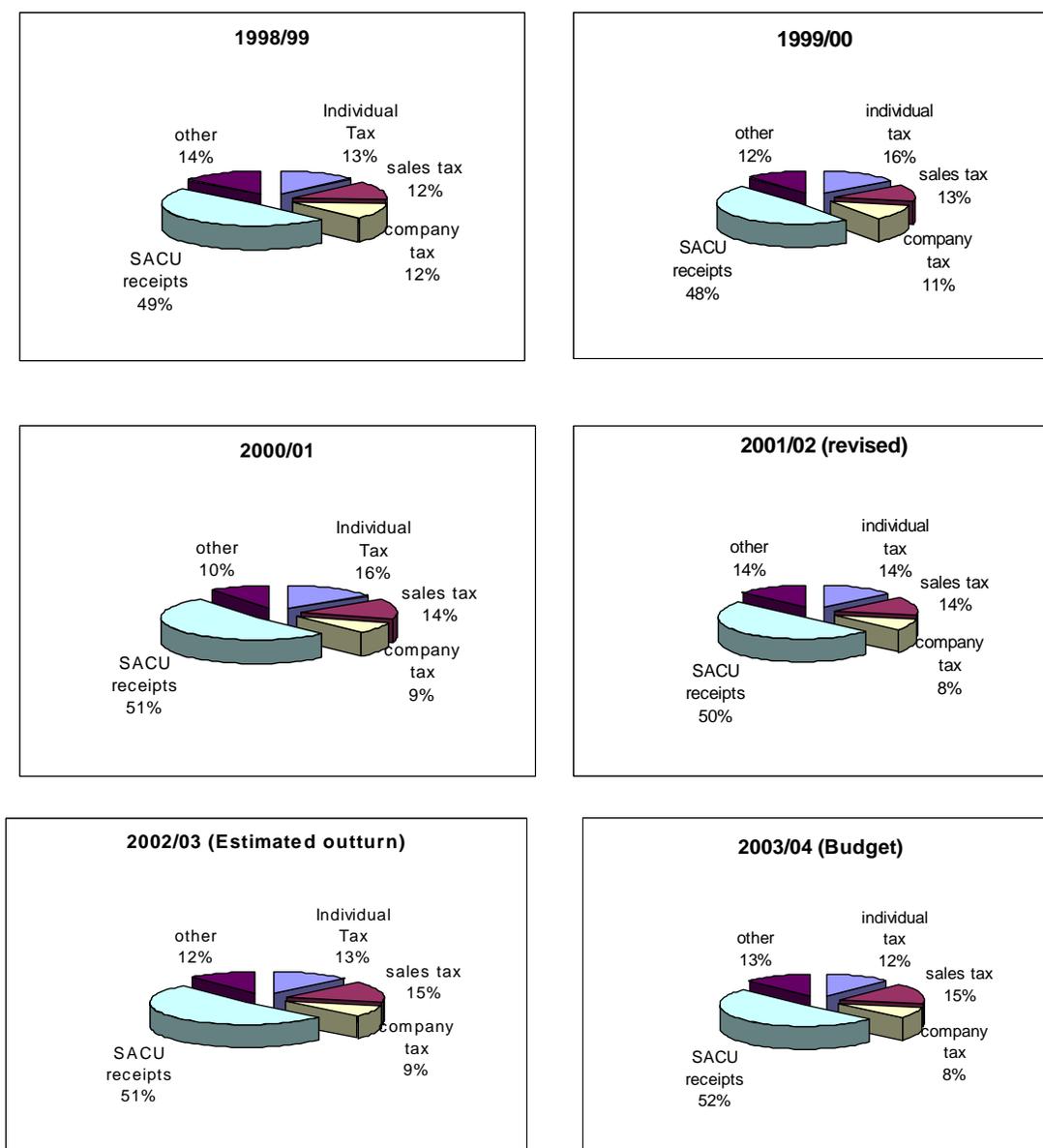
Under the review period (between 2000-2006), according to government there were some elements of control in expenditure. This was particularly evident on expenditures on personnel, subsidies and transfers and interest payments, which had minimal increases. Worth noting is that resources spent by government on financial intermediations (grants, subsidies and transfers) decreased from 6.1% of GDP in 1999/00 to 5.8% in 2002/03, allegedly freeing resources for other government activities.

Personnel expenditure continues to be the highest component of recurrent. Over the review period, it averages over 55% of total recurrent expenditure. A E5m fall in wages and salaries was observed in 2000/01 before increasing by 8.5%, 3%, 40% and 30% in the subsequent years. This increase was mainly caused by the 11.4% salary award, which was part of the salary restructuring process and the general increase in the employment of the security personnel, and the two circulars in 2003/04 and 2004/05 which increased the personnel budget substantially. The completion of this exercise resulted in a ballooned personnel share to well over 55% of the recurrent budget, which is highly unsustainable, and over 20% the advisable personnel budget for an economy of the size of Swaziland. This was a result of, however, government's ineffective implementation of the circulars and intended imposition on labour movements.

The goods and services component continued to be of major concern in Swaziland's public finance. Since 1999/00, goods and services expenditure has increased from E542.2million to over E2billion in 2004/05. Contributing to the increases has been CTA charges, consumables, professional services, and transport and communications. Goods and services for 2004/05 exclude the CTA deficit. Subsidies and transfers were relatively stable compared to all the recurrent expenditures, with an average increase of about 5% per annum between 1999/00 and 2003/04 before sliding by 58% to reach E246.7million from E591.5 million recorded the previous year. In previous years, problematic expenditure under this component was the ever increasing subvention to the University of Swaziland and Swaziland Development and Savings Bank, which was not accounted for in 2004/05 pending finalisation of supplementary data. The University always takes more than half the education budget. This is money allocated for scholarships and the general operations of the University. Interest payments have been increasing in line with previous years' loan commitments at an average of 37.4% each financial year.

Public Sector Revenue

Figure 1. Trends in Government Revenue



Source: *Annual Report, Central Bank of Swaziland, 2003/04.*

Neo-liberal adjustments and the informal sector

Table 2 Paid Employment by Sector 1995-2002

	Number of employees							
	1995	1996	1997	1998	1999	2000	2001	2002
Private sector	60,735	63,497	60,790	59,983	60,856	63,598	63,816	66,267
Public sector	26,300	26,367	27,392	27,238	28,159	28,495	28,791	29,091
Total	87,035	89,864	88,182	87,221	89,015	92,093	92,607	95,358
Growth	0.7%	3.3%	-1.9%	-1.1%	2.1%	3.5%	0.6%	3.0%
Informal employment		16,877	21,096	26,370	32,962	41,203	52,328	53,561
Total	87,035	106,741	109,278	113,591	121,977	133,296	144,935	148,919
Growth	0.6%	22.6%	2.4%	3.9%	7.4%	9.3%	8.7%	2.7%

Source:

Ministry of Economic Planning and Development, April 2005.

As Table 2 clearly illustrates above that the informal sector has been growing over the years due to, on the main, the neo-liberal policies adopted by the Swazi Government in their varying forms, like the privatisation of state assets, restructuring of the public sector and retrenchments in the both the public and private sectors. Since the political independence of South Africa and the end in the civil war (around early 90s) in Mozambique, there has been massive disinvestment or relocation of firms into the two neighboring countries, which has obviously had a negative impact for the investment trend in Swaziland. There is a high possibility that another census will present a shadowy scenario considering the retrenchments in various companies like Sappi-Usetu, Swaziland Posts and Telecommunications and Swaziland Railway, between 2002 and 2003.

CHAPTER TWO – SECTOR ANALYSIS of RESTRUCTURING and CASUALISATION

2.1 Introduction

This study seeks to focus its attention on three primary sectors, namely: the public sector, public enterprises/state-owned enterprises and the private sector. The general scan over the whole economy forms the primary focus of the study. The selection of all the three tiers of the economy was motivated by a need to ensure an even analysis of the restructuring process without leaving out certain elements and being skewed in the process.

In the public sector, the Ministries of Education, Health and Social Welfare and the Public Works and Transport are the selected public sector domains. Meanwhile, in the private sector, the agriculture and plantations as well as the commercial and retailing sectors were chosen. In both these particular sector cases of investigation will be drawn out to make a closer analysis of the trends and cases of casualisation and other such related trends. The state-owned enterprise considered for investigation/study is the SPTC (a telecommunications parastatal).

In the case selected above the rationale is plainly because communication forms part of the sectors in ‘the commanding heights of the economy’ in the sense that it relates to the basic survival of the workforce of the country and the poor. Moreover, communication demands a lot of attention because it seems to be attacked by the crises of neo-liberal restructuring. In sectors like the commercial sectors, in the private sector, the issue of casualisation is an everyday occurrence where even some companies (particularly MNCs) threaten withdrawal of investment when confronted with issues of fighting against casualisation.

1.2 Public sector analysis

Government Policy framework

The Swazi Government broad vision, which is a 25 year plan, which is a long-term framework within which short and medium term action programmes, would be formulated. The vision of the NDS commits the Swazi Government to a future which is “*economically viable, socially and politically stable*”. The NDS identifies 7 strategic macro-economic areas for its development plan:

- ✘ Sound economic management
- ✘ Economic empowerment
- ✘ Human resource development
- ✘ Agricultural development
- ✘ Industrialization
- ✘ Research and development
- ✘ Environmental management

Sector strategies of the NDS include:

- ✘ **Public sector management strategy**
- ✘ Macro-economic management strategy

- ✘ Physical infrastructure strategy
- ✘ Agriculture strategy
- ✘ Land and rural development strategy
- ✘ Economic services strategy
- ✘ Education and training strategy
- ✘ Population strategy
- ✘ Health and social welfare strategy
- ✘ Gender and disadvantaged group strategy

All these sectoral strategies are informed by the need to introduce greater competition and commercialization, to introduce market forces into various spheres of public life (in tertiary education, for example) and privatization where possible.

Sectoral Reports

Public sector management

Ministry of Health and Social Welfare

The Ministry of Health and Social Welfare is facing an all-round crisis that manifests itself in the collapse of the entire health system in the country. The country has five (5) government health centres qualifying to be called hospitals, namely; Hlathikhulu Government Hospital, Mbabane Government Hospital, Nhlngano Health Centre and the National Psychiatric Centre in Manzini.

Catering Section

In Mbabane, the kitchen unit has been privatized/out-sourced; being taken up firstly by a firm called Feedem, and then later to another called Royswa (which has royal links in terms of its proprietorship). The rationale presented by government behind the out-sourcing of the catering/kitchen unit in Mbabane was two-fold:

- a) There was a discovery that such units do not only cater for the patients housed in the hospital, but also was invaluable to other people who took the food out of the premises for their domestic needs.
- b) The quality of the food produced in that unit, including its cleanliness, was seriously in question, as it was said the hospital administration failed to properly administrate over the unit.²⁰

Quality of service

In interviews conducted, there has been a consensus around the quality of the service rendered by the kitchen unit, which has been considered to have improved immensely under private hands. This restructuring does, however, have a bearing on the accessibility of the health services to the poor segments of society because it is now paid E10-00 to be attended to in the Hospital as against the

²⁰ Interview with Senior Health Administrator in the Ministry of Health and Social Welfare, in Mbabane, 17th August 2006.

E1.50 to E2-00 that was being paid before the restructuring (in the early 1990s).²¹ However, some argue, the E10-00 is justified given the time and inflationary trends, which may also be true.

Sector Restructuring

According to interviews conducted there was an indication to the fact so far there has been no retrenchments in the health sector (particularly in health centres), but there are future possibilities of such retrenchments in the horizon. However, what is not clear is the fact that in those centres where private security companies have come in, how many people have lost their jobs who were previously employed by government.

In a majority of the health centres and hospitals there are possibilities of privatizing the catering, security, radiography, pharmacy and laundry departments since these are considered by government to be the non-core functions. In essence the security function has been privatized in only one of the above centres and has been taken by a private firm in Mbabane, whilst in the others there are still government employees manning security.

The argument presented in the process of privatizing this function has largely been that most items (including hospital equipment, workers' possessions) have disappeared, allegedly stolen by unknown individuals. According to government sources, the security function is to be privatized in all the health centres given the pressure that most workers are applying in this regard because they are complaining of losing their possessions. Concerning the dispensary or the pharmacy, the current situation is characterized by lack of medication, where patients are given doctors' prescriptions to go and purchase the medication from private pharmacies in town (at commercial rates). These rates are usual three times the subsidized rate by government in the hospital.

Union position

Unions representing workers' interests in this sector are the Swaziland Nurses Association (SNA) and the Swaziland Health Institutions and Allied Workers' Union (SHIAWU). The union that was interviewed was SNA and their position was clear in relation to the neo-liberal challenge as presented by privatization and out-sourcing. SNA is opposed to privatization, believing government has a hidden agenda in the whole restructuring exercise, since they say; government has not been consultative in the whole process. This was also mentioned by the interviewed public official, who also noted that indeed the process was not consultative enough to the unions.

SNA also noted the basis of the current wave of 'brain drain'; where above 500 nurses have left the country for greener pastures (mostly the United Kingdom) as the process of both restructuring and government's negligence to their needs. This has a negative effect over the quality of service rendered, as those left behind have to shoulder all the responsibilities of those who have left. Moreover, the union mentioned a problem of general frustration and low staff morale characterizing their members because of government's lack of interest in addressing their concerns, pertaining to working conditions and uniform for working.

International Community observations

Observations made by a World Bank mission identified an infrastructural problem where the building of the Mbabane Government Hospital has leaking roofs; shaky pillars and the whole

²¹ Interview conducted with various people including a patient, a government official and a union official.

buildings are showing a patchwork of constructions. On medical and other equipment it was observed that there is no inventory to review the condition of the equipment ward by ward. In the various wards visited the equipment was often out of service either because very old, or because inappropriate utilization and/or lack of maintenance had led to premature damaging. In all the equipment found at the hospital, only one item could be used in an upgraded hospital. Standing out was the shortage of skill as there is no adequate relation between equipments, installation and available skills.²²

The in-patient wards were found not to be suitable both for caring for patients in relation to their medical needs and with dignity. The over-occupation of medical wards and under optimized distribution of beds are limiting any attempt to improve the quality of care.

Ministry of Public Works and Transport

This ministry is responsible for all major government construction, maintenance and the provision of transport. It is divided into the Building, Roads, Central Transport Administration (CTA), the Aviation Departments and the Roads Transportation Board (inculcating the Swaziland Road Safety Council).

In this ministry government had intended to retrench about 500 workers who were considered to be 'redundant'. The bases for such a retrenchment by government was stipulated in the Government Circular No.8 of 1999, which sought to retrench mainly the daily paid.²³ However, government failed in that regard as the issue was taken to the Industrial Court by the workers' union, the Swaziland National Association of Civil Servants (SNACS), which reversed the process in favour of the workers. Mostly affected in this circular were the lower ranks of manual workers, and it was the plan of the government to convert these workers, some of whom had about more than 15 years of service as casual/daily paid workers, into being permanent government employees.

However, technicalities reported included the fact that the process ended up being a corruption-riddled exercise as some workers were told to go home whilst others were informed to 'hang around' until the issue of positions has been sorted, something which made the whole process technically flawed. This then cost the whole exercise as government ended up not proceeding with it. Even now, government claims the conversion and restructuring process is still on course, 7 years after. The whole issue and government perspective appears a paradox and confusion because workers are being paid yet they do not know what they are employed for.²⁴

Policy direction

On the whole, the NDS establishes the institution behind the public sector restructuring process: the Public Sector Management Programme (PSMP), which is used to develop the structure of the whole restructuring/casualisation process. The PSMP is a professionally set up body (set up by government) to generally improve service delivery in the public sector. This body has sourced the expertise of consultants in issues of conducting surveys to consider the opinions of Swazis on the

²² *World Bank Report, July 2006.*

²³ Daily paid workers according to government are those employed not on a permanent basis and are not pension able, and whose rate is not as per the proper rate of pay accorded permanent workers. Though most public officials do not want to accept the utilization of the term 'casuals', but from their definitions it still fits what we considered to be casuals. They preferred the terms temporary, daily paid workers.

²⁴ Interview with a middle management official at the Ministry of Economic Planning and Development, 28 August 2006.

efficiency of the public sector. Further, the PSMP justifies retrenchments and/or privatization on the historic structuring of the civil service according to colonial interests. It goes on to say because of the shift in the needs of the public service there has been a need to shift accordingly to suit what it calls, 'a development-oriented public service' committed to the interests of its citizenry (*Swazi Government, PSMP Policy Paper*).

Public Sector Cleaning

The cleaning section of the public sector, particularly in the Ministry of Public Works and Transport, Ministry of Housing and Urban Development, Ministry of Natural Resources and Energy, Ministry of Economic Planning and Development, Ministry of Enterprise and Employment and the Ministry of Public Service and Information, has been restructured and taken out of the core functions. However, worth noting here is the fact these people still remain government employees and they all did not lose their jobs in the restructuring process. All that happened was transformation of their service in two major ways:

- a) The number of hours they work everyday has been lowered (about an average of 3 hours daily) but, according to the public officials this does not have a bearing to their payments and broader benefits.
- b) The number of days they work have also been reduced (to about three days a week).

From this scenario public officials are comfortable to call these workers "part-time permanent workers", because they say these people are part-time workers of government whose status will be maintained on a permanent basis.²⁵

Roads Department

On the Roads department front, the government is planning to out-source this structure (employing about 800 employees in 2001, including engineers, technicians and other support staff) to be taken by sub-contractors with specialized contracts renewable on an annual basis. Unfortunately as to this date it is unclear as the specific numbers because a lot of jobs have been shed. That is in the pipeline, as government does not believe this function forms the core government functions.

Union position

According to SNACS casualisation is there, as there are situations where government employees are made to renew contracts on a 1 to 3 months basis, a situation promoting perpetual renewal and in a majority of cases the worker is not aware of the contents of the actual contract and its terms. In one case workers from the Blood Bank in Manzini have been working for more than 3 years as casuals without both pay and confirmation as permanent employees. Also, Secretaries to Ministers are generally regarded as casuals who have a clear job description, but work beyond it because they eventually find themselves attending to personal needs of the Minister they serve. Being desperate, they cannot resist such victimization.²⁶

²⁵ Interview with the Under Secretary of the Ministry of Public Service and Information, a ministry dealing with the employment of civil servants and their development, as well disseminating government information to the public, 28 August 2006 in Mbabane.

²⁶ Interview with the President of the Swaziland National Association of Civil Servants (SNACS), 11 September 2006.

According to SNACS there have been trends of casualisation resulting in retrenchments in public sector workers, where in one case a contractor that had assumed responsibilities of an out-sourced unit reduced the number of employees to a figure less than 5% of the original figure (those originally employed by government).

Central Transport Administration

On the issue of the Central Transport Administration (CTA), a department of the Ministry of Public Works and Transport whose role is to manage the fleet of government cars, service and maintain such a fleet in a fairly good condition, the following was discovered. Government is complaining of fuel wastage and pilfering, and continuous losses that the unit is facing which further worsens the deficit crises, as noted by the remark below;

“The operations of CTA have been resulting in deficit for a long time now. Financial year 2004/05 is expected to be the last year for this to happen. The CTA is projecting a surplus in the 2005/06 financial year. This will be possible because of measures taken by the Board of Management aimed at reducing the deficit. One of these measures has been the increase in the tariff charged to government. The CTA is however, still faced with challenge of improving the efficiency of their operation and controls. The increase of the tariff should not be seen as the solution to the problems of CTA” (Swaziland Government, 2004 Budget Speech)

However, the 2006 Budget Speech notes, on a discouraging tone:

“...CTA charges continue to a problem on expenditure control. Ministries have to be mindful of mileage clocked and compare it with the ceilings set per vehicle, which defines the budget to be appropriated. Government is not purchasing additional vehicles but only considering the replacement of boarded vehicles, within the resources accumulated in the replacement fund.”

Government goes on to say the core business of the CTA is to manage fleets and not to repair and maintain the vehicles, a justification for the intended restructuring of the unit. To try and limit cases of disappearing fuel (which has been dating back in the period of its inception, in 1967), government has allowed private security companies, just like the Ministry of Finance.

SNACS says CTA’s main focus is not to make any money but to provide a service towards ensuring a running, efficient and cost-effective fleet at all times.

Ministry of Education

This Ministry is responsible for the whole process of education in the country. Government recognizes the importance of education as a cornerstone for sustainable economic development of the country. The fundamental goal of education is to ensure that it produces citizens that are able to use existing resources to improve their standard of living. Swaziland is participating in the global Education For All (EFA) initiative whose agenda includes among others:

- Expansion of early childhood care and development
- Provision of free and compulsory education
- Promotion of the acquisition of life skills for adolescents and youth
- Expansion of adult literacy

- Elimination of gender disparities; and
- Enhancement of educational quality.

According to the NDS Government commits itself to improving the quality of education coupled with the reduction of subsidies in higher education and promotion of policies whereby the beneficiary of education is the one who bears the education costs. Moreover, it says tertiary education must be market-driven and more financially independent. The share of the national educational budget to tertiary institutions must relate to their cost-effectiveness. Again, it emphasizes, the efficiency and cost-effectiveness of the education system must be improved (Swaziland Government, NDS, 1997).

However, according to the Budget Speech of 2006;

“...it is estimated that of over 10, 000 school-leavers that join the job market every year seeking employment, only about 2,000 are absorbed into the formal job market. There is, therefore, need to expand the measures of dealing with the mismatch in demand and supply in the labour market. This will involve promoting the small and medium scale enterprises (SME) in promising sectors, encouraging locally manufactured goods, promoting vocational training and improving business conditions in the informal sector, community level enterprises and co-operative banks”(Swaziland Government, 2006 Budget, page 3.)

From the quotation above it is clear that the process of restructuring the education system, which has implications for the labour market, is only partially achieved as the demand for labour and its supply in the labour market is at disequilibrium. In fact, letting an important public service to the market forces of demand and supply is problematic since it is likely to result in this mismatch.

SPEED: Neo-liberal Action Plan

According to the Smart Programme on Economic Empowerment and Development (SPEED), concerning training and job creation, a concerted effort will be made to ensure that training and job creation go together. SPEED is a short term plan that evolved from ESRA seeking to operationalise the long term NDS. According to this plan, the education system must be reformed to provide skills that lead to self-employment and employment creation. This will be realized by, among other initiatives: re-orientation of the curriculum from the conventional academic perspective to the more practical and functional skill-based curriculum by expanding and strengthening the traditional practical subjects; strengthening the pre-vocational educational programme, still at pilot stage, and giving more support to skill development centres, which admit students who do not have a formal high school qualification.

Quality of service

A government official in this ministry decried the quality of service saying it eventually becomes affected when it comes to the employment of unqualified teachers. In some cases, it was mentioned by the official, that because of the scarcity of qualified teachers, the Teaching Service Commission (TSC) becomes compelled to employ unqualified teachers, that is, people who are not qualified into the teaching profession but who are mainly qualified in other areas of speciality.

Moreover, the schools in the rural areas usually lack facilities, one thing that makes qualified teachers to avoid going to those schools (mainly preferring urban schools), wherein principals in

those schools tend to employ either their relatives, including their children, who are relatively unqualified in the teaching field. Ultimately, quality of education is seriously compromised. The Swaziland National Association of Teachers (SNAT), also agreed on the shortage of qualified teachers in Swazi schools, with a pupil/teacher ratio in the primary schools is 32:1, while in the secondary/high school is 18:1.²⁷ This shows a marked imbalance/disequilibrium in the teaching service.

Private schools

The position of government on this issue is not clear. This is said because government seems to be offering lip-service to this component of education, without any practical operational mechanisms. Government says it is not 'happy' about the emergence of these schools, but some have been there for quite some time and there is nothing they can do to stop them. Unfortunately, the ministry does not seem to make a distinction between illegal private schools and those that are legal and provide quality education (used largely by the middle and upper classes).

Table 3: No. of Primary schools teaching staff by qualification, citizenship & type of school in 2004

Citizenship of Teacher & Type of School	Graduates	Post Matric with Training	Primary Higher Certificate	Primary Teacher Certificate	Primary Lower Certificate	Primary Lower Upgrading Certificate	Uncertificated	Total
Govt. Schools								
Swazi Citizens	166	397	366	271	101	75	43	1419
Non-Citizens	14	26	11	3	1	0	1	56
Total	180	423	377	274	102	75	44	1475
Aided Schools								
Swazi Citizens	698	993	941	881	550	302	541	4648
Non-Citizens	13	15	7	8	1	3	8	49
Total	711	1008	948	889	551	305	549	4961
Private Schools								
Swazi Citizens	60	43	52	47	42	23	47	314
Non-Citizens	8	0	0	0	0	0	0	8
Total	68	43	52	47	42	23	47	322
All Schools								
Swazi Citizens	924	1433	1359	1199	693	400	631	6381
Non-Citizens	35	41	18	11	2	3	9	113
Grand Total	959	1474	1377	1210	695	403	640	6758

Source: C.S.O. Education Statistics 2004

Table 4: Teaching staff by qualification and subjects taught in 2004

Subject taught	Graduates trained	Graduates untrained	Post matric with training	Pre-matric with training	Uncertificated	Total
Agriculture	144	5	119	0	1	269
Commercial subjects	57	24	229	1	3	314
Economics	20	9	19	1	0	49
English Lang.	373	12	336	0	5	726
English lit.	181	7	158	0	3	349
French	16	4	8	1	0	29
Geography	196	5	232	0	8	441
History	287	5	215	3	6	516

²⁷ Central Statistics Office, Swaziland Government, *Education Statistics, 2004*.

Home economics	85	6	68	3	1	163
Mathematics						
Religious	230	73	401	0	7	711
Knowledge	205	3	113	1	0	322
Science						
SiSwati	250	70	354	1	6	681
Technical subjects	192	6	305	0	2	505
other subjects	11	1	174	0	0	186
	62	18	51	1	5	137

Table 5: Secondary schools teaching staff by qualification, citizenship and type of school in 2004

citizenship of teacher & type of school	graduates trained	Graduates untrained	post-matric training	pre-matric with training	uncertificated	TOTAL
<i>Junior Govt. schools:</i>						
<i>Swazi citizens</i>	10	0	46	0	1	57
<i>Non-citizens</i>	1	0	0	0	0	1
total	11	0	46	0	1	58
<i>junior aided schools</i>						
<i>Swazi citizens</i>	42	5	177	0	6	230
<i>Non-citizens</i>	2	0	4	0	0	6
Total	44	5	181	0	6	236
<i>High govt. schools</i>						
<i>Swazi citizens</i>	765	55	681	5	8	1514
<i>Non-citizens</i>	35	3	23	0	0	61
Total	800	58	704	5	8	1575
<i>high aided schools:</i>						
<i>Swazi citizens</i>	944	69	748	3	8	1772
<i>Non-citizens</i>	61	19	34	1	2	117
Total	1005	88	782	4	10	1889
<i>all secondary/high</i>						
<i>Swazi citizens</i>	1761	129	1652	8	23	3573
<i>Non-citizens</i>	99	22	61	1	2	185
GRAND TOTAL	1860	151	1713	9	25	3758

Source: Central Statistics Office, *Education Statistics, 2004*.

In the above tables there are categories of graduates who are either trained in the teaching profession or untrained. About 9.5 % of the teachers at primary school level are casual or employed on a temporary/contract basis. These are the teachers:

- These are Ordinary Level holders (equivalent of Matric) waiting to enroll in tertiary institutions, who may be roped in for various reasons.
- People who might have not finished school but for some reasons they may be called in by the principals to teach, mostly where they are relatives to the school head and this usually happens in the rural schools that do not attract professional and qualified teachers.
- Those who have underperformed in their O'Level, and are not about to enroll in any tertiary institution.

At the Secondary/High school, less than 1% (about 0.9%) are uncertificated, with the probable reasons raised above as the background. Similarly, there are untrained graduates who do not have

teaching qualifications, per se, but have specialised training and are largely on a contract/ casual basis (usually a contract of 1 year, renewable).

Box 1. Experiences of a Qualified Contract Teacher

"Although they say a half is better than nothing; it is bad when you have no clue when you will receive that half, and by the time you get it, it is covered with dust.

The above is true when you are a temporary teacher in Swaziland, especially a qualified one. Graduates are informed that posts at Secondary and High Schools are not easy to get, thus they must (take the half) while away time by teaching at primary school.

This is more than a privilege to the unqualified O'Level holders, who applaud the Ministry for such an opportunity. They endure all the hardships in teaching and the little pay; just to make ends meet.

On the contrary, there are SPC (Swaziland Primary Certificate), PTD (Primary Teachers Diploma), STD (Secondary Teachers Diploma) and PGCE (Post Graduate Certificate in Education) holders who are made to suffer the same fate as O'Levels, yet that is not supposed to be the case.

The Teaching Service Commission (TSC) has made it appear as a privilege for qualified teachers to be employed by government, not to mention 'offering' them places to teach at primary schools.

Infact, the word temporary should be replaced by the word contractual or casual, because these qualified teachers are employed on a 1 year contract. This is done, I believe, to avoid the Industrial Relations Act of 2000 provision that no person shall be employed temporarily for a period exceeding six (6) months. So, you cannot say the teachers are temporary, but they are contractual. Another problem is this contract set-up is that a contract is signed when the TSC decides to embark on a take –on exercise.

Not only that, the teachers are not given copies of the contract no are they are allowed to digest its contents. Another very disturbing element of being a contractual teacher is that you get paid only when all the ministries have done their part in processing your salary.

Sometimes it takes up to six (6) months for these teachers to get their first pay in a calendar year; by which time they have accumulated debts to an extent they are left with nowhere to borrow money.

All of these problems, especially the financial ones, lead to poor performance by the teacher; due to the inconvenience caused by being cash-strapped.

It has been promised now and again that government is engaging on a normalisation process, to ensure the employment of all qualified teachers and phasing out of O'Levels in the teaching profession. However, if this exercise has been initiated, it is going at a snail pace. What we would like to see done as contractual teachers is the following:

- i. Early signing of employment contracts, in the school calendar, to ensure efficiency in delivery at the workplace.
- ii. Getting paid early in the year, after signing contracts, that is after, at most, a period of 3 months.
- iii. Being allowed to keep a file/copy of the employment contract, after signing it, to digest its contents later.
- iv. Being recognised by the TSC, by listen to us, doing collective bargaining so as for them to get our views on how things could be better for us."

Quality of Education

During an interview with SNAT Secretary General it was apparent that the education quality in public schools and in a majority of the illegal private schools is non-existent. He further said in order to rectify this problem there is a lot that needs to be done in terms of:

- Uniformity of infrastructure
- Uniformity in facilities
- Accessibility to some schools especially in the rural areas
- Training of teachers
- Clear policy regarding pre-schools
- Clear policy on private schools

He also mentioned unequivocally that quality public education should and can be free as opposed to the issue of Orphaned and Vulnerable Children (OVCs) Programme, which according to him is a total flaw. He further said if the above challenges were addressed coupled with a clear fiscal discipline from government as opposed to the rampant corruption prevalent today. As a matter of fact he lamented the inconsiderate expenditures of the monarchy, which are a cost to the nation.

2.2 Private Sector

The Commercial Sector

This is one of the vulnerable sectors and where the neo-liberal restructuring has largely been prevalent. It is also one of the sectors that provide employment to a majority of manual and unskilled labour. In numerical terms, a third of the staff of most of the companies in this sector are casual. Many of the workers have little employment protection, retrenchment are fairly easy and widespread. Most casual workers have little opportunity to move into permanent positions, despite the fact that many have worked as casuals for years.

MNCs, especially those in Africa and those in Southern Africa are at the receiving end of products and services, and this is true in comparison to MNCs in the North that is, Australia and the United Kingdom. Southern Africa is the dumping site of products, and the conditions of service for workers in the advanced countries is far better than those of workers in Southern Africa. The aspect that when trade unions are strong and economies go down and investments withdraw is a myth, no MNC will withdraw, because their goods are charged at rates equivalent to the South African Rand, no matter how poorly performing the economy may be. For instance, in Zimbabwe though the economy is failing, there are still MNCs making profits in that country, because they are charging rates per product according to the Rand and not the local weak currency, making it expensive for the domestic market (*Interview with L. Modige, Collective Bargaining Unit, SACCAWU*).

Governments are responsible for legislating friendly labour relations to the MNCs. They seek to give space to bad worker environment, which is far more appalling than the developed countries.

This sector suffers from one or two of those forms of flexibility, namely; a) work process flexibility, b) wage flexibility and c) numerical flexibility.

Definitions:

- a) Work flexibility – refers to the way in which production and grading is organized. For employers, it refers to the ease with which they can shift workers within activities; alter hours of work and work practices. It includes such aspects of multi-skilling, job rotation and different forms teamwork.
- b) Wage flexibility – refers to the extent that wage rates will change as employers' demands for new workers' changes. It also refers to the shifting from a uniform pay system where wages are linked to the individual performance. An example of this is productivity bonuses.
- c) Normal flexibility – refers to the ease with which employers can hire workers when needed and free them when they are not needed. Typical forms of numerical flexibility include the use of casual or seasonal workers. All the situations undermine solidarity in the shop floor.

Union position

SCAWU is a union, which unionises workers in the commercial/retail sector. It unionises at Shoprite, Spar, Pick n' Pay, sole trader shops (some of which are of Asian ownership) and mostly all furniture shops.

The general scenario on casuals and casualisation in Swaziland

Casualisation has got a history in the retail sector; Shoprite inherited it from OK Bazaars. Underpayment is rife in the retail sector; there is a downward mobility of wages. This mobility of wages is the main bone of contention with management.

On the average, 64 are permanent per shop at Shoprite, with 150 being casuals. The permanent employment is going down due to death and retirement. The local management is alleged to be employing more than the stipulated number of employees in casuals outside the instruction of management in South Africa. In stores like Pick n' Pay, the workers are afraid to declare the employment or casual status, for fear of victimization from the employer. At Builders' Hardware and Nhlanguano Spar, casuals on average are 20 and at Evukuzenzele (a chain of retail outlets co-owned by Moses Motsa, a national tycoon) casuals are minimum but salaries are seriously low. In the Indian shops, workers pretend as if they permanent because they fear being fired. Some employees have been in casual employment for 3 to 10 years.

Flexible labour standards

In South Africa, SACCAWU has been engaged in the struggle of converting these flexi-time workers into being permanent workers. In the Swazi case, SCAWU Secretary General says:

"...Shoprite threatens to close down if we as a union embark on such an issue."

So again, according to his own words:

"It is better to preserve what we have, than to have employers move out of the country."

Inspection System

The inefficient public inspection system by the Labour Department causes a majority of these problems like casualisation in small shops other than those of the multi-nationals. It has been a priority of the union to fight for the revamping of the inspection system. Key suggestions have been made to come up with an integrated inspection system as opposed to the traditional approach.

The strategy of engagement

Those employers who recognise the union may entertain individual cases if workers have been casuals for a long time. CMAC and the Department of Labour are bound to make an inspection to check violations. The union has to write up a request for a general inspection, but the Labour department has been lax in strengthening the inspection.

Role of CMAC

The union has recommended CMAC because it has helped in dispute resolution; it is more effective than the previous approach of utilizing the Industrial Court. The most daunting challenge is that the dispute filing process is too technical for the individual worker; against a background where above 50% of workers in the sector are not unionized. But a casual or un-unionised worker comes to the union the latter charges a fee for services rendered, something which greatly compromises the relevance of the union in defending worker interests.

On the whole SCAWU rejected the campaign of making flexi-time workers to be permanent, because the union tends to accept the ‘half a loaf is better than nothing’ concept, a very survivalist approach to issues and very detrimental to union survival.

Co-operation with other unions

In the retail sector there are three unions namely SCAWU, CAWUSWA, ACCIWU

The origin of the splits: It is important to note that all these unions split from SCAWU. SCAWU has been there since 1983. CAWUSWA said it will provide permanent employment to the workers. It is affiliated to the SFTU, which is steeped towards ‘social transformative trade unionism’ in word. SCAWU is unionised under the SFL, which uses more of a service approach to membership and issues. ACCIWU works more as a labour broker and is not affiliated to any trade union centre.

According to SCAWU no worker will benefit where there are two – three unions on the same platform. The other two unions according to SCAWU are brief case trade unions because they just unionise from a small a number as 6 workers and then call themselves a trade union. ACCIWU splintered from SCAWU, whilst CAWUSWA was formed by SFTU to contest membership from SCAWU (as the latter is an affiliate of the other federation – SFL).

Moreover, according to the brief background by SCAWU – Secretary General, who rules out any possibilities of joint programmes and campaigns with the other contending unions in the industry, there are no possibilities and projections of any merger in that regard.

Wages in the retail sector vary according to respective retail outlets, though Swaziland does have Wages Council regulated by a Wages Order. The retail gazette in the country is characterized by improved conditions of service and wages when compared with other industries and /or sectors. Chiefly, what has made the non-uniformity of wages is that of political approaches of the various (two) federations. The SFTU aligned unions do not recognize the wages council, simply dismissing it as a structure that is not part of their broader socio-economic agenda. Meanwhile the SFL, with SCAWU as an affiliate, believe these are some of the structures worth engaging in the pursuance of defending worker interests.

SCAWU also believes that it is important for workers to consider joining unions which have a history of leadership, have traceable organizational achievements as well as recognized and established office infrastructure. Truly, this multiplicity of trade unions in the same industry has and will continue to erode gains previously made because there is no common purpose but high competition and hostility.

SCAWU view on casualization

SCAWU agrees that casualisation is a global phenomenon, having emanated from the developed world and because of those countries low unemployment rates the developed world do not view it as a problem. But to the LDCs (less developed countries) it is a problem, wherein SCAWU views it as an inevitable challenge that cannot be eradicated because it tempers with the economic processes at macro level. This is still part of the survivalist cum – conformist approach of the union. Further the union observes that there is no remedy out of this situation because of the economic crises of the country; “...therefore we see no means of fighting this global crises, since there is a difficulty in Swaziland to engage in sectoral and cross-industrial forums”, (*Interview with SCAWU Secretary General*).

MNCs in Swaziland are between 60-70% of the outlets currently in the retail sector. There is Shoprite, Spar, Score and Pick n' Pay. Furniture shops in the country do not use casuals.

- a) Pick n' Pay pretend as if all workers are permanent, the problem is unveiled when the workers are fired or having a grievance, and that is the only time that the union knows that these workers were casuals.
- b) Shoprite, where more than 54% of the staff are casuals.
- c) Furniture shops, as mentioned, do not use casuals.
- d) Spar, where slightly above 50% are casuals.
- e) Evukuzenzele, all are permanent but are underpaid, earning on the average range of E200 – E600 per month.
- f) Individual employers, under this category only one employee is permanent and the rest of the staff is changed after three to six months. On an average basis.

Link between improved conditions of work and democracy

There is no link between worker-improved conditions of employment and democracy, according to SCAWU. The improved conditions are largely pushed by MNCs through policies, which cut across the retail sector.

SCAWU on research and education

The union does not have any capacity-building mechanisms but uses gatherings called 'Vuselas' (revival meetings), which are at regular intervals to check progress and educate members about the union. This exercise is aimed at reviving the shop floor. As per the need arises flyers are also used to mobilize for SCAWU. The Secretary General performs all these tasks.

Key observations

Unions in southern Africa are not strong a force, giving a space to the chain multinationals to exploit, and that is why SACCAWU has established a MNCs Project aimed at capacitating unions in the region, sharing of experiences and information and coming up with way forwards and common approaches in fighting the MNC onslaught. The payment rates to employees are different in Swaziland than in South Africa. In the region, South Africa has better payment rates. The flexi-time permanent/temporary/casual has been turned at least into a permanent casual in South Africa. SACCAWU seems to have a more systematic strategy of engagement as compare to its sister unions in the region, thus because of the relative capacity of SACCAWU, the MNCs are considering a strategic move from that country, but not moving their investments in south Africa. This move is, however, not informed by the strength of the union only, but also the laxity in legislative terms in the neighboring countries of South Africa.

2.3 State-Owned Enterprises

Swaziland Posts and Telecommunications Corporation (SPTC)

This sector of the economy is one, which is undergoing various forms of restructuring, like outsourcing, corporatisation and downsizing. According to the Privatisation Road Map, the SPTC is in the first lane priority cases for restructuring. According to the Road Map, the main aim of the

restructuring exercise is to have a well-regulated, modernized telecommunications with broadband services, which is essential for growth to a modern economy.

The mammoth question is: will restructuring, retrenchments and privatization produce a modern economy? But the SPTC is saying its main aim is to return to profitability. In 2004, the SPTC made negative returns in its revenues, a downward trend which necessitated the process of downsizing and restructuring.

SPTC believes returning to profitability will be attained by:

- a) Maximizing revenues and minimizing costs
- b) Suspending capital expenditure through restructuring
- c) Meeting all financial obligations

The SPTC is said to be suffering from excess staff, high loans and virtual it will be facing insolvency if no restructuring process is prioritized. According to the Road Map:

*“The priority needs of SPTC are an experienced and qualified Managing Director and Board of Directors, strategy, technology, good labour relations, expert team for strategy, **restructuring**, identification and securing of a strategic partner and achieving equity and turnaround” (Privatisation Road Map, 2006, p.5,).*

According to information gathered, restructuring has been there in the telecommunications and postal services, but it mostly affects the lower ranks, mostly unskilled and semi-skilled workers. In 2004, the Marketing Unit was upgraded into a separate department, reporting directly to the Managing Director. This restructuring process is one which expands at the top whilst narrowing at the bottom. This is because most people have been brought in from middle to top management, whilst unskilled labour was casualised.

Further it has been established that there is a lot of fraud in the company that is one of the main justifications for the restructuring process by management. Undoubtedly, fraud and corruption usually happen at higher echelons of most organizations, as was the case with SPTC. The nature of the problem at SPTC is such that it happens through individuals within management form private companies to tender on work within the company/parastatal.

Union position

The SPTC- Workers Union is a union organizing in the communication industry, largely unionizing workers under the Swaziland Posts and Telecommunications Corporation. The union is affiliated to Union Network International (UNI).

Most workers doing unskilled labour are the ones suffering from being casualised. The Telecommunications Bill is in Parliament and it is moving on the separation of the Postal from the Telecommunications Department.

The union is against this because it will weaken the strength of the union, but they have anticipated this scenario and are moving forward to organizing the whole communication industry. This will require, according to the union an organizational renewal, where they intend changing their name to the Swaziland Communication Workers Union. The move by management is viewed by the union as an intention of weakening the union strength, by means of out-sourcing of non-core activities, introducing voluntary retirement packages, hiring casuals in the out-sourced departments. The casuals hired are non-unionisable, but the union is moving with a position paper on the unionization of casual workers.

Mostly, labour brokers allegedly having individuals within the management as major shareholders to provide atypical employment provide casuals. The union managed to successfully stop this exercise. Further, the union says casuals should be stopped because the work they are doing is permanently available (a justification for the permanent work demanding permanent workers) and even more frustrating to the workers is that the permanent staff does the training of these very same casuals, though without any incentive for the extra work done. In simple terms, the union views the perpetual renewal of contracts (3 months basis) as a complete waste of time, effort and resources, yet the work the workers do is permanent.

Undoubtedly, the rates of pay for casuals are far less than payment for permanent staff, something which motivates management to utilize casuals as compared to permanent staff. On average, at SPTC, casuals are paid E42/ per day as compared to E69/day for permanent staff (*Interview with SPTC-WU Secretary General*).

There have been various futile attempts in the past, which were meant to move the company into private hands. There has been the Malaysia deal, which unfortunately failed; the Starcom (a United States-based communications outlet), then the recent Spirit Telecoms deal, largely being pioneered by top government officials. In the last deal, involving Spirit Telecoms, the Head of State in the country, King Mswati III (codenamed *Umbele* in the deal to conceal the political clout and legitimacy his presence brought into the deal), was supposedly offered a 10% shareholding.

2.4 Sugar Industry

“The most talked-about development during this review period was without question the implementation mid-2006 of the EU sugar reforms: under this new regime prices paid for Swazi sugar exports are expected to drop by 36% cumulatively over a four-year period which began in July” (*Swaziland Review, Ministry of Enterprise and Employment, page 41*).

Far-reaching implications for the above scenario are expected which result in restructuring of the workplace, job losses and sometimes affecting the package of workers in the employ. From the workers’ perspective, the restructuring of the sugar industry as a whole has shown the ill-preparedness of management and government in speedily and appropriately responding to the challenges posed by the global market reforms.²⁸

Industrial Background

The people and the economy of Swaziland are heavily dependent on the sugar industry. The dominance of sugar or sugar products is evident as about 40% of the country’s exports are either sugar or processed food products for which sugar is an input. For example, sugar growing and milling comprises 37% of the total agricultural wage employment, 17% of total private sector wage employment, 18% of GDP and 24% of manufacturing output.²⁹ In 2006, permanent employment

²⁸ Interview conducted with a worker at Illovo Sugar Corporation in Big-Bend, responding on the workers’ perspective concerning the restructuring of the industry and the EU reforms.

²⁹ Dr. Michael Matsebula, Chief Executive Officer, Swaziland Sugar Association; *Swaziland in the context of the EU sugar regime: Briefing to the ACP-EU Joint Parliamentary mission to Swaziland, 10-11 April 2006*.

within the two major milling and cane growing companies amounted to 3, 275 people, whilst seasonal employment totaled 2, 120 people.

The Royal Swaziland Sugar Corporation (RSSC) is one of the largest business groups employing approximately 2, 300 permanent staff (Government statistics). It was an outcome of the merger between the Simunye and Mhlume Sugar Estates in 2004, and it produces two-thirds of the country's sugar from 15, 625 irrigated hectares of land 'leased' from the Swazi Nation and a further 5, 020 hectares managed on behalf of third parties, delivering 2.3 million tones of cane per season to RSSC's two sugar mills. The Royal Swaziland Sugar Corporation (RSSC) Limited that owns Mhlume and Simunye Sugar Estates and Mills is 50% controlled by Tibiyo takaNgwane, with a secondary shareholding by Actis Capital, a British based private equity investor in emerging markets, and Booker Tate.

Another critical player in the sugar industry is the Illovo Sugar Corporation at Ubombo Ranches. Of note, however, is the significant presence of South African firms in these Swazi establishments. For instance, the South African Illovo holds a 60% stake in the Ubombo Sugar Mill and Estates along with the Tibiyo takaNgwane that holds 40% on behalf of the royal-led Swaziland Government.

Tongaat-Hulets has farming operations at Tabankulu. Crookes Brothers Limited also owns sugar plantations through two companies incorporated in Swaziland, namely: Crookes Plantations Limited and Bar J Ltd. In total, estate farms and large scale commercial farms account for 77% by area and 81% by production of the total area used by the companies.

Companies lease land from the Swazi Nation Land (SNL). For example, RSSC leased four farms totaling 20 761 hectares for 25 years from 1 January 2003. Other farms and portions of land were leased to subsidiaries of RSSC for 25 years from 9 September 1983 and they have the right to renew the leases for another 25 year period. All future costs of leases after 2005 came to total of E 11 179 000.

Overall export earnings from sugar nearly doubled in the year 2003. These earnings rose by 64% from E584.7 million recorded in 2002 to E 956.3 million in 2003. This is mainly because of the increased production volumes, which were in turn necessitated by favourable climatic conditions, expansion of area planted as some citrus plantations resorted to sugar production with increased small scale farmers venturing into sugar-cane production. The 8 year average percent share per commodity for sugar in the period between 1996 – 2003 is 8.98%, being the fourth largest from miscellaneous edibles, other exports and consumable finished goods in the values of exports in that period (Development Plan 2004/05 – 2007/08).

However, despite the tremendous increases in sugar production and the average value of sugar as an export (the 64% increase in export earnings), there have been serious setbacks to the industry which has cost the overall performance of the economy. The reduction in SACU tariffs could impact negatively on the domestic front as cheaper imports from other sugar producers enter the Swazi marketplace. From an agricultural point of view, the sugar industry in Swaziland has declared as its main objective the increase of productivity at minimum cost as a means of cushioning itself against these challenges presented by the global neo-liberal front.

According to the Swaziland National Adaptation Strategy in response to the EU Sugar Sector Reforms of April 2006, by the Swaziland Government, Swaziland faces competition from subsidized EU sugar in Eastern and Southern Africa. The majority of revenue is derived from road-based export sales of refined and Very High Pol (VHP) sugar to the Southern African Customs Union (SACU). Preferential price exports of raw sugar to the EU (via rail and then ship) account for 36% of all sales revenue. EU-ACP raw sugar protocol market access is 120 000 tons and attracted a price of € 523,70 in April 2006. a sugar levy applied to this protocol sugar generated € 3.6 million for the Swaziland Government in 2005. Thirty-thousand tons of Special Preferential (Raw) sugar is also sold into the EU at a preferential price of € 496.80.

Despite the increased volumes, export earnings in the period 2005/06 fiscal year, from both international and regional sources slumped by 26.6% to E 557 million, with the strong local currency cited for the decline in real terms value of export receipts.

The EU Sugar Reforms: It's Impact on Workers

From 2006/07, if the proposed EU Sugar reforms are implemented, the estimated loss in foreign exchange increases from E3.2 million in 2006/07 to E 29.8 million in 2009/2010. This figure is roughly equivalent to the European Development Fund (EDF) annual aid allocation to Swaziland of € 31 million up to 2007.

Although the country maintains preferential sugar markets in the European Union and the United States, earnings from these markets were significantly slashed by, yet again, the appreciation of the local currency. Moreover, it is mentioned that there are expectations with government that, the reduction in the EU price of sugar will significantly reduce revenues of the sugar industry. Issues of globalization have been cited to be at the fore of the debates in the industry, resulting in the new sugar regime. Obviously, a reduction in revenues in the sugar industry results in reduced tax revenue for government.

The National Budget Speech of 2006 noted (with regard to the EU reforms):

“As the trade arrangement for preferential markets and prices under the Cotonou agreements takes a new form, the sugar industry has been forced to undergo massive operational restructuring to remain competitive at the beginning of the year 2008. As the Rand continued to gain strength and inflation remained low, more tension was created in the industrial relations climate. Exporting companies faced much strain which saw most of them embarking on drastic cost-cutting measures and no salary increases” (Budget Speech, March 2006, p2).

The observations made above by the Budget Speech have two critical elements to note:

- The need for the sugar industry to undergo ‘massive operational restructuring’ in order to remain competitive.
- Because of low key macro-indicators (like appreciating local currency and low inflationary rate) there was tension in the industrial relations environment, resulting in company closures and no salary increases.

Both these developments above are inextricably intertwined because in order for the industry to remain competitive it has to restructure, something which in most cases have consequential effects of lay-offs, retrenchments and even closures.

Company restructuring and Retrenchments: Impact to workers and the poor

SAPWU (Swaziland Agricultural and Plantations Worker's Union) members think it is hard to fight, stop and resist retrenchments when dealing with an employer with vast financial resources like those companies in the sugar industry in the country. Probably by way of justifying itself, and aver the blame laid by workers, the management at Illovo is accused of presenting itself as the saviour or Messiah and the EU as the devil hell-bent on denying workers their means of livelihood.³⁰ Seemingly, the way the companies (all of them in the industry) have presented the justifications of the retrenchments and restructuring is both as a direct result of the EU sugar reforms and in preparation for a future industry trajectory based on much higher volumes of raw sugar exports to the EU at lower prices. Fear of further retrenchments exists and the companies want to be leaner and meaner despite trade unionists agreeing to wage increase restraint in recent years.

Attrition and retrenchment exercises at the Ubombo Ranches have taken shape, since ninety-three (93) were retrenched from the company at the end of July 2006. workers have suffered serious inconvenience because of the timing of the retrenchments since school fees were already paid at this time of the year and parents/workers have to relocate their children in the middle of the school year as they exit.

Significant retrenchments were effected after the Simunye and Mhlume Estates were merged under one group in 2000. The process of 'harmonizing' conditions of employment at the two operations has been a source of concern for SAPWU, mainly because it is out of this 'harmonization' process that there were lay-offs and eventual retrenchments.

On 14th October 2004, the RSSC Board of Directors approved a Revenue Enhancement and Cost Reduction Programme, entailing short, medium and long term strategies to ensure the sustainability of the company. A special management brief dated 9 December 2005 explains:

"The challenges and uncertainties facing RSSC in the future include a deteriorating profit situation. This is due to the reducing sugar prices as a result of the European Sugar regime reform and the WTO liberalization, as well as stiff competition for access to Southern African Customs Union (SACU) and the Common Market for Eastern and Southern Africa (COMESA). It is estimated that the EU prices will reduce the RSSC profits before tax by an amount of in excess of E 300 million over the next five years. Furthermore, while enjoying relatively low unit costs in international terms, RSSC still cannot compete with industry leaders such as Brazil".

Critical to this Revenue Enhancement and Cost Reduction programme is, firstly, revenue enhancement by means of greater access to markets, improved marketing, and value added activities and by-product value addition. Second, is productivity improvement and cost reduction, mainly about reducing Corporate Social Investment costs, introducing technological changes and

³⁰ Interview with SAPWU leadership on the EU sugar reforms and how the company/management responds.

continuing to pursue outsourcing opportunities. Thirdly, staff establishment reduction through one round of redundancy and converting people from permanent to seasonal employment affecting 700 people/workers in 2005 and another affecting a further 481 workers in 2006. Lastly, the programme sought to mitigate negative effects and concerns through outsourcing and rationalization (e.g. off harvesting), expiry of fixed term contracts, retention of skills and redeployment of “senior” employees, counseling and life skills workshops and communication strategy.

The Union Response

SAPWU had taken the first staff reduction exercise to the industrial court and received a judgment that influenced and guided the second exercise. SAPWU had also tendered to take the security division due for out-sourcing, however, they were passed up on grounds of capability and capacity, with Fidelity Springbok (a private well established security firm) being selected instead and awarded the tender. SAPWU also indicated that RSSC was good at flouting agreements and policies concerning the harmonization of conditions of service. Following restructuring and retrenchments, although job descriptions have remained the same workers are now somehow multi-skilled and end performing the work that several employees would have performed in the past.

Reduced Social Benefits to Workers

A more pressing set of restructuring concerns for SAPWU members (and probably all the affected workers) is the issue of reduced social benefits, increased personal taxation and the proposed sale of worker houses. Social benefits under threat include:

- A. **Health**:- as many retrenched workers will no longer have access to Anti-retroviral therapy (ART) after retrenchments and if there is money to buy ARVs, health facilities may be far to reach outside the sugar belt area. Even for workers that remain employed at the Simunye and Mhlume operations, the more comprehensive clinic and hospital care provided by the company has been relegated to a ‘panado’ clinic service, where ARVs are obtained from public health facilities and where the quality and timing of the ambulance transport and care has already been brought into question through the death of a child.
- B. **Education for workers children**:-schools within the sugar belt area are considered to be of a considerably higher standard than that elsewhere in the country.³¹Following retrenchments, workers are concerned about the quality of education will receive upon relocation to other schools.
- C. **Other benefits**:- many valuable benefits were previously provided ‘free’ to employees e.g. housing, medical and food rations. Converting these benefits to cash payments as part of their remuneration has led to a new taxation at a rate of 33% being applied. Management has also proposed that mill worker housing be sold to workers who would have to secure loan finance. There are serious concerns in these regard about the affordability and risks involved in this route during a time of possible retrenchments.

Impact of Restructuring on SAPWU

³¹ This comparison is made in full understanding of the fact that students from private and high fee schools around Mbabane and Manzini take the lead, and the Sugar Belt Schools products follow.

SAPWU has been heavily affected by these retrenchments and seasonalization of workers. At Ubombo Ranches approximately 2500 workers are Union members and the majority cannot pay the E27 subscription fee. Instead, subscriptions range from E2, to E7 and E27 ultimately.

At the Mhlume and Simunye operations, union subscriptions to E4986 divided by the subscription of E9 which gives around a figure of 554 members. Before retrenchments, they used to have 1200 regular members and 1800 members during peak seasons. The low level of subscriptions is creating problems with funding enough meetings to ensure adequate representation on issues at the two mills.

Swazi Government Response: The Swaziland National Adaptation Strategy

The Swazi Government published its National Adaptation Strategy in response to the EU Sugar Sector Reforms in April 2006. this strategy places most of its emphasis on diversification out of sugar cane to the value of E 109, 610,000. the second most emphasized programme in budgeting terms, is promoting small-holders worth E 80, 800,00. Measure to assist workers retrenched as a result of EU reforms fall under the social amenities programme to be funded by a donor and government to the value of E 52, 700,000. Assistance of retrenched workers is described in the following terms within the strategy:

“The retrenchment programme is combined with out-sourcing of a series of services, where some of the retrenched workers have the opportunity to become contractors.”

The following measures have been suggested by the strategy:

- Phased easing-out of access to social services for retrenched employees.
- Support a loan facility for SMEs, in particular retrenched employees who wish to venture into other income generating activities and even running their out-sourced service of the industry. This will include a programme of retraining and multi-skilling.
- Establish effective support services for rural micro and small scale enterprises as farms and mills lay off personnel and “out-sourced” services.

Practice, however, bears testimony to the contrary, as most workers are (till the present) not engaged in any income generating initiative of any sort. The case of Fidelity Springbok snatch the security tender/contract ahead of workers is a case in point, where workers do not become the favourites of management in the race towards contracts.

In summary, the Swaziland Sugar Association (SSA) in response to the EU Sugar sector reforms, has proposed definite measures, namely: additional (i.e. 150 000 to 350 000) duty-free access to the EU market in terms similar to the Everything But Arms (EBA) initiative and a Restructuring and Diversification Assistance Fund.

CHAPTER THREE – CASUALISATION IN THE CONTEXT OF SWAZI WORKERS

3.1 Introduction

In light of the background presented in form of sector reports it is now imperative to engage the socio-economic impact of casualisation and the whole neo-liberal restructuring on the Swazi workers, against the legislative framework governing the employer/employee relationship in the shop floor. This shall be done, firstly, by means of the brief characterisation of the Swazi worker as informed by the context, then an analysis of the labour market in the country, which shall assist us to make a proper assessment of the impact of casualisation on the subject under investigation.

3.2 Socio-economic impact of the Neo-liberal Restructuring of the Swazi economy

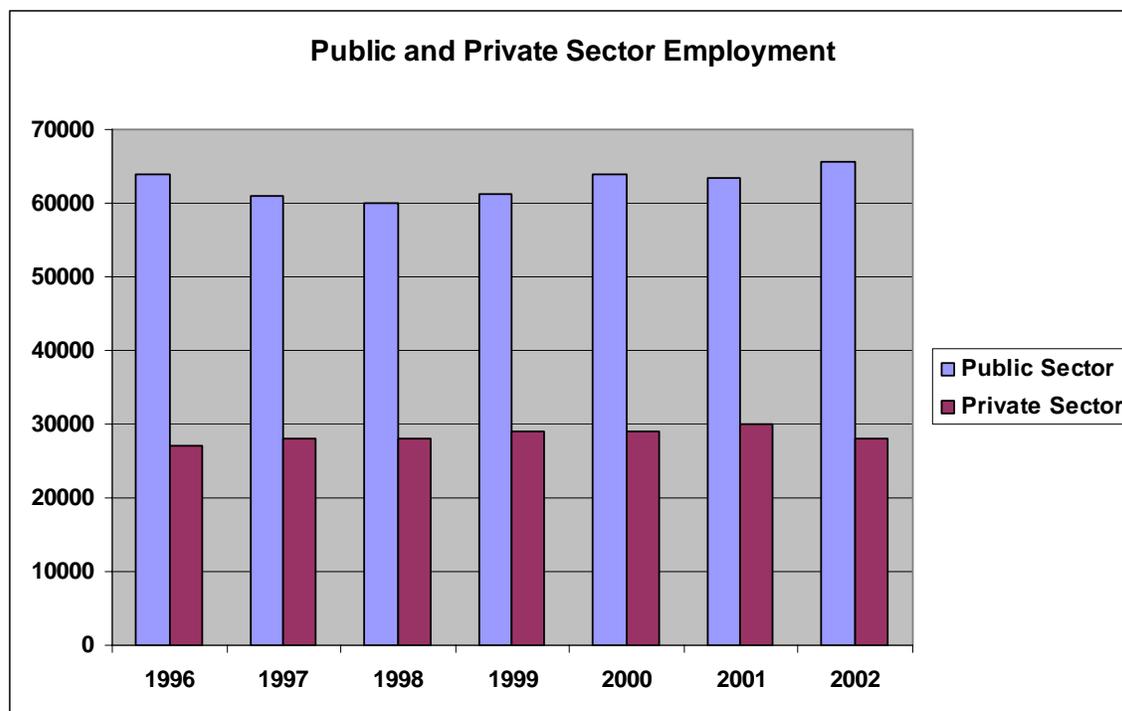
In general, what has been observed in the country are rising levels of poverty, where Swaziland has been experiencing declining economic growth rates from 4.0% in 1997 to a meagre 1.6% in 2002. Further the prevalent growth rate of 2.9%, implying a shrinking GDP per capita. The annual growth rate in real terms is projected to be at a meagre 2% of GDP between 2003 and 2006. At present 66% of Swazis live below the poverty line estimated at E71-00 (US\$10) per month.

There is also a skewed distribution of wealth, which prevails both among the rural and urban dwellers. The inequality in income shows that 10% of the population control 40% of the wealth, while the poorest 40% control only 14% of the wealth. Unemployment was estimated to be 22% in the 1990s but is now estimated to be 29% (only those who are actively seeking employment, not those who have given up) – *Swaziland Household Income and Expenditure Survey 2001/02*. As the neo-liberal policies are on the onslaught this trend is bound to increase.

In the Graph below, is the distribution of public and private sector workers in the period 1996 to 2002. The average annual growth rate of private sector employment was 0.45 % for that period. However, there was significant percentage change in employment for the private sector of about 3.7% in the period 2001/02. Statistics reveal that the sector that significantly contributed to the increase is the manufacturing sector, which had an annual growth rate of 15.8% in the period 2001 to 2002. In the period 1996 to 2002 public sector employment at an average annual growth rate of about 0.67% per annum.

There was, however, a decline in employment in the public sector of about 6.6% between 2001 and 2002. Such a decline is mainly attributable to a fall in employment in the agricultural and construction sectors which had growth rates of about -39.6% and -60.6% between 2001 and 2002 respectively. The decline in employment for such sectors is probably due to the laying off of daily paid staff which constitutes a significant proportion of employees in such sectors in the public service.

Graph 1: Distribution of Public and Private Sector Workers



Source: *Employment Statistics, Central Statistics Office, 2002*

Character of the Swazi worker

Swaziland does not have the classical worker, in Marxist terms, because the set-up in the country is such that the very same wage-earner has a very close interaction with the peasantry. Thus it follows that all or most of the workers come from extended family backgrounds, where there is a high dependency on the one worker/wage earner. The current status in economic terms is such that Swaziland is at the lowest level of capitalist development, where the feudal order still commands a significant portion of the economic relations, which explains the semi-dual character of the Swazi worker and the high level of dependency around a single wage earner.

Moreover, the industrialisation rate in the country is low, with a greater possibility of urban anarchy which shall be a direct off-shoot of the neo-liberal restructuring programmes (retrenchments), hampering an advanced rate of proletarianisation of the Swazi workforce. Throw-backs to the peasant setting will not be within perimeters of uniform integration as these retrenched workers will be bringing with them advanced elements of interaction with production, consequently leading to peasant chaos as well. All this is true particularly in the absence of worker leadership. In average terms, therefore, the context of the Swazi worker is such that for every employed worker there are ten dependents around him/her.

In gender terms, women in Swaziland are largely involved in informal sector activities, in low-skilled and low-paying jobs, in areas like domestic work, farm work, household unpaid labour, community development and others areas related to community work in general.

Labour market Restructuring

Within the context of capitalism, workers are forced to exchange their labour power for wages in order to provide for themselves and their families. The condition under which this exchange takes place is determined in the labour market. The two important forces in the labour market are: business representing capital, and trade unions representing workers. Government plays an important role and is a very influential manager of the relationship between capital and labour in the labour market.

From the late 1980s up to the early 90s, Swaziland has been experiencing favourable growth rates, wherein the structure of the economy was relatively untouched by the neo-liberal restructuring processes. However, from the mid-90s until now the economy has been characterized by a marked decline and stagnation that can be attributed mainly to the restructuring programmes accompanying globalisation.

In the Swazi labour market, the contending forces (similar to in most economies) are labour, capital and government, where the latter has been forming a monolithic force with business against labour. In the process this monolithic force has managed to crafting neo-liberal policies which are against workers. At varying points, however, workers were consulted on the process but probably because of lack of capacity, could not formulate a systematic and worker-informed response.

As a direct result of the restructuring processes the economy has shed formal jobs (both semi-skilled and manual/low skill jobs), further resulting in unemployment and an increase in the informal sector and activities of the economy. However, what is becoming an unclear issue is the direct result of an increased informal sector activity, which is largely characterized by an insignificant portion of the economy where a greater majority of the economically active population is involved in very peripheral activities of the economy. The question asked is: *what will become of a situation whereby a greater percentage of the active population is involved in informal sector activities?*

Labour legislations and related institutions

The key pieces of legislation governing the relationship in the shop-floor in the country are:

- a) Industrial Relations Act, 2000
- b) Employment Act, 1980
- c) Workmen's Compensation Act, 1983

Industrial Relations Act, 2000³²

This is an Act to provide for the collective negotiation of terms and conditions of employment and for the provision of dispute resolution mechanisms and other related such matters. The Act provides for the establishment of institutional bodies responsible for the facilitation of the nature of industrial matters mentioned above, and these bodies are:

- Industrial Court
- The Labour Advisory Board
- The Conciliation, Mediation and Arbitration Commission (CMAC).

¹³ Amendments to the Industrial Relations Act of 2000, made in September 2005 will be covered in final draft of report.

The *Industrial Court* shall have exclusive jurisdiction to hear, determine and grant any appropriate relief in respect to an application, claim or complaint or infringement of any of the provisions of the following: Employment Act, Workmen's Compensation Act, or any other legislation which extends jurisdiction to the Court, or in respect of any matter which may arise at common law between an employer and employee in the course of employment or between an employer or employers' association and a trade union, or staff association or between an employees' association, a trade union, a staff association, a federation and a member thereof. This structure has a workable operational relationship but time constraints limit the operations, individuals are free to register an issue with the Industrial Court which is largely at the arbitration level, but procedural concerns are primary.

The *Labour Advisory Board* shall consist of the Commissioner of Labour, the Deputy Commissioner, 4 members to represent interests of employees, 4 members to represent employers' interests, 5 senior government officials (including the Commissioner of Labour), Secretary of the Board from the Department of Labour by the Commissioner. The term of office of this structure is three (3) years.

The terms within this structure are defined by the Minister of Enterprise and Employment and breach of such conditions might not enable an individual to participate in that structure. However, in the current set-up and because of the general trend of union weakness, this structure has not been engaged by workers, hence the situation that workers are not aware of whether their interests are properly represented or not.

The *Conciliation, Mediation and Arbitration Commission (CMAC)* was established to make and provide an alternative dispute resolution mechanism that was cheap, accessible, effective and affordable. This is a tri-partite structure where unions, employers and government engage on issues of industrial importance. By means of inviting both parties to the processes of conciliation and arbitration, the commission is embracing 'principles of effective justice and fair hearing'.³³ Worker organizations/trade unions, employer bodies, individual workers and individual employers have the right to report disputes to the commission, which may at times provide legal advice thereof.

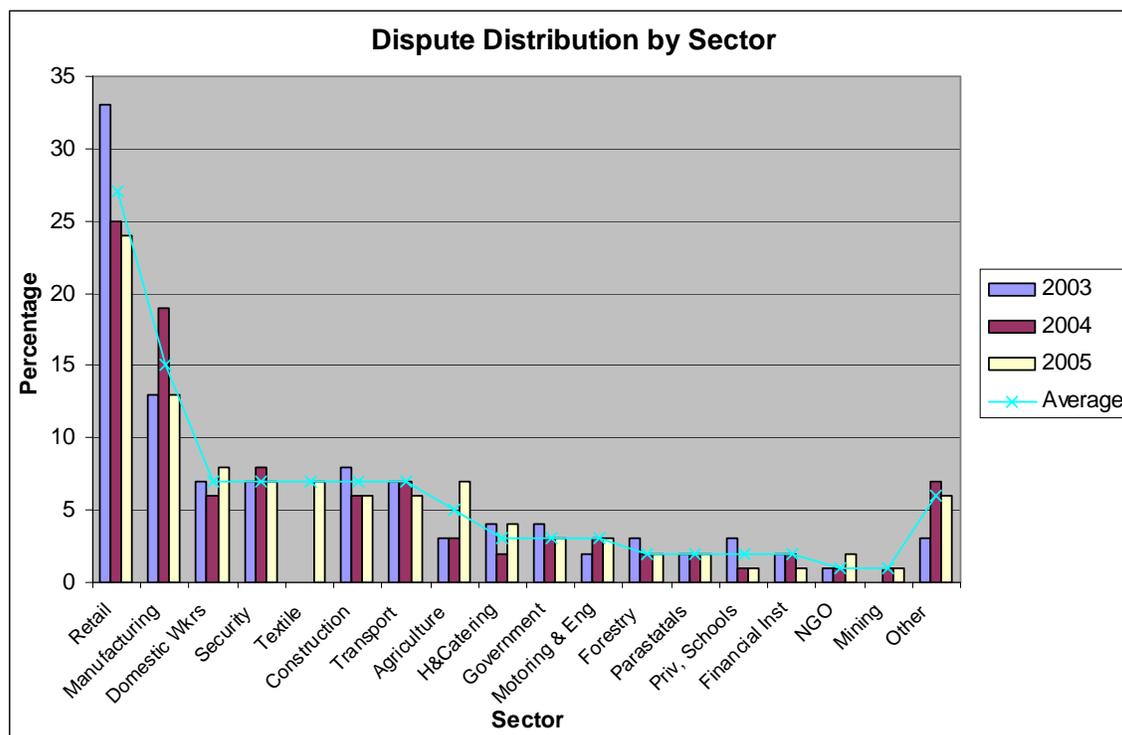
The emergence of such a structure was in full view of the anticipated worker responses given the neo-liberal restructuring, wherein it was developed to play a 'cooler-box' role, dampening worker militancy, unity and activism. According to the Executive Director of the Commission, "there is a declining trend of strikes because people have realized that losses are greater than gains in a strike".³⁴

However, the fall in the rate of strike action in the country is not attributable to workers' realization of CMAC's role but to a relative and general weakness of the trade union movement in matters of worker mobilization, structuring campaigns, general membership capacitation in trade union issues as well as engagement with management at policy and other levels.

³³ Interview with the Executive Director CMAC, on the 07 September 2006.

³⁴ Ibid.

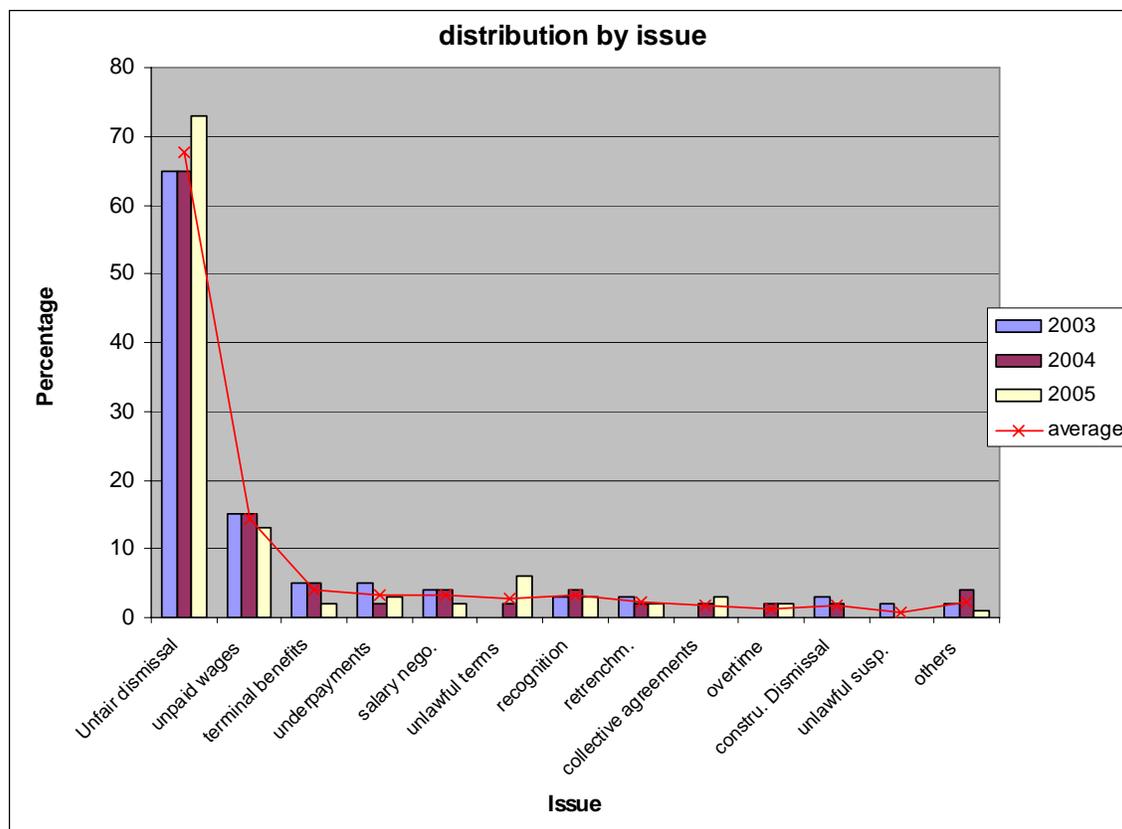
Graph 2



Source: Annual Report, CMAC - 2005.

In the above graph (Graph 2), the retail sector is on the lead accounting for 24% of cases followed by manufacturing with 13% in the period 2003-2005. Completing the top six were domestic workers, textile, security and construction. It is worth noting that the textile industry, although relatively new, rose to claim the fourth spot. Significant changes were realized only in two sectors manufacturing and agriculture. The manufacturing sector had a sharp decline of 6% in reported disputes and this is mainly attributed to the separation of the textile and apparel sector from the manufacturing sector. The agricultural sector on the other hand showed a sharp incline. This sector is facing key challenges following the anticipated changes in the EU-ACP countries sugar protocol and the agreement on special preferential sugar expiring in 2008. Resultantly, the industry has been undergoing lots of restructuring, cutting down on its workforce.

Graph 3



Source: Annual Report, CMAC - 2005

The distribution of cases by dispute category also showed less variation over the years. Unfair dismissal disputes continue to dominate and accounted for 65% of the total caseload while unpaid wages followed at 15%. Underpayments, which was ranked fourth in 2002 was replaced by the recognition category and has been relegated to the sixth position in 2003.

Strikes and protest action

91 collective disputes of interest (salary negotiations, retrenchments, etc) affecting an estimated 45,000 workers were handled by the Commission. 58 (64%) of these were resolved, resulting in the aversion of strike action which would have possibly led to a loss of over 140,000 man-days.

From 33 unresolved disputes, 7 culminated into legal strike action, which resulted in a loss of approximately 15,000 man-days. 18 were resolved back at plant level using the non-binding arbitration awards issued by CMAC as the bases for further negotiations. The year under review (2005) ended without an indication of intended action by parties on the remaining 10.

Works Councils

These structures are still in existence in some companies/areas of employment where at shop-floor level they play the same role as the union. They bargain at industrial level as well, but their approaches are different from those of trade unions. In as far worker interests that amounts to a compromise, as the principle of worker control is highly in question.

Employment Act, 1980

This is an Act to consolidate the law in relation to employment and to introduce new provisions designed to improve the status of employees in Swaziland. It sets the basis for the creation and termination of contracts of employment, protection of wages, registration of employers and foreign contracts of employment; also setting the conditions of service in the workplace. The latter includes the recruitment of staff, allowing for holidays (annual holidays and sick leave). The Act also provides a provision against forced labour; however, there is a distinction between practice and labour legislation provisions.

Workmen's Compensation, 1983

The purpose of the Act is to provide to workmen and all their dependants cash compensation for the economic effects resulting from the injuries accidentally sustained by the workmen in the course of the employment or death resulting from such injuries or from the effect of diseases attributable to the nature of the workman's' employment and to provide to workmen at the expense of their employers reasonable medical treatment for such injuries or diseases.

The compensation is not intended as a recompense for the fact that a workman has been injured or dies. In the case of death (fatal cases) the compensation relieves the actual economic effect on those who were dependent on the deceased workman's monthly earnings. In the case of injury it offsets the actual earnings lost during incapacity for work and the potential loss arising out of the workman's reduction in earning capacity due to disablement.

National Security Schemes/Social protection

These are generally non-existent in Swaziland, as ideally these schemes should be under the Ministry of Health and Social Welfare. This is explicitly captured in one comment:

"...The remaining countries of Malawi, Lesotho, Swaziland and South Africa do not have any social security scheme" (Torres, Labour Markets in Southern Africa, 1998).

We may not be sure of the current situation in South Africa, but we assume the African National Congress (ANC) government was still new in public office (only four years old), but in Swaziland it is clear that the social scheme/protection is non-existent.

Swaziland, on the other hand, employs largely the contributory methods of social security, where workers contribute a certain percentage of their monthly earnings for future survival. The two are embodied in the Swaziland National Provident Fund (SNPF) and the Swaziland Public Pension Fund (SPPF), which, however, are seriously flawed in terms of effectively providing for the security of the workers and the poor in the shop-floor and beyond. The loop-holes in the schemes are:

- a) Most workers do not reach the ages of 60 (the benefit age), due to casualisation and retrenchments, HIV/AIDS and other diseases and a generally low standard of living.
- b) These schemes are not transferable from one job to another, and not cumulative.
- c) Rights to ill-health and early retirement benefits are often poor and usually only begin to meaningfully accrue after about 10 years of service. This means workers with a high job turnover can spend their entire working life paying into pension schemes and never get a descent retirement benefit.
- d) Interestingly, those who benefit the most from pension schemes are those with highly secure and rewarding jobs, creating a regressive subsidy from low to high income earners.

- e) Although the provident and pension funds gather large amounts of savings, these savings are completely outside the control of the unions or the workers they are supposed to serve.
- f) The investment of the funds does not follow any social logic or consideration, an area which remains a serious challenge to unions.

Subsidies and grants have decreased from 6.1% of GDP in fiscal year 1999/00 to 5.8% in 2002/03, showing government's lack of commitment to providing social safety nets to the vulnerable segments of society. In the process, workers pay for the incentive given to companies in the name of investor attraction. The nature of the investments attracted into the country of late (since the late 90s) has been the Asian-originating Export Processing Zones (EPZs). These do not provide quality jobs but are only meant to benefit the injectors of the capital.

CHAPTER FOUR – CHALLENGES TO SWAZI UNIONS

4.1 Introduction

Given the background in the preceding chapters, it is important to isolate the areas for immediate action towards programme formulation. It is important, in this regard, that unions are aware of the extent and nature of the crises before anything can be done to ensure proper and timely action. Early identification of the problems under investigation in the varying contexts, forms and character is primary for informed action. The challenges shall be categorized under the international and domestic levels, with each being clearly analysed in line with the current phase of the struggle.

4.2 International Dimensions

In relation to the federations in the country, the SFTU and SFL, they both do not have international relations policies and strategies. The resultant outcome is their ambiguity in matters pertaining to a clear stand on globalisation and casualisation. A clear understanding of this global onslaught is by evolving a clear class analysis outlook thus informing a clear international policy and alliances globally.

4.3 Domestic Challenges

These shall be at three levels: *political, financial and organisational*.

Political Challenges

The situation in the country is such that political parties are banned (as per the 1973 Decree), and trade unions operate within a semi-legal parameter. Political meetings, processions and gatherings remain prohibited in Swaziland, a situation which leaves a vacuum in the political arena, consequently starving trade unions of the political momentum. Paradoxically, in light of this anomaly, trade unions tend to attempt to assume the political role, an act which unfortunately is not sustained through and through.

Moreover, the trade unions in the country are unable to effectively represent the interests of their workers, this being the political and historic mission of these organs of worker interests. In lacking their understanding of the political and historical task of fighting for workers in the shop-floor but at the same time understanding the ruling of the political forces, trade unions show an ideological bankruptcy. This undermines the effective representation and defending of workers, engaging in

policy issues at national and influencing the international context of workers and the poor by these unions.

It is primary for workers to understand the domestic linkages with international developments, because although Swaziland is said to be 'peaceful' (a condition considered to be conducive to investor attraction), but there is no Foreign Direct Investment (FDI) except for Export Processing Zones (EPZs), neo-liberal adjustments and a growing informal sector. Workers should understand the alignment of capital with the traditional aristocracy and the role played by its institutions (largely royal, like Tibiyo takaNgwane) and the facilitation of exploitation of workers. In summary, unions in the country have no industrial strategies, clear political positions on engaging the bosses, no thoroughgoing gender programmes and policies and no proper skills development initiatives.

Concerning the neo-liberal restructuring in the country, as mentioned earlier, there has been an ever-expanding informal sector coupled with an escalating unemployment rate thus it becomes a challenge to unions to consciously develop and evolve policy responses on the informal economy.

Documenting of evidence

All unions do not have the capacity to document evidence and information in a chronological manner in order to highlight key trends especially in this particular topic. On the whole, it seems the issue of casualisation cannot be linked to its broader source; that of the restructuring of the global economy. The various forms of privatisation are not understood and most unions do not have clear campaigns and strategies as a systematic response to globalisation and collective bargaining at the workplace as well as workplace restructuring. Globalisation is still not seen clearly as a threat to workers and casual workers still remain unorganized by unions in the country. It is a further challenge for unions to establish research departments, desks or units in order that they become ahead in negotiation and collective bargaining processes.

IRALE is trying to come up handy in this area of research and worker education, thus some unions were surprised at the information and capacity building initiatives and activities of IRALE. Its duty is to provide research and capacity to all unions and federations regardless of affiliation. This will obviously enable unions not to trail behind employers and governments in this era of heightened restructuring and globalisation.

Organisational Challenges

Most unions revolve around the National Office Bearers, Staff and some comrades strategically placed around leadership, this tendency undermines the fundamental principles of trade unionism like worker control, trade union democracy plus accountability. This means the whole capacity and direction of the union becomes informed by a few individuals.

In this scenario the resultant outcome is organisational weaknesses (unions in Swaziland are incapable of developing and running campaigns), declining membership due to non-servicing of structures and the capacity of effectively engaging worker issues and non-functioning of trade union branches.

In the scenario of the neo-liberal onslaught resulting in flexible and home-based labour, there is also an accompanying expansion of the scab labour around the workplaces, which has a down spiral effect on wage rates, it is imperative for unions to come up with informed approaches on mobilising these vulnerable sectors around concrete programmes of action. Workers and trade unions in the country should learn how to wage a bitter class struggle against the class enemy which is the bosses

and the royal minority regime. Infact, Swaziland suffers from a stolen struggle whereby King Sobhuza ascended to power stealing the hard won worker efforts on the ground. Thus in the conduct of the struggle we should not repeat the same mistakes of the pre-independence era.

On the skills development front, workers are still not convinced of the relevance of trade unions in upgrading their skills and linking those skills with trade union involvement. The area of skills development is an ideological issue with technical dimensions, both at shop-floor and union levels (capacity-building). This capacity building initiatives form the cornerstone of union development and strength, including continuity and ideological coherency.

Financial Challenges

In this area, trade unions are relatively involved in mobilising funds in the pretext that those funds shall be directed to the worker interests, but in most cases it is not traceable that the funds indeed do end up being directed to the intended constituencies. The most daunting challenge is to evolve the worker economy, that is, to define the various the alternative routes of economic direction. Issues worth considering are co-operative development and forms of investment (worker friendly) in the whole trade union development.

CHAPTER FIVE – CONCLUSION AND REMARKS

5.1 Introduction

The area of casualisation and globalisation in Swaziland remains a challenge in terms of documented information. Observations made by the authors in relation to some interviewees and general Swazi workers and people were that the concept of casualisation was not clearly understood by many. Infact, some were even saying they were hearing the concept for the first time.³⁵ Similarly, workers were even not aware that their casualisation at work is informed by both external and national policies, not a ‘bunch of corrupt Swazi public officials’, as one worker leader put it. That does not, however, seek to assume that the corruption and greediness of the ruling elite does not play a part, but it does not form the heart of the matter.

Important to note, also is the fact that the restructuring of the Swazi economy is continuing and the ruling class is planning to take out into the private and independent sector some of the institutions that are currently under government. Departments like the Income tax, to be out-sourced and established as a Revenue Service, the Teaching Service Commission to be made independent into an Authority, and the Roads Department to be established as Roads Authority. Moreover, the restructuring process is thoroughgoing because the Public Enterprises Unit (PEU) currently under the Ministry of Finance is to be called the public Enterprise Agency (PEA).

This study has mainly concentrated, this far, on the public sector (Government ministries), with state-owned enterprises (SOEs) to be engaged in the final draft as interviews are still being scheduled with the relevant people (see attached appendix). The other area is the private sector, with companies that are largely foreign-owned are to be engaged – in both the commercial and agricultural sectors.

³⁵ Noted by the authors in an interview with both the Under Secretary of the Ministry of Public Service and Information and the Deputy Director of the Teaching Service Commission (TSC) under the Ministry of Education.

Also noted were the expected conflicts in positions regarding the issue of restructuring and casualisation between unions and government. In most instances, government contradicted herself on the issue. One particular case is the situation whereby PSMP felt it was not informed of the Ministry of Public Works and Transport planned retrenchments, which however, failed.

Another observation worth noting is the challenge that though a greater portion of the research has been covered, some of the areas would still require specific research to ensure justice is done to the issues. The role of international companies in the whole neo-liberal restructuring and the extent of worker coverage of the national labour legislations require adequate investigation themselves. Further, more research is still needed on the same topic of casualisation. More specifically, more research should be done in labour relations, labour laws, labour market and its changes, to empower unions in the country. A lot of resources need to be allocated for the research projects in the country, both at the level of trade union and the mass democratic movement.

REFERENCES:

- Brooks, M. (2001); *What's Happening to the working class?*, - http://www.marxist.com/theory/what_is_wclass.html
- Bureau of Democracy, Human Rights and Labour (1999); Swaziland: Country Reports and Practices, - <http://www.state.gov/g/drl/r/s/hrrpt/1999/274.htm>
- Ceasefire Campaign (2000); *Report on the Human Rights Situation in Recipient Countries of South African Arms*, Johannesburg, May.
- International Crises Group (July 2005); *Swaziland: The Clock is Ticking*, Pretoria.
- NALEDI (1999); Unions in Transition: COSATU into the new millennium – <http://www.naledi.org.za>
- Public Services International Research report, 2002; *Profile of the Public Sector in Swaziland*. A research prepared by Khanya College in Johannesburg, South Africa.
- Swaziland Government (2006); *Privatisation Policy of Swaziland*, Ministry of Finance, Mbabane.
- _____(2004/05 – 2007/08); *Economic Review and Outlook*; Economic Planning Office, Ministry of Economic Planning and Development, Mbabane, April 2005.
- _____(2006); *Budget Speech*, Ministry of Finance; <http://www.gov.sz/home>.
- _____(2006); *Implementing Privatisation Policy: The Privatisation Road Map*, Ministry of Finance, Mbabane.
- _____(2005); *Statement by His Excellency the Right Honorable Prime Minister, A. T. Dlamini on SPEED in Parliament*.
- _____(2004); *Budget Speech*, Ministry of Finance, presented by the Minister of Parliament.
- _____(2004); *Education Statistics*, Central Statistics Office, e-mail: statistics@africaonline.co.sz.

- _____(2003); Swaziland: 35 years of Economic and Social Development, report of the Prime Minister.
- _____(1999); National Development Strategy (NDS): Vision 2022; Key Macro and Sectoral Strategies.
- _____(2000); Industrial Relations Act, Department of Labour, Ministry of Enterprise and Employment.
- _____(1980); Employment Act, Department of Labour, Ministry of Enterprise and Employment.
- _____(1983); Workmen Compensation Act, Department of Labour, Ministry of Enterprise and Employment.
- Torres, L (1998); Labour Markets in Southern Africa, Fafo Institute for Applied Social Science, Norway.

Zambia

EFFECTS OF CASUAL



BOUR IN ZAMBIA

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Acronyms

ADB	African Development Bank
ALRN	Africa Labour Research Network
ASO	Africa Social Observatory
BNB	Basic Needs Basket
CSO	Central Statistics Office
FNDP	Fifth National Development Plan
GDP	Gross Domestic Product
GRZ	Government of the Republic of Zambia
HDI	Human Development Index
JCTR	Jesuits Centre for Theological Reflection
ILO	International Labour Organization
ILRA	Industrial and Labour Relations Act
IMF	International Monetary Fund
LDC's	Least Developed Countries
LUSE	Lusaka Stock Exchange
PAYE	Pay As You Earn
PSRP	Public Sector Reform Programme
NAPSA	National Pensions Scheme Authority
NUPAW	National Union of Plantation and Agriculture Workers
SADC	Southern Africa Development Community
SAP	Structural Adjustment Programme
ZCTU	Zambia Congress of Trade Unions
ZRA	Zambia Revenue Authority

Section I

1.0 Introduction

This study explores and examines the extent of casualisation in the Zambian formal sector and its impact on workers and the economy. The increase in casualisation in the Zambian labour market is a subject of great controversy. Increasingly casual employees are filling positions that are permanent

in nature. Behind employee vulnerability in Zambia is the high levels of unemployment and accompanying poverty. Poverty has bred a dangerous work environment where many desperate job seekers in the labour force are willing to take any job for survival purposes rather than dignity. This is a big challenge for trade unions in their pursuit to protect and advance workers' rights.

The study attempts to cover the following as per terms of reference;

- The effects of casualisation on the workforce
- The comprehensiveness of national labour legislation in the face of assaults on conditions of work
- The provisions for social protection for all workers
- The role of international companies in selected sectors

1.1 Purpose of study

This report will ultimately feed into a toolkit to be developed to assist the trade unions in the participating countries to advocate for the strengthening of their labour legislation and in so doing, asserting the strength of trade unions to protect and advance workers' rights.

1.2 Methodology

Because of time and resource limitation two methods of data collection were used. The methods used to collect data were;

- Interviews with key informants mainly trade unions and workers (both in casual and permanent employment)
- Literature search; desk review and content analysis of published and unpublished data including policy documents, newspapers, Internet.

1.3 Constraints and Limitation

Time constraint and insufficient budget for the study as such scope and coverage was limited. For instance interviews with individual workers were limited because funding could not sustain prolonged field operations.

The none availability of reliable official statistics on casualisation and other forms of precarious work was another major constraint as such the study had to a great extent depend on trade union/workers testimony as well as reports published by organizations other than the government.

1.4 Report Outline

This report is structured in five sections. Section I of the report begins with the introduction outlining the problem area and purpose of the study, terms of reference, objectives, and methodology and constraints of the study as well as the executive summary. Section II outlines the socio-economic environment in Zambia showing some selected indicators. Section III of the report gives an overview of the labour market situation, existing legal framework and its implications on causal employment. Section IV looks at the extent and effects of casualisation in selected sectors on the workforce. Section V identifies trade union strategies or tactical questions for engagement by

unions and way forward giving suggestions to the union for possible responses and actions. Section VI of the report is the conclusion.

1.5 Executive Summary

The debate on the issue of casualisation of labour is important to trade unions. The increase in casualization of labour in almost all sectors of the economy is becoming a great concern because of its adverse effect on workers rights and society. However, there is generally lack of reliable official statistics and information of casualisation of labour.

From the findings casualisation is prevalent in the retail trading, hospitality and service sectors, banking sectors and agriculture sectors as well as public sector. The factors identified leading to increased casualisation of labour include the high levels of poverty and unemployment, weaknesses in labour laws and enforcement mechanism, lack of awareness on workers rights, lack of trade union action to respond to the increasing casualisation in the work place. Government and employers tendency to put investment and profits before decent and dignified work has equally exacerbated casualisation of labour.

The effects of casualisation of labour on workers rights and society are evident. The findings reveal increased vulnerability of workers through the casualisation of labour in the absence of labour laws to protect them. The poor remuneration and lack of conditions of employment and social protection transfers the burden of looking after casual employees on society in particular, government, taxpayers, families and charity.

The findings point to inadequate and limited trade union actions and responses to casualisation of labour. However, the efforts by the National Union of Plantation and Agriculture towards organizing the casual employees gives a success story on attempts to give representation to this vulnerable category of workers.

A number of trade union strategies are suggested which include identifying the causes of casualisation of labour and corresponding action in particular on macro policy on poverty and employment, defining the role of trade unions, government and multinational companies and collective actions on labour laws reviews and company practices. It is further recommended that trade unions rethink their organizing strategy to one that is inclusive and takes all workers on board regardless of employment status. The work place is an important site of the struggle on casualisation hence strengthening the capacity of shop stewards, increased education, information and awareness are important in the campaign against casualisation. Public awareness and building strategic alliances with like-minded civil society and community organizations is equally important.

In conclusion casualisation of labour is as much a problems of the trade union as it is a national problem. Trade unions however must take a leading role in the campaign against casualisation of labour.

Section II

2.0 Socio-Economic Situation

Zambia covers a land area of 752,620 kilometres squared with a population estimated at 10.9 million growing at an annual rate of about 3.1%. The Zambian economy is characterized by a shrinking formal or modern economy and an expanding informal economy. The concentration of

policy remains largely on the small formal economy with copper mining and other mining activities accounting for about 85% of the country's foreign exchange earnings. Even though mining has continued to be a major contributor in terms of foreign exchange earnings its share in Gross Domestic Product (GDP) has been declining. In 1994 mining accounted for about 16.5 per cent of GDP and only 7.9 per cent in 2002. On the other hand the agriculture and manufacturing increased its share in GDP (13.5% and 9.8% in 1994) to 15.2% and 10.7% in 2002 respectively (CSO 2004).

Zambia has been pursuing neo-liberal market led economic policies under the auspices of the IMF and World Bank doctored Structural Adjustment Programmes (SAP's) for the past decade and half as remedy to its economic malaise with varying results. Post studies on socio-economic performance indicate that despite instituting reforms the Zambian economy has continued on its downward decline. Per capita incomes have fallen and poverty is widespread. The impact on employment has been a drastic fall in formal employment and an increase in informal and other precarious forms of employment. Even though Zambia has been recording positive growth in real GDP [3.3% (2002), 5.1% (2003), 5.4% (2004) and 5.1% (2005)] this has not translated into improved quality of life of the majority of the people. Adult literacy rate stands at about 79% while life expectancy is estimated at about 37.5 years. Human Development Index (HDI) ranks Zambia at 166. 80% of the population is poor. Table 2.1 below highlights selected economic indicators.

Table 2.1 Selected Economic Indicators

	2002	2003	2004	2005
Real GDP Sub-Saharan Africa			5.4	4.8
Real GDP Growth (%)	3.3	5.1	5.4	5.1
Inflation Rate (%)	26.7	17.2	17.5	15.9
Domestic Fiscal Deficit (% of GDP)	(6.3)	(6.6)	(3.3)	
External Debt US\$ Billion	7.1	6.4	7.0	4.5
Current Account Balance US\$ Million	-652	-628	-583	-826
Population	10.9	10.9	10.9	10.9

Source: Ministry of Finance and National Planning Economic Report 2004 and 2005 Budget Address (format by author)

Per capita income was about US\$ 300 in 2000. Inflation at two digits 15.9 per cent in 2005 remains high and Zambians have not recovered from erosion in purchasing power arising from the hyperinflation experienced in the early 1990's. Wages and salaries did not adjust correspondingly to the levels of inflation and the accompanying increase in prices of food and other basic needs. The national currency the Kwacha experienced massive and continuous devaluation since the early 1990's has now stabilized at about Kwacha 3,500 to 1 US\$.

The external debt stock at the end of 2005 dropped to US\$ 4.5 from US \$ 7.0 billion. The explanation behind this development is that Zambia reached the HIPC completion point in April 2005 resulting into most Paris Club creditors writing off 100% of Zambia's public debt. Additionally under the Multilateral Debt Initiative to which Zambia qualifies for 100% of debt to the African Development Bank (ADB), International Monetary Fund (IMF) and World Bank. On the other hand Zambia's current account balance deficit increased significantly from minus US\$583 million in 2004 to minus US\$ 826 million in 2005.

Section III

3.0 Labour Market Situation

The labour market remains fragile with the high levels of unemployment. This is a result of inability of the economy to absorb the growing labour force. As a result the structure and quality of employment has equally changed over the years with a shift from durable and permanent jobs to part-time, temporal and casual employment. According to the 2002/2003 Living Conditions Monitoring Survey the number of persons in the labour force (aged 12 years and above) in 2003 was estimated at 4,055,169 out of which 3,517,371 were employed either in the formal or informal economy. Those employed in the formal economy were 597,953 (14.7 per cent of the labour force) while 2,919,418 (86.7 per cent of labour force) were employed in the informal economy and 13.3 were unemployed. The unemployment rate is estimated at 22 per cent nationally with urban unemployment at about 30 per cent.

Table 3.1 below shows status of employment in Zambia for both the formal and informal economy.

Table 3.1 Employment Formal and Informal Economy 2003

Sex/Residence	Formal Economy	Informal Economy	Number of Persons employed aged 12 years and above
All Zambia	597,953	2,919,418	3,517,371
Male	441,813	1,393,819	1,840,889
Female	156,140	1,525,599	1,676,482
Rural	181,617	2,391,172	2,571,153
Urban	416,336	528,246	946,218

Source: GRZ, Economic Report 2004 (format by Author)

From table 3.1 it can be said that the formal economy employs more male persons than female but the opposite is the case in the informal economy where there are more female employed than male persons. Another observation is that formal employment is predominantly urban while informal employment is predominantly rural. One can therefore say there is more formal employment in the urban areas than in rural areas.

The GRZ Economic Report 2004 puts formal economy average earnings in the first quarter of 2004 at K 808,375 (US\$ 162), which it claims was below the CSO poverty line of K 575,206 (US\$ 115). Table 3.2 below shows average earning per month in the formal economy.

Table 3.2 Average Earnings in Kwacha by Sector 1st Quarter 2004

Sector	Average Monthly Earnings
Central Government	676,489 (US\$ 135)
Local Government	410,410 (US\$ 82)
Parastatal	1,924,071 (US\$ 385)
Private	659,646 (US\$ 132)
Total	808,375 (US\$ 162)

Source: GRZ, Economic Report 2004 (format by Author)

However, the Jesuit Centre for Theological Reflection (JCTR) puts the total Basic Needs Basket (BNB)³⁶ at K 1,147,840 as at end of 2004. The ranges of wages or take home pay for selected occupations are shown in the table 3.3 below.

Table 3.3 Comparative Figures of Monthly Wages 2004

Teacher	Secretary in Civil Service	Nurse	Police Officer	Miner	Security Guard
K 407,000- K913,000	K 390,000- K791,000	K 461,000- K1,489,000	K120,000- K300,000	K 584,223- K846,488	K 40,000- K180,000
US\$ 85- US\$190	US\$ 81-US\$165	US\$ 96 –US\$ 310	US\$ 25 – US\$ 63	US\$ 122 – US\$ 176	US\$ 8 – US\$38

Source: JCTR Basic Needs Basket 2004

It is evident from table 3.3 that on average most persons employed in above-mentioned occupations are paid wages far below the basic needs basket. It is clear from the above that most Zambian workers are struggling to survive and are increasingly joining the ranks of the working poor. Given this scenario it is correct to state that workers in causal and other precarious forms of employment are even worse off.

3.1 Existing Policy and Legal Framework

Zambia has adopted a National Employment and Labour Market Policy as an integral part of the overall socio-economic policy framework the Fifth National Development Plan (FNDP). The policy aims at generating employment and contributing to reducing poverty. The policy provides general guidelines on all labour matters as well as responsibilities for key players in the labour Market. There are several laws or legislations that regulate the labour market. The principle legislations are the Employment Act and the Industrial and Labour Relations Act. Additionally there are two Statutory Instruments under the Minimum Wages and Conditions of Employment Act. These are Statutory Instrument number 56 the Minimum Wages and Conditions of Employment (Shop Workers) Order 2006 and Statutory Instrument number 57 the Minimum Wages and Conditions of Employment (General) Order 2006.

3.2 National Employment and Labour Market Policy

In 2004 the government adopted a National Employment and Labour Market Policy. The policy stipulates the role of government in creating a conducive environment that will generate employment and ensure an effective and efficient labour market. It further gives guidance on all labour matters in the country. Through the adoption of this policy Zambia was conforming to the ILO Convention 122 on employment policies that it ratified but has operated with no employment and labour market policies since independence. The trade unions played a key role in initiating this policy and contributed to its formulation.

In its vision the policy aims at promoting pro-employment economic growth and reducing the unemployment rate to below 10 per cent of the labour force. The policy equally aims at effectively

³⁶ The Basic Needs Basket (BNB) is a monthly survey carried out in selected major towns of Zambia and is made up of basic food items, basic non-food items such as soaps, energy (charcoal), electricity, water, housing and other additional costs such as education, health and transport, required to sustain a family of six (two adults and 4 children). Additional costs however do not include personal care, clothing and recreation etc.

dealing with the issues such as violation of workers rights, social protection and occupational health and safety. The policy expects that once implemented 90 per cent of the work force will be operating in an environment where worker rights are fully respected and their safety guaranteed. The policy further aims at ensuring that cross cutting issues such as gender and HIV AIDS are put in during the policy implementation. However the implementation of this policy remains a big challenge. Since its adoption government has not put in place financial resources through budgetary allocations to the responsible ministry to operationalize its implementation.

3.3 Employment Act

The Employment Act provides legislation to the employment of persons, engagement of persons on contracts of service, appointments of officers of the Labour Department and conferring of powers on such officers, protection of wages of employees, control of employment agencies among other things. The Act binds the Republic of Zambia has no effect in relation to the following; persons in the Defence Force (other than locally engaged civilian employees); members of the Zambia Police Force; members of the Zambia Prison Services.

Some definitions in the Act are of particular interest to this study. In the Act casual employee, means any employee the terms of whose employment provide for his payment at the end of each day and who is engaged for a period of not more than six months. An employee, means any person who has entered into or works under a contract of service, whether the contract is express or implied, is oral or in writing, and whether the remuneration is calculated by time or by work done, or is in cash or kind, but does not include a person employed under contract of apprenticeship made in accordance with the Apprenticeship Act or a casual employee.

In the Act employer, means any person, or any firm, corporation or company, public authority or body of persons who or which has entered into a contract of service to employ any person, and includes any agent, representative, foreman, or manager of such person, firm, corporation, company, public authority or body of persons who is placed in authority over such person employed. A employment agency, means any person who acts either on his own behalf or as an intermediary for the purpose of obtaining employment for an employee of supplying an employee for an employer and who either charges an entrance fee, a periodical contribution or any other charge, or derives, either directly or indirectly, any pecuniary or other material advantage from either the employer or employee.

Important provisions under the Act on contract of service include paid holidays, maternity leave, termination, and redundancy but this does not apply to casual employee.

3.4 The Industrial and Labour Relations Act

The Act provides laws relating to trade unions, employers associations, recognition agreements, collective agreements, settlement of collective disputes, strikes, lockouts, essential services and Tripartite Labour Consultative Council, and the Industrial Relations Court among other things. The Act however does not apply to the Zambia Defence Force, Zambia Police Force, Zambia Prisons Service, Zambia Intelligence Service and Judges, registrars of the court, magistrates and local court justices.

Some definitions under this Act are important to this study. Eligible employee, means a unionised employee other than a member of the management of an undertaking. Employee, means any

person who has entered into, or works under, a contract of employment with an employer whether such contract is express or implied, oral or written, or serving a probationary period of employment, a casual employee, an employee specifically engaged on a temporary basis for work of an intermittent or seasonal nature. The definition of employer is same as in the Employment Act. An important right conferred on all employees within the Act is the right to take part in formation of a trade union and the right to be a member of any trade union of his choice. According to this Act no employer or any person acting on his behalf shall prevent, dismiss, penalise or discriminate against or deter an employee from exercising the above rights. A casual employee is no exception to this right.

3.5 The Minimum Wages and Conditions of Employment Act

This Act provides minimum wages and conditions of employment for specific categories of employees. There is the Minimum Wages and Conditions of Employment (Shop workers) Order and the Minimum Wages and Conditions of Employment (General) Order. The Minimum wages and Conditions of Employment Act apply only to protected employees specified in their schedules and does not apply to casual employees, employees in domestic services or those in occupations where wages and conditions of employment are regulated through the process of collective bargaining under the Industrial and Labour Relations Act. However, this Act applies to a temporary employee, defined as some employed under the specifications of an “oral contract”, one that is less than 6 months and that the law does not require to be made in writing.

Protected employees under this Act are guaranteed a minimum wage, overtime (beyond 48 hour per week). The Minimum wages are set as follows:

General Order

Category I – K 1,400 per hour or K 268,000 (US\$ 77) per month (general, cleaner, handyman, office orderly, watchman or guard)

Category II - K 450,000 (US\$ 128) per month (driver)

Category III – K 500,000 (US\$ 143) per month (typist, receptionist or telephonist)

Category IV – K 715,000 (US\$ 204) per month (qualified Clerk)

Shop Worker Order

Ranges from Grade I to Grade VIII

Grade I – K 268,000 (US\$ 77) per month (handyman, general worker)

Grade II – K 360,000 (US\$ 103) per month (machine operator, packer, driver of motor cycle)

Grade III – K 450,000 (US\$ 128) per month

Grade VIII – K 840,000 (US\$ 240) per month (book-keeper)

In addition to the above, protected employees under this Act are entitled to Annual leave at two days per month; sick leave; maternity leave; funeral benefits; retirement benefits at three month pay for each completed year of service; redundancy pay at two months pay for each completed year of service; subsistence allowance (K100,000 of US\$29) per night; Upset allowance; protective clothing, tool allowance; housing allowance 30 per cent of basic salary; machine allowance; lunch allowance; and repatriation benefits.

3.6 National Pensions Scheme Act

Zambia has a compulsory pension contribution system administered by the National Pensions Scheme Authority (NAPSA) under the National Pensions Scheme Act. The Act establishes

guidelines for all employers who must contribute to NAPSA on behalf of their employees. The Act defines a contributing employer as a person, association, and institution or firm registered as a taxpayer with a contract of service with an employee. However, employee is given no definition under this Act. The NAPSA scheme does not cover employees in the informal sector. The number of employees who made NAPSA contributions in 2004 totalled between 300,000 and 350,000³⁷ implying that about 250,000 workers in the formal economy are not contributing to the scheme. Most of those not contributing to the scheme are usually casual employees. While a temporary employee is given protection under this Act i.e. temporary employee must contribute 5 per cent of each payslip (with matching 5 per cent contributed by employer) towards NAPSA benefits, which can only be collected upon reaching retirement age of 55 it is silent on casual employees.

3.7 Income Tax Act

The Income Tax Act establishes guidelines for all employers and employees concerning payment of income taxes and Pay As You Earn (PAYE) to the Zambia Revenue Authority (ZRA). The Act defines employee as any individual who is paid or given an emolument, including salary, wage, overtime, commission, fee, bonus, gratuity, allowance, pension or other advantages. A casual employee is defined as an employee whose payment period is less than five days. The Act also sets the tax exemption under PAYE, which currently stands at K 280,000 (US\$ 80) per month. This is to imply persons earning K 280,000 or less are exempt from paying PAYE.

Under the Income Tax Act a casual employee by definition pays tax on Kwacha earned and does not qualify for the PAYE tax exemption rate on income under K 280,000. On the other hand a temporary employee is entitled to the K280,000 PAYE exemption threshold.

Section IV

4.0 Extent of Casualisation in Selected Sectors

The incidence of casualisation though still undocumented is visible and on the increase in formal economy. The incidence of casualisation is evident in almost all sectors of the economy. Casual employment is not a new phenomenon, as it fills an important gap in society emerging from demand for short-term employment. However, it is the extent of its magnitude and the abuse of this type of employee that has become referred to negatively as casualisation of labour that making it a controversy. The increase in casualisation can be associated with the implementation broad economic reforms by the government premised on neoliberal market led policies including wholesome liberalization of the economy, privatization of state owned enterprises, commercialization and reform of labour laws to deregulate the labour market.

What is more worrying is the extent to which employment that was previously permanent is increasingly being casualised. In the mining sector for instance the findings reveals increasing levels of casualisation far above what obtained when the mines were under state control. Whereas employment levels in the mines have reduced to less than half their level before privatization casualisation is increasing. According to the Mine Workers Union of Zambia, out of the 29,868 persons employed in the copper mines in 2004 about 11,175 or 37 per cent were casual or contract employees.

³⁷ Petruskis, Chris, Restoring Dignity to Employment in Zambia: Legal and Moral Motivation to Promote Common Good, 2005 A paper for the Social Conditions Research Project of JCTR

At Chibuluma Mines Plc a subsidiary of the Metorex Limited and Miranda Mines Limited both South African mining companies out of the 350 persons employed on permanent basis 61 or 17 per cent are casual employees. Even though the law does not restrict trade union from organizing and representing casual employees the sub contractor that normally engage these casual employees often intimidate and warn them from associating with unions. Most of the casual employees state that they have been in continuous employment for periods over three to four years as casual employees. This is contrary to the provisions of the Employment Act that stipulates that a casual must not be employed for periods exceeding six months but the employer normally roll over the fixed six months contracts. The contracts are appropriately terminated and then fresh ones re-entered into by both parties.

In the retail trade sector casualisation is more pronounced. A number of multinational retail trade companies including Shoprite, PEP Stores and Spar are reputed for engaging the bulk of their employees on casual employment contracts even for jobs that are essentially permanent such as cashiers. Like is common with other employers engaging casual employees six month contracts are often rolled over to avoid breaching the law on casual employment. Sometimes employees are given deceiving job titles such as student to obscure their casual employment status. Government in the recent past has acknowledged the exploitation of workers in the retail-trading sector but has come short of condemning casualization as one of the main contributor to such exploitation. The government still strongly believes that through their investor friendly policy that is attracting such investors it is fulfilling its mandate to create jobs for Zambians notwithstanding their precariousness.

Below is a testimony of a casual employee in one of the multinational retail trading company operating several outlets across the country.

Agnes (not her real name) is a grade – 12 graduate and has been working as a cashier for a multinational retail trading company in Lusaka for the past two years. Her initial six-month contract has been rolled and renewed during this period. Her basic pay is K 1,950 (US\$0.56) per hour and the schedule for cashiers is a three 8-hour shift per week. When she works all three shifts, her weekly payslip shows total earnings of K 46,800 (US\$ 13) and disposable income of K 41,400 (US\$ 12) after the deduction of K 5,400 income tax. She is not entitled to any allowances including transport and lunch.

Travelling by bus to work costs Agnes K 1,900 or K 3,800 (US\$1) roundtrip. She spends approximately K 6,000 (US\$ 1.7) each working day to buy lunch. Therefore, in order to travel to work and be productive for 3 shifts in a week she spends almost K 30,000 (US\$ 8.5), which leaves only about K 11,400 (US\$ 3) as weekly take home pay. Even if she is earning so little money, she is happy to have a job than nothing and would never raise her complaints with management for fear of losing her job.

During recent wage negotiations between the union and management demanding an increment in basic pay and allowances, workers went on an “illegal” strike that closed down all outlets across the country for a few days. While Agnes is not a member of the union, she and fellow casual employees joined in the strike action not so much to show their solidarity with the unionised employees but rather to express their frustration with the conditions of employment. For casual employees like Agnes their hope is that management will increase their hourly wage in proportion to increment given to unionised employee. Agnes wishes that she also had a union to negotiate on her behalf for better conditions of employment, including transport and lunch allowances, a permanent contract with provisions for terminal benefits, paid leave and holidays and training for career progression.

From the testimony above it obvious that the little Agnes earns can barely meet basics needs. From her earnings Agnes cannot afford to pay rent so she opts to stay with her elder sister. Imagine the situation of a worker in the position of Agnes but who has family and has to rent accommodation. The life of Agnes that is testimony of a struggle for survival that most casual workers go through.

The findings also reveal an increasing trend in casualisation in the hospitality and service sectors. At the Sun International Zambia Limited there are about 200 casual employees out of the total 500 employees. At Stanbic Zambia Limited the union says that there are about 40 casual employees in the establishment. Casualisation in the banking sector is on the increase. Cases of casualisation at Barclays Bank and Standard Chartered have been reported. The recent increase in theft by staff in banks is being attributed to casual employees because they are insecure and no terminal benefits to forego.

Both unions in the banking sector and hospitality sectors have been trying with difficulties to organize and unionise the casual employees. While there is no legal impediments restricting unionisation of casual employees it appears the unions are not simply pushing enough. Casual employees are equally afraid to associate with the unions for fear of losing their jobs even if this is not a condition of their employment.

The unions in the public sector are also alluding to signs of growing casualisation of labour. In the education sector there is growing employment of untrained teachers to fill in for the shortages of teaching staff. In some cases these trained teachers have been engaged for several years without any conditions of employment except for their salary, which in most cases take long to be paid. Casualisation has also been reported in the other sectors of the public service such as central government and local government following the Public Sector Reform Programme (PSRP) under the advice of the IMF and World Bank. The downsizing of the public sector under the PSRP created shortages of essential labour in most ministries and local authorities that have resorted to engaging casual labour to fill in the labour shortfall. However, it was not possible to get the numbers of persons engaged in casual employment due to lack of official statistics.

4.1 Trade Union Representation

Trade union representation is one of the missing links in addressing the rights of casual employees. However, this is an area of greatest weakness among the trade unions. While the law clearly does not restrict trade unions to organize this category of workers little or no effort has been made by trade unions towards this end. Trade unions when asked why they are not organizing the casual employees usually give vague and unsatisfactory responses. On the other hand the casual employees point to fear to lose their jobs and general insecurity as reasons not to join unions. The casual employees are always in doubt whether the unions can really stand for them. What is evident in the retail trade, hospitality and services and banking sector is that the trade unions are not simply doing enough to reach and organize this category of workers.

However, an interesting case is that of the National Union of Plantation and Agriculture Workers (NUPAW) who have managed to organize all employees in the establishment including casual, temporary and seasonal employees at Zambia Sugar Plc. At privatization, Zambia Sugar Plc had a total labour force of about 4000 but is now employing 4,881 persons. 36 percent are permanent the bulk of whom are unionised except for a few Zambian management and supervisory staff, 63 per cent are seasonal employees, 11 per cent casual and 25 per cent contract employees. Realising that its strength is in numbers the NUPAW has made it a priority to organize all workers. Through mounting education for its members and potential members NUPAW has managed to recruit all employees including seasonal and casual employees. The union has a recognition agreement with Zambia Sugar Plc. NUPAW maintains its visibility in every section of the company through its well trained sixty-nine (69) shop stewards who are always at hand to attend to members making an effective link to the other union structures. It is important to state here that by not taking decisive action on casualisation of labour trade unions themselves are contributing to the same.

4.2 Working Conditions and Remuneration

Casual employees do not have any other working conditions except for the remuneration that they receive at the end of the day like in the testimony of Agnes above. This analysis further reveals that the labour laws concerning employment, minimum wages and conditions of employment, employment benefits do not apply to casual employees. A casual employee is not guaranteed a legal minimum wage, job security, allowances or terminal benefits. Though the legal requirement is that all employees contribute 5 per cent of earnings to NAPSA (with 5 per cent matching contribution from employer) the Act fails to clarify whether a casual employee is legally required to contribute. Casual employees are therefore positioned to receive no terminal benefits when their employment comes to an end.

A casual employee does not qualify for the PAYE tax exemption rate on income under K 280,000 (US\$80) as stipulated in the Income Tax Act and in particular PAYE as a casual employee must pay income tax in line with the ZRA tax table for daily paid casual workers. However, temporary and permanent employees are required to pay income tax on all earnings greater than the PAYE exemption threshold of K 280,000.

Through casualisation employees ultimately pass the burden of providing social protection to families/relatives, the government, the church and other charitable organizations. The society hence has to take a responsibility, which in the first place should have been the employers.

Since casualisation does not motivate the worker, productivity usually suffers. In the banking sector the increase in-house fraud involving bank staff mainly those engaged on casual employment contracts points to its danger to business.

4.3 Worker Rights and Core Labour Standards

On the positive side a casual employee is free to join a trade union as guaranteed in the Industrial and Labour Relation Act. However, as the above analysis has demonstrated casual employees like Agnes are extremely vulnerable to intimidation with no job security. Since casual employees are not covered by collective agreements in most cases and that labour laws offer little or no protection to them they remain highly vulnerable in the work place. For instance because they are not part of the collective agreements they are not covered by internal company policy on important issues such as health and safety including occupational accidents, HIV/AIDS, protective clothing, medical care to mention a few.

Zambia has ratified several ILO labour Conventions including the 8 core labour standards. However, most relevant labour standards are ILO Convention 26 on Minimum Wage Fixing Machinery that calls for minimum wage tied to cost of basic needs and productivity. ILO Convention 158 on Termination of Employment that calls for legal protection of workers to severance pay on termination of employment and ILO Convention 87 and 98 (Freedom of

Association and Protection of the Right to Organize and the Right to Organize and Collective Bargaining respectively) that calls for the right of workers to organise and join unions without intimidation.

The practice to roll over the fixed six months contracts for casual employees exploits a loophole in the labour laws as it fails to explicitly make it illegal to hire casual workers to fill permanent positions.

4.4 Role of Multinational Companies

Government sees the role of multinational companies as that of bringing in investment that is required to generate economic growth and wealth that in turn would create jobs and contribute to poverty reduction. Government is not interested in the type of jobs that will be created. Therefore, government is usually not keen to confront these investors by prescribing the type of jobs that they need to create for fear of losing these investors. As such government is willing to give a blind eye to some of the violations of workers rights that come with the jobs created by these multinational companies even were labour laws are being violated.

While some of these multinationals companies may have good corporate policies that include good employment practices these are not often adhered to in Zambia as the profit motive overrides everything else. In the retail trade sector for instance and according to Zambian workers and the union officials interviewed, it is the Zambian managers that are more insensitive to workers problems and demands than the expatriates. As such multinational companies are able to continue with the practices of casualization with de facto support from government and the Zambian or local managers.

Further local management has no decision-making powers in the multinational company as most decisions are usually made by parent company. The parent has to give a go ahead for any decision reached by local management including decisions on reaching an agreement between management and unions on a collective agreement. In this context it is correct to state that multinational companies have tended to exacerbate casualisation of labour given the loopholes inherent in the labour laws and their lack of effective enforcement mechanisms.

Section V

5.0 Trade Union Strategies

In the face of increasing casualisation of labour it is important to identify what role trade unions can play. This is critical because those affected by casualisation of labour are not only potential members but are workers that by the very trade union principle whose interests they claim to represent. It is important at this stage to ask some questions. What are the causes of casualisation of labour? Is casualisation of labour a trade union problem? Who are the main actors perpetuating casualisation of labour? What role must trade unions play in addressing the problem of casualization of labour? What role can government and companies including multinationals play in ending casualization of labour? What practical actions and options are available for trade unions in the campaign against casualisation of labour?

At the macro level high levels of poverty and unemployment tend to move in tandem with increasing casualisation of labour. Policies that are aimed at reducing or eradicating poverty are therefore crucial to tackling casualisation. The trade unions must in this respect engage government

and other stakeholders including employers in national policy processes on poverty and employment. The National Employment and Labour Market Policy is an important instrument that trade unions can use to advance the decent work agenda and campaign against casualisation of labour. It should be made clear that casualisation of labour is not a trade union problem alone but the society at large including government and employers.

Another observation is that labour laws in their current context have contributed to increased casualisation of labour. The labour laws do not seem to protect casual employees or give guarantees to protect their rights. Trade unions must use institutions such as the Tripartite Consultative Labour Council to press for labour law reforms with the aim of harmonizing all labour laws including those on NAPSA and income tax in particular regarding the definition of “employee” and “casual employee” and clarify legal provisions guaranteed to all distinct categories of employees including casual employees. Furthermore, labour laws must make explicitly illegal to casualised jobs that are permanent in nature.

The government and multinational companies have a critical role to play. They must not put the quest for investment and profits before decent or dignity of employment. The ending of casualisation of work will benefit both government and multinational companies through gains in productivity. Well remunerated workers as consumers and taxpayers contribute to wealth creation and growth and prosperity of the national economy. Well remunerated workers will also be able to sustain a social protection scheme that guarantees their well being after their working life without putting any due pressure on government, tax payers, the families and charity. Trade unions can also try to use global framework agreements as a bargaining tool against multinational companies where they do exist.

Trade unions must take action on casualisation of labour and put it as a permanent feature on their agenda. The work place is an important site of struggle for trade unions on ending casualisation. Trade union must rethink their strategies on organizing to include all categories of workers including casual employees. Trade unions must give casual employees confidence, motivation and protection from intimidation to exercise their rights to join unions as provided in the Industrial and Labour Relations Act and ILO labour standards. The trade unions must take advantage of the positive laws and instrument in achieving this objective. The example provided by the National Union of Plantation and Agriculture Workers in organizing casual employees must be explored and harnessed in strengthening their strategies towards ending casualisation of labour.

Strengthening the capacity of shop stewards, education, information and knowledge is important in realizing the trade union strategy towards ending casualization. Trade unions must mount campaigns on workers rights aimed at workers in distress such as casual employees. This is part of an important service trade unions can provide to this category of workers.

Trade unions must identify sectors in which casualisation of labour is most prevalent and develop innovative campaign strategies on casualization of labour to bring about public awareness on the adverse effects of casualization workers rights and society. Trade unions must seek strategic alliances with like-minded civil society and community organizations to increase their voice to influence government and multinational companies towards action on casualisation of labour and ending it for the common good of society.

Section VI

6.0 Conclusion

While it is not possible to do away with casual employment per se it is possible to end the casualisation of labour. It is also generally agreeable that casualisation of labour is against the trade union campaign on decent work for all and an assault on workers rights. Therefore, it is the duty and responsibility of trade unions in taking the lead in the campaign against casualisation of labour and restoring decency and dignity to work in all its forms and categories.

Trade unions must develop strategies on organizing that are inclusive to bring into union membership all workers regardless of the status of their employment. Building capacity in trade unions structures especially at shop steward level in important in addition to education and creating awareness on workers rights. Trade actions on reviewing labour laws that encourage casualisation while denying workers basic rights is a priority.

The political will on part of government and multinational companies in addressing the loopholes in labour laws and stopping employment practices that encourage casualization of labour is not only necessary but also essential. However, trade unions need to act and put in strategies that can lead to influencing government and multinational actions towards ending casualisation of labour.

List of Unions Interviewed

1. Bankers Union of Zambia (BUZ)
2. Civil Servants and Allied Workers Union of Zambia (CSAWUZ)
3. Hotels Catering and Allied Workers Union of Zambia (HCAWUZ)
4. Mineworkers Union of Zambia (MUZ)
4. National Union of Commercial and Industrial Workers (NUCIW)
5. National Union of Plantation and Agriculture Union (NUPAW)
6. Zambia National Union of Teachers (ZNUT)

References

ARLN, African Social Observatory Reports 2003, 2004 and 2005

CSO, Economic Indicators January to August 2004

GRZ, Budget Speech 2005

GRZ, Economic Report 2004 and 2005

GRZ, Employment Act, Cap 268 of the Laws of Zambia

GRZ, Industrial and Labour Relations Act, Cap 269 of the Laws of Zambia

GRZ, The Minimum Wages and Conditions of Employment Act, Cap 276 of the Laws of Zambia

GRZ, Transitional National Development Plan 2005-2005

ILO, Application: International Labour Conventions, Report of the Committee of Experts, 2000

JCTR, Basic Needs Basket, July 2004

Petrauskis, Chris, Restoring Dignity to Employment in Zambia: Legal and Moral Motivation to Promote the Common Good, 2005 a paper for the Social Conditions Research Project of JCTR (Unpublished)

ZPA, Privatization Status Report 2005

Zambia Sugar Plc/NUPAW Collective Agreement 2005-2007

Zimbabwe

THE EFFECTS OF CASUALISATION ON THE WORKFORCE OF ZIMBABWE

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(LEDRIZ)

EXECUTIVE SUMMARY

This study is about casualisation in Zimbabwe. It is a research commissioned by NALEDI to evaluate the effects of casualisation in Zimbabwe. The ILO defines casual employment as while in Zimbabwe it is defined as employment existing for a period not exceeding six working weeks. In this report casualisation will be defined as a process by which employment shifts from a preponderance of full time and permanent positions to higher levels of casual positions. The overall objectives of the report are to:

- ✓ examine the extent of casualisation in Zimbabwe;
- ✓ assess the effects of casualisation on the workforce;
- ✓ look into the national labour legislation in the face of assaults on the working condition;
- ✓ assess the provision of social protection for all workers; and
- ✓ evaluate the role of international companies in the industrial sectors.

Casualisation in Zimbabwe

The last two decades saw an increase in the adoption of Structural Adjustment Programmes (SAPs) in the region. The coming of these SAPs resulted the introduction (at a massive scale) of retrenchments and the growth of atypical types of employment, including casual employment. Zimbabwe has not been left behind by this wave of globalisation and casualisation, and has been opening up its market as per the prerequisite of these SAPs. Globalisation has led to the reorganisation of production within companies and general instability on the product market, they have shifted from mass production to batch or upon order production. This means that they require less permanent employees just to maintain the equipment and casuals will be called upon when a batch is to be produced.

According to orthodox theory, the combined effect of real exchange rate depreciation and trade liberalisation is to promote the expansion of labour-intensive production relative to import-intensive production and such changes should favour the employment of unskilled labour. As the price of labour (the real wage) falls, this is expected to encourage a favourable quantity (employment) response. In addition the rising cost of capital relative to labour resulting from both high interest rates and real exchange rate depreciation should encourage the promotion of labour-intensive production. In this regard, orthodox theory expresses no concern about falling real wages and real labour productivity, as these are expected to be more than compensated for through rising

employment. It is therefore particularly interesting to know that ESAP was adopted mainly to resolve the unemployment crisis (GoZ, 1991).

But this has not happened, we have only evidenced increases in the unemployment rate and growth in casual employment figures and rates. While 200,000 to 300,000 school-leavers enter the job market each year, on average only 200-300 find employment. The result of all this is an unacceptable level of poverty. Related to poverty reduction is the need to create employment, hence the increase in the cases of casualisation. With levels of unemployment as high as 80% this has made it simpler for employers to implement casualisation in the different industries, as there is an abundant labour supply in the labour market. With abundant labour (which makes it easy to replace employees) and the SAPs (reorganisation of production), it became more convenient for employers to use casual employees as a measure of improving competitiveness and cut costs.

There are no precise figures of how many employees are employed by the formal economy as casual workers are either not registered with the National Employment Council (NEC) of their sector or with the National Social Security Authority (NSSA). The only available information is that provided by the Central Statistical Office (CSO) and according to their figures the proportion of those in the formal economy who are casual workers is 7.09%³⁸.

This figure is lower than that given by the unions and other independent surveys who estimate that casuals are 65% or even more of the total population employed by the formal sector. The CSO figures are low because they only account those who are registered with the NECs and because the employers have shifted from using the term casuals to part-time employees. Due to batch production most casuals are no longer being called casuals but contractual workers, this is the other reason why the CSO figures are rather much lower than the figures from independent sources/surveys.

Some of the Causes of Casualisation

The increase in capital mobility and the deregulation of the labour market are some of the major causes of casualisation in Zimbabwe. SAPs prerequisites included the opening up of the product market (removal of trade barriers), which at the time the Zimbabwean industry was not yet readily for. Trade liberalisation allowed competing imports into the country, due to instability in the product market, employers adopted cost-cutting measures, including cutting back on employment and use of permanent employees.

SAPs promoted outsourcing, which is one of the major causes of casualisation. With globalisation in place, outsourcing provided an easier way to cut costs and run of competition. If an employer was to outsource for either labour or production components he/she no longer needed as much permanent employees as before, therefore he/she would cut the number of permanent employees and replace the which casuals. Uncertainty and instability in the product market promoted just in time production systems which the manufacturing sector. Due to the adoption of this type of production system there was no need to have permanent employees, one only need a few just for machinery maintenance.

³⁸ CSO figure from the Labour Survey 2004.

National Labour Legislation

The post independence era was characterised by regulations and direct interventions by the government into all markets. In the goods market, the government had adopted some parastatals and these were maintained. The Industrial Conciliation Act as amended, the Employment Act, and the Minimum Wage Act governed industrial relations in 1980, these regulations specified conditions of employment. Before independence, there was no employment security, people were lowly paid, and generally the standards of living of the people were deplorable.

To be more proactive, the government introduced the principle labour law in the form of the Labour Relations Act (1985), superseding the other three sets of regulations. The law was protective of workers, and many employers complained of the extent to which the contract of employment was managed. The regulations made it difficult to unilaterally dismiss workers. There were also minimum wage settings where the government determined the extent to which wages could be increased.

The immediate effect of the Employment Act was that, all powers to dismiss employees were vested in the Minister of Labour who would in turn act on recommendations from the tripartite Retrenchment Committee on whether to dismiss or not (it is important to note that the Employment Act was promulgated to discourage retrenchments following the introduction of minimum wages).

Due to the rigidities posed by the interventionist policies of the government during the first ten years of independence, reforms were necessary to revitalise the economy. The government chose to implement orthodox economic reforms supervised by the World Bank (WB) and the International Monetary Fund (IMF), whose neo-liberal ideological background was a full-circle turn from that followed by the government at independence and thereafter. The reforms entailed the liberalisation of markets (trade liberalisation, exchange rate policy flexibility, financial sector reforms and labour flexibility, among others), and opening up to international trade and competition.

The Effects of Casualisation on the Workforce

The effects of casualisation have not only attacked the wages and job security of the employees, it has gone as far as attacking the employees health. Casualisation has also increased the ratio of unpaid to paid labour and the intensity of work. As casuals, the employees cannot be absorbed in the available social protection schemes and if they can be absorbed their benefits are so low that having them or not having them is the same. The casuals are not the only ones feeling such effects but they are also affecting the permanent employees too.

The number of unprotected workers has increased, as most of the workers who are casually employed can no longer be part or members of unions and the current laws are anti-union. This has caused reduced job security and has forced workers to negotiate their position on their own and making them vulnerable to exploitation. Through threats of outsourcing (from the informal economy and internationally) employees are forced to agree to move from being permanent to being casual workers, but as casual workers they are still subject to the same threat of outsourcing if they ask for wage increments or better working conditions.

The drop in the working conditions of the employees caused by the casualisation has also filtered into crushing the employee's morale. The employees do not have a future they cannot even build careers as they continuously change jobs and duties. Above all casualisation has affected the living standards, working conditions and general lives of not only the casuals only but also the permanent employees too.

Workers have been forced to do other forms of jobs to generate income such as being cross border traders, operating flea markets and in most cases selling fruits and vegetables so as to supplement their income. When one becomes a cross border trader for example he/she will spend most of the time on the road and when they come back instead of working they would rather sell their goods which at the end of the month will give them more money than their salaries. Coming to work for some of the employees is not that they enjoy being casuals but rather they can sell their goods faster than when they are at home. As a result no work for the company is really done at the end of the day.

Conclusions

Developing and Implementing Decent Work Policies

Under SAPs no new jobs were created (as promised) and the decent work agenda was totally ignored as the focus was now on increasing profit and the need to cut on labour costs. This strategy was based on the expansion of the employer's wealth at the expense of the employee.

There is need for the adoption and the implementation of the decent work agenda as proposed by the ILO and the full development of labour standards aimed at achieving and promoting opportunities for decent and productive work in areas of freedom, equity, security and dignity to ensure fairness and equity in the global economy. This advocates for the betterment of working conditions and the promotion of training facilities for the employees. There will be also the need for the trade unions to educate the employees of their rights and what to do when these rights are violated.

Development and Improved Access of the Provision of Social Protection

Social exclusion undermines the pursuit of social justice; therefore the government is challenged to achieve inclusiveness in social security provision. There is need to develop and restructure the schemes available. The restructured and developed schemes should allow the provision of protection to all workers. This can be ensured by the provision of payment schemes affordable to all workers. There should also be an introduction of new legislation that promotes inclusiveness.

There is a need to enforce the provisions of the Pensions and Other Benefits Schemes so that all eligible employers register with the National Social Security Authority (NSSA) and remit contributions as per schedule. Also there is need to extend coverage to other contingencies such as maternity and sickness so as to make social security schemes more relevant to the needs of the women (who contribute a high percentage of the casual workers)³⁹. In order to address the problem of social exclusion, a tiered pension system is needed. According to Fultz and Pieres (1999) the first tier should provide a means-tested or universal benefit, with the second tier being based on a mandatory social insurance scheme. The third tier is a voluntary scheme designed to supplement the basic benefit.

³⁹ Social exclusion and social security: the case of Zimbabwe, Edwin Kaseke 2003

The Legal Framework Needs Changes

The amendment of Section 17 of the Labour Act Section 7 has led to the growth of casualisation, therefore there is need for trade unions and government to recognize the good provisions of Section 17 and integrate some of the sections that protected the employee's job security and working conditions. In the case that the Labour Act is not amended to take into considerations the interest of the casual worker, the different unions in the different sector can negotiate for the recognition and betterment of the working conditions of the casual worker through Collective Bargaining Agreements (CBAs). When these changes are made at sectorial level it will be made easier for adoption at the national level and be adopted as law.

There will also be the need to adopt and implement some (if not all) of the conventions and declarations by the ILO, which promote the decent work agenda. The government also has to look at the re-regulation of the labour market and taking back the power to hire and fire workers as they see fit from the employers.

1.0 Introduction

Casualisation is a process by which employment shifts from a preponderance of full time and permanent positions to higher levels of casual positions. Casual employment is employment of an irregular or intermittent nature. Casualisation is a form of atypical employment. Casualisation involves the spread of bad working conditions, insecurity, irregular working hours, low wages and the absence of standard employment benefits. A casual job is a job without rights.

Since the liberalisation of the labour market in 1990 there has been an increase in labour market flexibility. The root causes of casualisation emanate from globalisation, technological change and the abundance of labour. Globalisation came with the deregulation of not only the product markets but also the labour market. Employment has greatly shifted from permanent employment to contract employment, part-time employment and casual labour.

Also through globalisation, capital mobility has increased making MNC's stateless enterprises, which can move from one state to the other in search of low production costs and averting stringent regulation and outsourcing which has reduced the bargaining power of the workers. This has led to the increase in the use of casuals as the companies no longer need to employ people on a more permanent basis as they might relocate if and when the production costs in that country are no longer conducive in promoting their competitive edge or when raw materials have run out. In Zimbabwe, Coca-Cola and Palmolive are some of the MNCs that have relocated to South Africa.

The rate of growth in employment decelerated from an annual average rate of 2.4% during the period 1985-90 to 1.7% during the period of economic reform (1991-98)⁴⁰. However, agriculture, mining, electricity & water, finance, education and other services experienced an acceleration in their average rates of employment growth since the adoption of economic reforms. A major cause for concern, especially for agriculture and the other sectors, is the increased 'casualisation' of labour. This is because whereas employment in this period has increased, their proportion of these employees are casuals and those who were on full-time employment basis are either retrenched or moved into casual employment. As from 1999⁴¹ the country has evidenced a continuous decline in

⁴⁰ See Appendices Table 6.3 on the Trends in Average Annual Employment Growth Rates, 1985-98 (%)

⁴¹ See Appendices Table 6.4 Quarterly Employment Survey

the employment figures, though precise figures are not available more than 55% of the employed are casual employees.

The massive rise in the number of workers (perpetuated by the emancipation and increases in women participation in the market) has also influenced the increase in casualisation. Increased global competition has also been a cause of casualisation, companies argue that through casualising employment they cut costs and also enhances flexibility. As a prelude to privatisation, casualisation has been effected as a cost cutting measure and as a way of attracting investment (as low labour cost would result in high profits).

In an interview, the ZCTU President, Mr L Matombo⁴², indicated that casualisation had affected the labour body as a whole. He stated that the number of permanent employees has been greatly reduced and as a result incomes to the different unions have been reduced, which in turn creates inefficiency in trade unions. He also noted that when you call for a strike management will always find soft targets in the form of casual workers. Since their jobs are not permanent, they are not willing to take part in strike actions. Casual workers are not part of unions because they cannot get time off from work to participate in union activities for example to attend seminars, workshops, meetings and labour forums, without prejudicing their remuneration.

Casual workers are often the workers who take on more overtime work as a means to increase total earnings. This reflects workers rights disparities between casual and permanent employees. Unfortunately, casual and part time employees are not unionised and are not covered for adequately in the Labour Act and are excluded from collective bargaining agreements on general conditions of service for employees.

In most sectors casual female employees when they want maternity leave and have worked for less than a year will be granted at their request, ninety days for maternity leave without pay. Casual workers do not have vacation leave days. They are paid a wage for exactly the number of days that they report for work.

Provisions in the Labour Act for sick leave are not applicable to casual employees. Because casual workers are not unionised a lot of their workers' rights have been violated. They are oppressed and have very limited benefits in their terms of employment. They are denied the most basic of working conditions given to permanent employees such as paid leave, paid vacation or special leave, educational loans etc. Remuneration also is far below the Poverty Datum Line (PDL). The implication of casualisation on the workers trends is that casuals see unions as not helping. They think that for them being casuals it means unions are not helping their situation. As a result of this assumption, casuals ask why they have to support unions while nothing is done about their being casuals, hence the weakening of unions.

The legal framework nationally and in Collective Bargaining Agreements (CBA) does not encourage trade unions to do away with casualisation. In the CBA statutory Instrument 167, an employer is allowed to have casuals at anytime, as a result much is needed to be done to cushion casual employees, trade unions have a challenge ahead of them because the CBA allowed the employers to have casuals at any time though the contracts should not be on a month-to-month basis, which then means the employer can terminate the contract after two months. The time frame allowed for a contract to be terminated is very little and works to the advantage of the employer. Hence this is a

⁴² The President of the Zimbabwe Congress of Trade Unions (ZICTU).

challenge to the trade unions. Laws within the trade unions have left out casuals, and no one can negotiate for them for their contracts to be changed to at least six month.

2.0 Sectoral Analysis

In the analysis of the implications of casualisation the following sectors were looked at from an individual point of view. The unions, which we visited during our study to find out how casualisation had affected them and the workforce in their sectors, were:

- Agricultural Sector General Agricultural Plantation Workers Union (GAPWUZ);
- Catering Hotel Industry [Zimbabwe Catering and Hotels Workers Union (ZCHWU)];
- Commercial sector [Commercial Workers Union of Zimbabwe (CWUZ)]; and
- Engineering sector [National Engineering Workers Union (NEWU)].

2.1 Agricultural Sectors

Agriculture is the most important productive sector of Zimbabwe's economy. It regularly generates about 15 percent of the gross domestic product (GDP) and some 40 percent of foreign-exchange earnings. More than one-half of the total labour force and one-fourth of the formally employed are engaged directly in agricultural activities. The agricultural sector is the single largest employer of skilled and semi skilled labour. In a population of about 12 million, nearly half live by subsistence agriculture and about 75 percent rely directly or indirectly on agriculture for their livelihood. The country has abundant arable land, minerals, good infrastructure, an educated and disciplined work force. Its chief sources of hard currency are exports of tobacco.

With an increase in subsidizing by developed countries, this has led to the try by the local agricultural sector to cut cost. The pursuit to cut cost reigns from the need to be more competitive in the global market and the only cost, which can be cut on a more visible point is the labour cost. By implementing casualisation the agricultural sector can cut costs and be more competitive. That is the other reason why the sector has pursued the casualisation ideology. International companies have been advocating for the mechanisation of the sector and this has led to the need for labour at as less permanent basis.

Mr Muti⁴³ of the General Agriculture and Plantation Workers Union of Zimbabwe (GAPWUZ), noted that for those in the agricultural sector, casualisation was more prevalent and on the increase. This has led to the development of a culture to overload casual workers with more duties to carry out as the employer tries to maximize on their tenure of employment. Currently the sector employs less than 30% permanent employees where the rest, the majority are casual workers and contract workers. The percentage contribution of full-time employees to the whole sector's employment total drop from 73% in 1980 to 57% at the start of the structural adjustment period (ESAP period, 1991) to 47% by 1998⁴⁴, this showing that casuals percentage contribution was now pegged at 53%, which is more than half the total labour force of the sector. Table 1 below shows full-time employees as a percentage of total employment in the sector:

⁴³ Mr Muti is the Assistant Secretary General of GAPWUZ.

⁴⁴ CSO Unpublished Data

Table 14: Full-Time Employees As A Percentage of Total Employment on Large Scale Farms, 1980-98.

Period	Full-Time/Total	Females /Total	Female Full-Time/Full-Time Total
1980	73	26	9
1981	75	22	5
1982	75	20	3
1983	72	21	3
1987	63	23	3
1988	60	23	3
1989	55	26	3
1990	58	24	3
1991	57	25	4
1992	58	26	5
1993	53	28	5
1994	51	28	6
1995	52	29	6
1996	49	31	8
1997	49	31	8
1998	47	31	10

Source: Calculated From Unpublished CSO Data.

Notes: No figures for 1984-86 are available by tenure of employment.

The rate of casualisation has been made worse because of the land redistribution programme which started in 2000 to date has seen most commercial farms being given to locals, most of whom did not have the knowledge and skill for large scale agriculture. As a result more than half of those who were employed as permanent workers lost their jobs and some have become casual employees. However there is evidence, that most of the farm employees prefer to be casuals, because of the low wages, which are less than 2% of the PDL. Therefore by being casuals they can move to the next better paying job available⁴⁵.

Except for some annual variations, the percentage of workers employed on a full-time basis on large-scale agriculture has declined over time from a peak of 75% in 1981/82 to 47% by 1998. By employing non-permanent workers, employers avoid incurring additional labour costs such as housing, pension payments, etc. In addition, these can easily be retrenched since most are contract workers. Table 6.3⁴⁶ suggested some improvement in the rate of growth of agricultural employment. In the context of a downward trend in the employment of permanent workers, this suggests the new jobs may not be secure.

The effects of casualisation in the agricultural sector are that there has been an increase in occupational related illnesses due to lack of training and protective clothing. There is no job security for employees and as casuals most of them have to travel long distances to work since they do not have houses by the farm since they are not permanent, at the same time they also do not

⁴⁵ See Appendices Box 6.1

⁴⁶ See Appendices.

have a piece of land to grow their own crops. At the end of the day it means they have to buy the same maize they are growing on the same farm, which means they do not enjoy benefits enjoyed by permanent workers who are given a piece of land to grow their own crops. The implications are that workers do not plan for their future properly thus include banking money for the education of their children, they live on a hand to mouth basis (earn money and buy food). At the same time casuals do not enjoy other rights such as freedom to collective bargaining, association and expression.

Mr Muti claimed that as a union GAPWUZ has seen the drop in the total number of union members, which as a result has had a negative impact on the financial base of the organisation. He said the union should try and negotiate better terms and conditions of employment and to invite the government to play an active role in these actions. On a positive note GAPWUZ has already embarked on programmes to training its members and develop self-help projects.

2.2 Catering and Hotel Sector

The Hotel and Catering Industry has about twenty thousand employees, though this number varies from time to time because the tourism industry is a seasonal industry, which determines the number of people who visit hotels. Whilst tourism is by nature a seasonal industry and all hotels need to employ casual staff at certain times of the year, the union is concerned about the increased use of casual and part time workers to perform core services. This allows employers to pay no overtime, sick benefits or pensions. According to Mr Murawo whom we talked to on behalf of the Catering Industry, stated that casualisation had affected the industry greatly. The Zimbabwe Catering and Hotel workers Union has suffered greatly over the years because of casualisation, as the industry has tended to employ more casuals than permanent employees. According to him of the 20 thousand employed in the industry, only 9 thousand are unionised.

As a result of the above the union is not going to develop, as casual workers do not join the union. Most casual workers in this industry are not given protective clothing for example those who clean toilets they should be provided with gloves, if they are given in most cases these would be old which would have been left by the previous casual worker also. In the Catering and Hotel Sector if a casual worker has his/her rights violated they have to be a member of the union. For those who are not members of the union they have to pay a certain amount to get the services of the union. Most employees cannot afford to pay these fees, as they do not earn much, hence their rights continue to be violated because the employer knows that no legal action will be taken against him.

2.3 Commercial

The commercial sector is the biggest employer in the country. Over the past half a decade the commercial sector has seen an increase in the number of casual workers taking the number one position in the country, especially in retail. In a research by Africa Labour Research Network in 2003, on Shoprite (a retail shop), not less than 65% of the workers are casuals of which, female constitute 65%. These workers do not enjoy holidays even public holidays as if they miss a day they miss that days wages. Their wages are calculated upon actual hours at work.

According to Mr Taringa commercial sector employers do not offer its employees pension schemes outside the compulsory national social security pension scheme provided by the National Social

Security Authority (NSSA). Government introduced the compulsory pension scheme with a vision to provide for workers and their families against contingencies. It is compulsory that all employees contribute to the scheme, regardless of whether an employee is covered by a private pension scheme or not. Beside this benefit the workers have no other benefits. With the current economic status this benefit is eroded and some end up getting next to nothing when they retire which could have been compensated if they had other benefits.

For most casual workers for example those in the retail industry overtime to them are working during weekends and public holidays. Unfortunately overtime is not voluntary, and is management's decision. This is rather unfortunate as some casuals might opt not to have overtime as it is not well remunerated. Employees who work overtime during normal working days are paid one and half times the hourly rate, whilst employees who work overtime on public holidays are paid double the hourly rate. On training of employees, the national legislation is not clear in terms of providing training for employees. Some sectors have managed to negotiate for educational paid leave and educational allowances in their collective bargaining agreements, however these are not provided for in the commercial sector's collective bargaining agreements. Training for some casuals in the commercial sector usually is in-house training so as to gain new skills to enable them to carry out their work, i.e. for till operators.

2.4 Engineering

The engineering sector has not been left out of his attack on its members. Cases have been coming in and have been increasing of casual workers whose contracts have been terminated before the end of the tenure and without notice. Mr P. Howera said that most of the casual workers no longer join the union because they see no future in their employment and cannot even plan in life. He also noted the prevalence of back-to-back contracts, which have led to the exploitation of workers. Also some of the contracts are verbal contract, which makes it easier for employers to fire workers. It is estimated that more than 70% of the workers are casual workers.

The benefits withheld from the workers include medical aid, pension contributions and in some cases NSSA contributions. The casual workers are not getting protective clothing and when they get it they get second hand clothing, which is almost the same as not getting any. The leave days have been cut from two and a half days (2.5 days) to one point eight-three days (1.83 days). The union has managed to fight for the provision of gratuity for the workers upon termination of employment for the sector and is now fighting for the eradication of the casual employee status through the CBAs as the Labour Act seems to be on the move of becoming more and more employer friendly.

3.0 Assessment of Implications of Trends for Workers

3.1 Effects of Casualisation

In analysing the effects of casualisation, some caution is required because of the distinction between different forms of casual employment and the level of insecurity attached to them. Based on a

research by Weller et al. (1999) they identify six types of casual jobs: probationary, quasi-permanent, restructuring, technical-organisational, labour pool and agency. The use of casual employment in some cases is because one will be on probation usually for a period of about three (3) months before being offered a permanent place or a fixed term of work. However, research in higher education has shown that such job paths are illusory, with most casual teachers remaining as casuals.

Overall, however, there is no question that casual employment is far less secure and more vulnerable than any other category of employment. Enough is known about the characteristics of casual employment to identify a range of problems, such as lack of training, consultation and task variety and lower satisfaction and organisation commitment (Walsh & Deery, 1999). Casualisation has affected workers in more ways, which are not only work related but also their lives (social lives). Some have been casuals for more than 10 years and have failed to reach their self-actualisation stage.

It has gone further to impact the workers health and safety at the workplace. Due to the decline in job security, workers are finding it difficult to participate in the management of health and safety issues at the workplace. Health and safety is now viewed as a prerogative of the management, which they tend to sideline, as it is costly and tends to "erode" their profits. Workers are also reluctant to report accidents to the relevant authorities due to fear of reprisal from their employers. Therefore, they suffer in silence as they can easily be fired and replaced. Casualisation has not only led to low wages and zero benefits (way below the poverty datum lines), but also has increased the ratio of unpaid to paid labour and the intensity of work. In a country where the inflation rate is ever on the rise, all workers have been thrown into poverty, but casuals have been thrown into the deep end of the pool.

The number of unprotected workers has increased, as most of the workers who are casually employed can no longer be part or members of unions and the current laws are anti-union. This has caused reduced job security and has forced workers to negotiate their position on their own and making them vulnerable to exploitation. Through threats of outsourcing (from the informal economy and internationally) employees are forced to agree to move from being permanent to being casual workers, but as casual workers they are still subject to the same threat of outsourcing if they ask for wage increments or better working conditions. Casualisation has created substantial deficits in the rights of the workers as due to fear of summary dismissal many now have their rights violated. Through casualisation there have been variations in working hours and schedules. This has caused workers to be called to work and latter are told that they were not working on the day, without any compensation for their transport costs. For example workers in fast food outlets i.e. the Bakers Inn bakery, Chicken Inn have obscure working schedules, which could be altered by management at anytime⁴⁷.

This also led to arbitrary treatment and underpayment of the workers. Workers have also been experiencing deficits in skill formation and promotion. This has resulted in workers not having the capacity to build careers and leaving them as non-skilled workers and very vulnerable to exploitation by the employers due to lack of experience.

Apart from attacking the wages of the workers, casualisation has also attacked the health and safety of the workers. Due to low training and regular task change, occupational hazards have increased. Generally there has been an increase in the number of stress related illnesses in the workplace. In

⁴⁷ An employee of INNSCOR Corp.

the agricultural sector, workers have been seen applying pesticides without proper protection. Because of the fear of losing their only source of income they continue to work without protection and at the same time do not question the employer because they may have their employment terminated. Most employers consider it an unnecessary expense to provide safety measures for casual workers.

Also due to these irregular working schedules and times, most of the workers are not getting enough rest time (they do not even have leave days), this is causing an increase in workplace accidents and the deterioration of the workers' health. Without health benefit schemes available to them, the workers have to bare the high medical costs of injuries from their own pocket. While the same worker is ill, he/she continues to come to work (due to fear of being replaced and being fired). This is putting other workers at risk.

There has also been a decline in the standard of employment relationship. Employers have lost the will to invest in their employees and parting some of the productive gains. This has also led to centralisation and has made decision making a prerogative of management. This has also led to the inhuman treatment of workers, where more and more employers/management have adopted the McGregor Theory X style of management, which states that workers do not want to work and have to be forced to worker and management has to be despotic. This has eliminated the sense of belonging from the worker, which has also caused big loses for the employers. This restructuring has created a tense, mistrustful, anxiety-haunted society within the workplace.

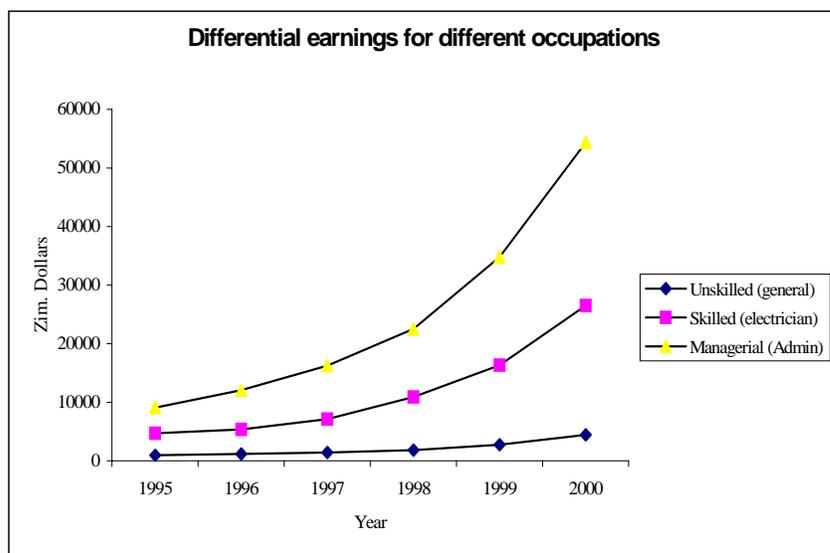
Most of the casual workers are females, this makes it easier for management to maintain a constant follow of production activities in that in the countries legislation only women employed permanently get maternity leave with full pay. For those who are casually employed if they fall pregnant can get on maternity leave but without pay for that period they will be on leave or their contract is terminated and the next person is employed. This has led to the violation of women's rights at the workplace and in society.

The division between casual and permanent employment has led to an increased level of labour market segmentation. The increased labour market segmentation has created inferior and stereotyped jobs. This has created dissections between workers where some now consider their jobs more important than others. This has affected the morale of the workers (casual) and subjecting them to ill treatment and isolation. Peer support and cooperation has also suffered due to possible resentment by casual staff against the superior industrial conditions enjoyed by others. There is some evidence that increasing precariousness of work (of which casualisation forms a part) leaves workers more vulnerable to workplace bullying, and certainly to more managerial control. Casual workers are not only vulnerable to exploitation by management only but by other workers (permanent) and up performing multiple tasks. Permanent workers may see casuals as a threat to their positions and hence the hostile relationship between the two groups.

Collective bargaining is under threat as there is increased job insecurity and one can be easily fired without any notification. Issues of survival have thus taken centre stage, and labour standards have been severely compromised. Businesses are resorting to multi-tasking as a way of reducing employees, but at lower rates of pay. Companies have also scaled down education and training as a way of cutting costs. This results in skill reproduction insecurity, which will affect industry and the whole economy in the long run.

Contrary to theoretical expectations of converging relative wages, income differentials have widened. Whereas the income gap between the fifth of the world's people living in the richest countries and the fifth from the poorest was 30:1 in 1960, it widened to 60:1 in 1990 and 74:1 by 1997. Pressures emanating from globalisation have led to job and income insecurity and precarious forms of employment, and in particular, 'casualisation'. From the figure below one can see the salary/wage differentials are increasing yearly and the casual workers (grouped under the unskilled (general) workers are the one suffering the most).

Source: Earnings Survey - Zimbabwe, 1980 - 2000, by Price Water House Coopers, Study Commissioned



by the Ministry of Public Service, Labour and Social Welfare, EMCOZ and ZCTU, December 2000.

3.2 National Labour Legislation

The National Legislation is a basic instrument for regulating collective labour relations and individual employment. It is there to protect the workers' interest more than the employer's interest. While it is necessary to amend statutes and regulations that stand in the way of certain types of desired flexibility, the legislation is by nature a less satisfactory method for promoting flexibility, than a process that is controlled primarily by the parties to the relationship.

Labour laws should serve the following:

- Protection (minimum legal standards to protect workers, given their unequal bargaining power from acceptable levels of exploitation);
- Promotion (to force the acceptance of an individual within the market economy).

The Labour Act of 1985 was one of the best labour acts in the region in terms of protecting the employee against assault from the employer. For the first time it outlined fundamental rights of employees. The government set to deregulate the labour market among other things, giving back to employers the right to hire and fire. The Labour Relations Act of 1985 was under attack from the business community, labelling it a disincentive to both domestic and foreign investment because of its alleged over protection of workers (Madhuku, 1995). It was further alleged that the

overprotection resulted in high labour costs and lack of effective production. As such, it was found necessary to liberalise the labour market.

In the context of Structural Adjustment Programmes (SAPs), labour is treated as a commodity and its market is treated the same way as commodity markets, implying that the equilibrium quantity demanded (employment) be determined by the price (the wage rate). Therefore, countries implementing these reforms strive to get the 'price right' by removing barriers in the labour market. We should note that this approach narrowly conceives labour market flexibility in terms of the extent to which employment is influenced by the wage rate. Because of the changing work environment and the influence of the process of globalisation, employers applaud this approach, as they desire to change production processes quickly in line with the changing environment, and at relatively little cost. Beyond the flexibility of wages, the labour market reforms demand the removal of any regulatory constraints (i.e. minimum wages, and other government or union induced interventions) in the labour market. The reforms have the effect of weakening union rights.

There is also a form of labour market flexibility that is internal to the firm. This involves the flexibility of working practices, with emphasis being put on issues of multi-tasking and multi-skilling. Local firms find themselves besieged by foreign competition, and they are forced to restructure internally in order to survive. This process culminates in retrenchment of some workers, and increased casualisation of labour. New technologies may be introduced to improve on efficiency and quality of goods. This invariably means adoption of new forms of work organisation.

The deregulation of labour laws was meant to make the labour market flexible so as to encourage foreign investment, employment and as a prerequisite to the implementation of SAPs. The major reforms made to the 1985 Labour Relations Act were meant to deal with perceived rigidity areas. Some of them are as follows:

- In terms of section 20 of the 1985 Act, the Minister of Labour had excessive powers to specify the payment of a minimum wage in any industry. The deregulation specified that wages should be determined by the market, and reflected in the individual contract of employment. However, the Minister still has the powers, which he/she can invoke should he/she find it necessary.
- The prerogative of the employer to hire and fire, which had been taken away by Statutory Instrument 371 of 1985 and was subject to ministerial approval, was amended through the introduction of retrenchment regulations and codes of conduct. Employers can dismiss workers in accordance with provisions of the registered code. Those without registered codes still have to apply to the Minister. Generally, the process of dismissal became easy for employers under the new Act.
- The initially cumbersome dispute resolution process was reduced. While it initially had four stages before getting to the courts, it was made possible that one could take his/her case directly from the labour officers to the tribunal, or to the courts. The two stages, of the labour relations board and regional hearing officers were abolished.

Labour market reforms were geared towards the decentralisation of regulations pertaining to the terms and conditions of employment.⁴⁸ In line with the adoption of a market-driven strategy, the law applying to retrenchments was changed through Statutory Instrument 404 of 1990. This statutory instrument provides that any employer wishing to retrench should:

Give written notice of his/her intention: -

- i) to the works council established for his/her undertaking; or
- ii) if there is no works council or if the majority of the workers concerned agree to such a course, to the employment council or employment board.⁴⁹ In his/her letter of notice, the employer is expected to give details of every employee affected and the reasons for the proposed retrenchment. A copy of the notice should be sent to the Retrenchment Committee. If the matter is not resolved within a month, the issue is referred to the retrenchment committee.

The regulations specifically outline that it is the duty of any employer to keep the employees informed of any major changes in production, organisation or technology that are likely to entail the retrenchment of any employees. This means dialogue between workers and employers on the performance of the business is emphasised.

Sweeping changes were also made to the law governing dismissals and disputes. Through Statutory Instrument 379 of 1990, workplaces and employment councils/employment boards were tasked with establishing employment codes (codes of conduct). Once an employment code is registered with the Ministry of Public Service, Labour and Social Welfare, statutory Instrument 371 of 1985 would cease to apply. However, Statutory Instrument 379 is silent in terms of what happens should both a workplace and employment council register an employment code. Through Statutory Instrument 356 of 1993, this issue was clarified. A works council was, through this amendment, allowed to register a code, notwithstanding that an employment council has applied or proposes to apply for the registration of a code. In the event that both the workplace and employment council have registered codes, the statutory instrument makes the code registered by the works council binding, implying the shop floor level arrangement supersedes any arrangement at the industrial level.⁵⁰

Other important changes arising from the 1992 amendments to the Labour Relations Act include allowing for the formation of committees for managerial employees, the abolition of the principle of 'one industry one union or employers association,' and slight amendments to the provisions on maternity leave. The abolition of the 'one industry one union' principle has resulted in the fragmentation of trade unions, as splinter unions can be formally registered by the Ministry.

⁴⁸ The previous employment regulations were indeed onerous, requiring Ministerial approval for retrenchments. This had an adverse effect on employment (Fallon and Lucas, 1993). The dispute procedure was long and cumbersome, resulting in inordinate delays in dealing with grievances (see Kanyenze, 1993).

⁴⁹ A works council is a decision making body at the shop floor level comprising of equal representation of workers and management. All Employment Boards have now been abolished in which case, all sectors that had boards have to form employment councils.

⁵⁰ These changes are formally incorporated in the amendments to the Labour Relations Act as revised in 1996.

The Labour Relations Amendment Act (1992) granted plant-based works councils the power to negotiate collective agreements and codes of conduct. This undermined union negotiated agreements (which were in most cases, favourable). The changes to the labour regulations introduced collective bargaining as an important tool in wage negotiations. Instead of the government setting the minimum wages, the different industries and trade unions were granted the opportunity to collectively negotiate any wage increments, although that Principal Act still empowers the minister to legislate for a minimum wage should the situation so dictate (in terms of sections 17 and 22). The introduction of collective bargaining was a welcome move for both workers and employers. Thus, employers and the trade unions from the different sectors meet at NEC level to negotiate wage increments and other conditions of service. While the NEC set the minimum, the different works councils can negotiate over and above this.

Collective Bargaining Agreements (CBAs) reached at national level, are binding to all operators in the sectors concerned. Realising that there could be some operators who may not be able to effect this, there is a provision that they can apply to the Ministry of Labour for exemption from the provisions of a registered agreement. Any CBA is registered with the Ministry. While the agreements are supposed to be binding to every operator in specified sectors within the formal sector, in reality this is not the case. With the massive growth of the informal economy, the operators do not abide by the agreements. Because of the nature of their operations, their sizes in some instances, and their numbers, the enforcement of the agreements is difficult, and the government seems oblivious of the need to improve the labour relations in the sector. Indeed, there is room that a comprehensive labour law reform can bring about the recognition of the informal economy, and ensure that CBAs also apply to the sector. But this is only possible if the informal economy is mainstreamed into the economy. In the formal economy, the agreements have largely been respected and implemented.

Due to the rising unemployment problem, the government embarked on an investment programme in Export Processing Zones (EPZ). Companies within the EPZs are currently the companies with high percentages of casual workers. Those who get licences to operate in these zones enjoy a multiplicity of incentives, some of which, unfortunately, compromise labour standards. Initially, the EPZ Act stipulated that no labour laws should apply. It was through intense negotiations by the labour movement that it was agreed that they should apply. Eventually, separate regulations were legislated through the EPZ Employment Rules (1998). The rules fall short of the rights that are espoused in the Labour Relations Act, and take away some rights of the workers therein.

The Labour Act was further amended in 2005 (Labour Amendment 7). This amendment made it much easier for employers to fire casual workers at any period in time of their employment. The act enabled employers to fire casual workers upon a one-day notification period, reduced from a two-week period, (this is for casual workers with a 3 month contract). For casual workers with 6-month contracts they get a two weeks' notice before employment is terminated. The Labour Act under Section 8 provides no cover or protection for women, if a women was to fall pregnant before her period of employment has accumulated to a year, she is eligible to get maternity leave. There is no section in the Labour Act, which provides for the attainment of gratuity to casual workers.

The Labour Act does try to address discrimination issues pertaining to the issue of wages/salaries. Under section 5.2(a) if a casual employee is performing the same task as a permanent employee he/she should be accorded the same salary as the permanent employee, which is called "equal pay

for equal value. The Labour Act now protects women against sexual harassment, this tends to protect them when called upon to perform sexual favours so as to maintain their employment.

Overall the national labour legislation is not protecting the casual worker and is in some instances promoting the exploitation of workers. As noted above, there is need to incorporate of the good aspects of the 1985 Labour Act on the protection of employees. The coming of SAP's saw the decay of the protection rendered by the Labour Act to the employee and gave back power to hire and fire to the employer.

3.3 Provision of Social Protection to Workers

Social protection is the setting up of policies, which ensure that all people have adequate economic and social protection during unemployment, ill health, maternity, child rearing, widowhood, disability and old age, by means of contributory and non-contributory schemes for providing for their basic needs. Walley (1972:9) defines social security as "the protection of standards which the worker has secured for himself and his family in his employment". Social protection systems have, in history, been developed in response to the problems of interruptions of income and exclusion caused by the functioning of labour markets. The varieties of forms taken by these systems depend on the approaches adopted to develop coherence between employment standards and social protection standards.

The last decade has seen the unfolding of major changes and developments in the labour market and social protection. There has been an increase in job insecurity, low wages, poverty, social exclusion and casual jobs (precarious jobs). This has led to social protection institution of today unable to effectively and adequate deal with the problems and challenges at hand. These challenges have emanated due to the higher degrees of economical integration, which has been associated with higher mobility of capital and production, accompanied by increased threats by companies to move if taxes are increased. These developments have affected various aspects of the labour market/social protection nexus.

The multiplication and development of casual employment has undermined the coherence of social protection as it relates to direct wages and assistance. This is having a triple effect on social protection rights:

- it is reducing the total duration or interrupting the continuity of reference periods which serve as a basis for the calculation of entitlements;
- it is contributing to the expansion of categories of the population on very low wages, with a direct impact on the level of their future benefits;
- it has also led to the increase in the number of persons who are not covered by social protection because of their period of employment and/or their wage level is below a minimum threshold.

In global terms, employment policy objectives and measures have had multiple effects on social protection systems, both through changes in labour law and the introduction of new measures relating to employment. as a result, the coherence of social protection has been undermined by the far-reaching changes made in employment standards. In Zimbabwe, the National Social Security Authority (NSSA) only offers two schemes, which are the Pensions and Other Benefits, and the Accident Prevention and Workers' Compensation Schemes. The Pensions and Other Benefits Scheme covers all employed in the formal economy except civil servants. The second being the

Accident Prevention and Workers Compensation Schemes, which doesn't cover civil servants, domestic workers, those in the informal economy and casual workers.

Social exclusion in the formal social security system emanates from the fact that these systems are designed specifically to meet the needs of people employed in the formal sector (Kaseke, 2003). At a glance look at the scheme of social protection offered to workers one can note the exclusion of the casual worker in attaining these benefits. Occupational pensions have remained largely exclusionary due to the fact that there is no law that makes it mandatory for employers to provide occupational pensions for their workers and in most cases, the scheme is provided to salaried staff (permanent employees). Most employers do not register their employees with NSSA in order to avoid paying their portion of contribution but still deduct the employees' contribution from the employees' wages.

Due to the design of these schemes (based on individual contribution), this has led to most if not all casual workers not being able to partake in the schemes as their wages can only afford them the small and little portions of the basics. This is how casual workers have not had access to all social protection services, be it medical aid, pension or even accident or injury cover. If they by chance are able to be included in the social protection schemes, the benefits tend to be of low levels and do not have an impact on their lives. The workers in most cases also do not have any form allowances such as transport, housing and educational allowances.

Can the problem be rectified?

The way out of this dilemma is in the establishment of a minimum wage (for casual workers) and a move out of the market orientated economy scenario. If an effective social protection policy is to remain or once again be possible, it is important to improve the management of the labour market. The prospects of greater use being made of minimum social rights in future has its roots in the fragility of employment in a changing world of work and in the conditions of access to social protection.

Therefore, there will be need to improve the coherence of social protection with developments on the labour market. An improvement in the management of the labour market, with the emphasis on the primary distribution of income from work rather than distribution will have a quadruple aim: the reconstruction of the employment relationship taking into account the new forms of economic dependence, clarification of the conditions under which the risks related to work are shared between the employer and employee, the adaptation of systems to occupational mobility, and the renovation of collective bargaining.

To respond more effectively to the situation of casual workers, which would have not been eliminated through a more effective management of the labour market, will involve improved knowledge of the diversity of the various situations. This improvement would then be conceived, both immediately and in the long term, to strengthen the coherence of the strategies pursued, particularly with the view to equity, by eliminating threshold effects and taking into account real needs.

The readjustment of the social protection system must not only lean towards taking into account the diversity of situations more effectively. It should also, to a greater extent facilitate the return or access to the labour market.

What can trade unions do?

Henri Lourdelle cited two major roles in which the trade unions can play part in the social protection field. The first would be their involvement in the management of schemes. This they can do either directly (through their representative organisation) or less directly (through mutual organisations). Through the involvement in the management system, trade unions can ensure that the issues involving casual workers can be tabled and policies addressing the provision of social protection are introduced and implemented fully. This is one of the best ways trade unions can ensure that the grievances of casual workers can be addressed.

Though the trade unions have developed a new model of defined benefit pension schemes, it is yet to be implemented⁵¹. Therefore the current role of the trade union is to advocate for the implementation of this model and ensure that casual workers are covered by this new scheme. Trade unions could also act as advisories to the reforms of social protection provision to casual workers, which uplift the livelihoods of the workers. Trade unions can also have campaigns to enlighten the casual workers of their rights and advocate for them to get benefits at work of equivalence to those of permanent workers.

4.0 Conclusion

Developing and Implementing Decent Work Policies

Under SAPs the decent work agenda was totally ignored as the focus was now on increasing profit and the need to cut labour costs. This strategy was based on the expansion of the employer's wealth, believing the benefits would trickle down to the employees.

There is need for the adoption and the implementation of the decent work agenda as proposed by the ILO and the full development of labour standards aimed at achieving and promoting opportunities for decent and productive work in conditions of freedom, equity, security and dignity to ensure the growth of the global economy provides benefits to all. This advocates for the betterment of working conditions and the promotion of training facilities for the employees. There will be also the need for the trade unions to educate the employees of their rights and what to do when these rights are violated.

Development and Improved Access of the Provision of Social Protection

Social exclusion undermines the pursuit of social justice. Therefore, the government is challenged to achieve inclusiveness in social security provision. There is need to develop and restructure the schemes available. The restructured and developed schemes should allow the provision of protection to all workers. This can be ensured by the provision of payment schemes affordable to all workers. There should also be an introduction of new legislation that promotes inclusiveness.

There is a need to enforce the provisions of the Pensions and Other Benefits Scheme so that all eligible employers register with the National Social Security Authority (NSSA) and remit contributions as per schedule. Also there is need to extend coverage to other contingencies such as

⁵¹ The ZCTU Model for CBA for Sectoral/Industrial Defined Benefit Pension Scheme.

maternity and sickness so as to make social security schemes more relevant to the needs of the women (who contribute a high percentage of the casual workers) (Kaseke 2003). In order to address the problem of social exclusion, a tiered pension system is needed. According to Fultz and Pieres (1999) the first tier should provide a means-tested or universal benefit, with the second tier being based on a mandatory social insurance scheme. The third tier is a voluntary scheme designed to supplement the basic benefit.

The Legal Framework Needs Changes

The fact that the Labour Act does not recognize the casual worker, tells that a lot needs to be looked at more seriously. The Labour Act only acknowledges casual work and not the person who carries out the work. Through this there is need to first acknowledge the casual worker, after this there will also be the need for the development legislation which does not promote casualisation (like the current Act), but one which again protects the interest of the worker.

The amendment of Section 17 of the Labour Act by Section 7 has led to the growth of casualisation. There is therefore need for trade unions and government to recognize the good provisions of Section 17, which include the revoking the power of employment termination from the employers and reinforcing the recognition of employees as permanent employees when the period covered as a casual employee is up. In the case that the Labour Act is not amended to take into considerations the interest of the casual worker, the different unions in the different sector can negotiate for the recognition and betterment of the working conditions of the casual worker through CBAs. When these changes are made at sectorial level it will be made easier for adoption at the national level and be adopted as law.

There will also be the need to adopt and implement some (if not all) of the conventions and declarations by the ILO, which promote the decent work agenda. The government also has to look at the re-regulation of the labour market and taking back the power to hire and fire workers from the employers.

Trade unions should unionise all those people who are employed irregardless of the status of their employment whether its permanent, part time or full time employees. All workers need to be represented at the workplace.

5.0 Appendices: Country Research Reports

Tactical Questions for Engagement by Unions

- What is the prevalence of casualisation in your sector?
- What has been the trend over time in casualisation?
- What actions need to be taken by trade unions to address the issue of casualisation?
- What is the impact of the current social protection stance on the labour market, that is on work incentives, employment and the living conditions on the various workers and what is the trade union doing to change this?
- What are trade unions doing to attract and lure casual workers?
- What has been done by trade unions to change the CBAs to cushion casual workers?
- What are the actions being taken by the trade unions so as to advocate for the improvement of the Labour Act so as to address the assault of casual workers by employers?
- Why should casuals not get benefits or allowances from their employers?

List of people interviewed:

- **Mr Matombo** (Zimbabwe Congress of Trade Unions, ZCTU)
- **Mrs Mariwo** (Zimbabwe Congress of Trade Unions, ZCTU)
- **Mr Kondo** (Zimbabwe Congress of Trade Unions, ZCTU)
- **Mr Murawo** (Zimbabwe Catering and Hotels Workers Union, ZCHWU);
- **Mr Taringa** (Commercial Workers Union of Zimbabwe (CWUZ)
- **Mr Howera** (National Engineering Workers Union, (NEWU)
- **Mr Muti** (Agricultural Sector General Agricultural Plantation Workers Union, GAPWUZ);
- **Mr Masunda** (Employers Confederation Of Zimbabwe, EMCOZ)

- Libraries at ZCTU, ILO and NSSA

Tables

Table 6.1 Employment Trends for Full-time Employees in 2004

Activity	Paid Employee Permanent (%age of Total Employees)	Total
15-21	6.71	951340
20-26	14.12	1060817
25-31	22.02	850979
30-36	29.53	691082
35-41	30.79	471882
40-46	25.68	383132
45-51	27.95	333836
50-56	21.52	275942
55-61	17.98	200120
60-66	13.14	168389
65+	5.85	277406
Total	18.99	56649253

Source: CSO Unpublished Data

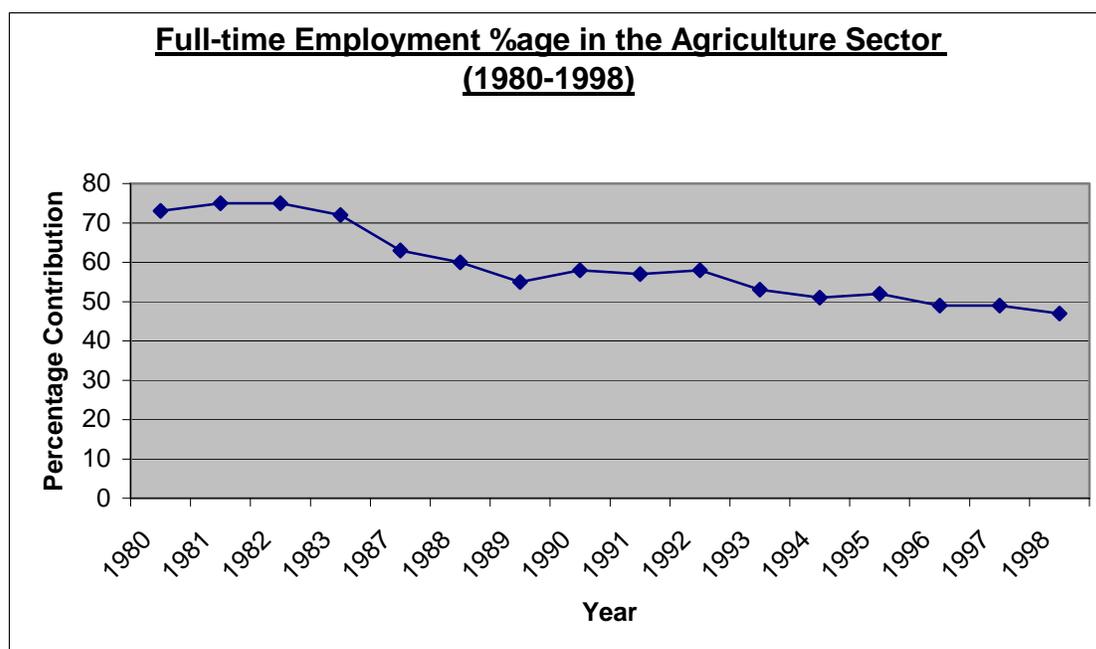
Table 6.2: Trends in Average Annual Employment Growth Rates, 1985-2004 (%)

	1985-1990	1991-2000	2001-2004	2002	2003	2004
Tradables :						
Agriculture	1.2	1.2	-10.7	-10.7	-10.7	-10.7
Mining	-0.9	-0.9	-4.1	-4.8	-3.7	-3.7
Manufacturing	2.9	-0.7	-3.9	-6.4	-3.8	-3.8
Non-Tradables:						
Electricity	3.0	4.0	-2.9	-15.0	10.3	10.2
Construction	9.2	-2.8	7.6	3.9	1.7	1.7
Finance	2.0	7.2	-0.5	5.7	6.1	6.1
Distribution	3.1	0.9	6.5	14.8	7.0	7.0
Trans&Comms	1.0	-1.8	2.6	7.0	3.6	3.6
Public Admn	0.8	-4.5	8.7	15.5	7.1	7.1
Education	4.4	2.7	-6.2	-15.0	-7.9	-8.0
Health	3.9	1.1	-0.9	-5.3	-5.9	-5.9
Pvt. Domestic	0.7	0.0	0.0	0.0	0.0	0.0
Other Services	5.0	4.3	-7.3	-14.0	-6.3	-6.2
Total	2.4	0.4	-3.6	-4.4	-3.1	-2.7

Source: Calculated From Quarterly Digest of Statistics, CSO (various issues)

The figure below shows the declines in contributions to total employment by full-time employees in the Agriculture Sector.

Figure 6.1



Source: Calculated From Unpublished CSO Data.

Table 6.3 Quarterly Employment Survey (1985-2004)

	Agriculture	Miner	Manufacturing	Electricity & Water	Construction	Financial Services & Real Estate	Distribution	Transport & Communication	Public Administration	Education	Health	Private Domestic Services	Other	Total	Annual Growth %	Employment Index
1985	276.4	54.3	169.6	7.7	44.8	15.3	78.3	50.0	90.8	89.2	19.9	98.6	57.6	1 052.5		88.3

1986	275.5	54.9	176.9	8.2	47.4	15.4	81.2	50.7	90.8	95.7	21.8	100.1	62.5	1 081.1	2.7	90.7
1987	265.6	56.7	177.4	8.2	49.6	16.3	83.6	50.7	93.5	98.8	22.0	101.0	61.7	1 085.1	0.4	91.0
1988	277.0	57.7	187.3	8.6	58.6	17.2	87.3	51.1	92.4	100.4	22.8	102.0	68.8	1 131.2	4.2	94.9
1989	284.6	55.7	195.3	8.8	66.6	17.1	91.9	51.8	93.5	104.2	23.6	102.4	71.2	1 166.7	3.1	97.9
1990	290.0	51.4	197.1	8.7	75.8	17.6	96.0	53.3	93.4	108.1	25.0	102.1	73.7	1 192.2	2.2	100.0
1991	304.2	50.9	205.5	8.9	81.0	18.2	100.7	56.4	94.9	109.5	26.5	102.1	85.3	1 244.1	4.4	104.4
1992	300.6	50.2	197.2	8.2	89.5	18.6	99.3	52.6	93.4	109.9	25.8	102.1	89.0	1 236.4	-0.6	103.7
1993	323.6	47.7	187.7	7.9	90.5	20.2	95.9	49.8	89.0	111.3	25.7	102.1	88.4	1 239.8	0.3	104.0
1994	329.4	52.5	199.7	8.6	85.2	21.9	105.1	52.5	76.9	112.8	25.9	102.1	91.0	1 263.6	1.9	106.0
1995	334.0	59.0	185.9	9.5	71.8	21.1	100.6	50.9	77.0	115.6	26.0	102.1	86.1	1 239.6	-1.9	104.0
1996	347.0	59.8	183.5	12.4	77.5	22.2	101.4	50.3	70.9	127.1	26.6	102.1	92.9	1 273.7	2.8	106.8
1997	355.1	59.1	197.8	13.1	78.1	26.3	106.3	51.3	67.1	137.0	27.0	102.1	103.1	1 323.4	3.9	111.0
1998	345.1	61.0	207.6	15.5	79.1	27.9	112.9	51.0	66.2	146.4	28.2	102.1	105.4	1 348.4	1.9	113.1
1999	337.70	59.50	200.7	17.10	69.20	31.00	115.30	44.90	62.50	134.90	28.00	102.1	113.2	1 316.1	-2.4	110.4
2000	325.00	44.60	181.4	11.20	53.80	34.90	103.30	43.90	58.50	139.70	27.90	102.1	110.8	1 237.1	-6.0	103.8
2001	290.2	42.7	178.6	9.3	41.3	28	100.2	42.2	61.4	148.1	31.7	102.1	107.8	1 183.6	-4.3	99.3
2002	259.13	40.66	167.2	10.69	42.90	29.60	114.99	45.15	70.91	125.84	30.02	102.10	92.71	1 131.9	-4.4	94.9
2003	231.38	39.17	160.9	11.79	43.61	31.4	123	46.76	75.96	115.84	28.25	102.1	86.91	1 097.0	-3.1	92.0
2004	206.6	37.74	154.8	12.99	44.34	33.31	131.56	48.43	81.37	106.63	26.58	102.1	81.48	1 067.9	-2.7	89.6

Sources: CSO Quarterly Employment Survey 2003 & Unpublished Data.

Box 6.1

The Herald: Friday 8 September 2006

Farm labour problems: Productivity threatened

The problem associated with getting farm labour in the recent months have affected operations as labourers now prefer being engaged as casual workers or have found value in deviating into other activities such as illegal gold mining and poaching.

Though the land reform programme was a blessing, it has come at a price as farm labourers, who Government said should not be moved from the farm compounds in the event that the farm has been appropriated to another farmer, have become masters of destiny.

This has seen the labourers refusing to be aligned to anyone on the appropriated farms that were previously owned by white farmers, only preferring to be engaged as casual workers.

6.0 ACRIMONIES

CBA	Collective Bargaining Agreements
CSO	Central Statistical Office
CWUZ	Commercial Workers Union of Zimbabwe
EPZ	Export Processing Zones
GAPWUZ	General Agriculture & Plantation Workers Union Of Zim
GDP	Gross Domestic Product
GoZ	Government of Zimbabwe
IMF	International Monetary Fund
ILO	International Labour Organisation
NEC	National Employment Council
NEWU	National Engineering Workers Union
NSSA	National Social Security Authority
PDL	Poverty Datum Line
SAPs	Structural Adjustment Programmes
MSE	Medium to Small Enterprises
WB	World Bank
ZCHWU	Zimbabwe Catering and Hotels Workers Union
ZCTU	Zimbabwe Congress of Trade Unions

References

- Amjad R, & Edgren G, 1991: **“The Role of Labour Markets in Employment Generation and Human Resources Development in Asian Countries”**,
- Chiripanura B.M. and Makwavarara T 2003: **“Labour Market and Economic Development 1980-2000**

- Fashoyin T. (2000): '**Labour Market Flexibility and Labour Standards in Africa**', *Industrial Relations and Structural Adjustment Programmes in Africa: Problems and Prospects*, Sibanda A. and Nyamukapa D. (eds).
- Fallon P.R, & Lucas R.E.B, 1993: "**Job Security Regulations and the Dynamic Demand for Industrial Labour in India and Zimbabwe**", in *Journal of Development Economics, No.40*.
- Fultz, E and Pieris, B. (1999) **Social Security Schemes in Southern Africa**, Harare, International Labour Office/SAMAT
- GoZ, 1991: **Framework for Economic Reform, 1991-95**, Harare, Government Printers.
- Kanyenze G, 1993: **The Impact of Economic Stabilisation on the Wage Structure in Zimbabwe**, Unpublished DPhil Thesis, University of Sussex.
- Kanyenze G, 2004: **Giving Voice to the Unprotected Workers in the Informal Economy in Africa: The Case of Zimbabwe**; ILO Discussion Paper No. 22
- Kaseke E, 2003: **Social Exclusion and Social Security: the case of Zimbabwe**; *Journal of Social Development in Africa*
- Muneto O, 2001 "**Negotiating Flexibility, The Role of Social Partners and the Statue.**" ILO
- Peter A & Christine D, 2002 "**The Future of Work Employment and Social Protection**", ILO
- Lourdelle H, "**The Future Role of Trade Union Organisations in Social Protection.**" ILO
- Sarfati H & Bonoli G, "**Labour Market and Social Protection Reforms in International Perspectives.**" ILO
- Standing G, & Tokman V, (eds), 1991: **Towards Social Adjustment: Labour Market Issues in Structural Adjustment**, ILO.