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LIST OF ABBREVIATIONS

ALMP	Active Labour Market Policy
BBC	Black Business Council
BCEA	Basic Conditions of Employment Act
BMF	Black Management Forum
BUSA	Business Unity South Africa
CAPES	Confederation of Associations in the Private Employment Sector
CCMA	Commission for Conciliation Mediation and Arbitration
COSATU	Congress of South African Trade Unions
DoL	Department of Labour
EEA	Employment Equity Act
ESB	Employment Services Bill
FEDUSA	Federation of Unions of South Africa
ILO	International Labour Organisation
LRA	Labour Relations Act
MoU	Memorandum of Understanding
NACTU	National Council of Trade Unions
NEDLAC	National Economic Development and Labour Council
NEDO	National Economic Development Office
RIA	Regulatory Impact Assessment
TES	Temporary Employment Services
UIF	Unemployment Insurance Fund
YES	Youth Employment Subsidy

Glossary

- (i) **Flexible Labour:** the organisation of work that departs from the traditional notion of permanent, standard forms of employment (Felstead and Jewson, 1999:1).
- (ii) **Decent Work:** is productive work for women and men in conditions of freedom, equity, security and human dignity (ILO, 2005:3).
- (iii) **Decent Work Deficits:** refer to instruments for measuring the pillars of decent work using identified standard performance in outputs and outcomes with qualitative and quantitative measures.
- (iv) **Employment Creation** is the process through which a country develops employment intensive economic policies and/or job creation programs that facilitate the creation of jobs in both the public and private sector to enable those not in employment to access the world of work.
- (v) **Employment security** means that individuals have the confidence, based on their experience that they will be able to continue their employment career, either in another job with their current employer or in another job with another employer, whenever they need or want to. It provides employees with the flexibility to float within the labour market without fear of loss of wages. It also means that people currently (temporarily) outside the labour force can have the confidence of being able to return to the labour market. It is the form of security that would be most suitable for a flexible labour market and is therefore often presented as an alternative for job security which refers to security of tenure in a particular job (ILO, 2005:18).
- (vi) **Job Security** is the security of continued employment in the same occupation with the same employer (ILO, 2005:18).
- (vii) **Work security** includes occupational health and safety issues as well as placing an emphasis on the quality of work (ILO, 2005:18).
- (viii) **Globalization** is a system of interaction amongst countries of the world in order to develop an economic village influenced by economic interconnectedness (Wikipedia, 2011:1).
- (ix) **Full Time Employment:** The underpinning determinant for a worker to be classified a full time employee is the amount of working hours that worker is contracted to do. The Basic Conditions of Employment Act (BCEA), No 75 of 1997 section 9 subsection

1(a) regulates that workers can work a maximum of 45 ordinary hours per week if they work a five day working week and 48 hours if they work a six day working week (BCEA, 1997:13).

(X)Flexicurity: is a labour market practice where there is a balance between labour flexibility and social security. It is derived from a combination of the words 'flexibility' and 'security' and is the dominant labour market strategy in most European Countries (Beukes, 2011: 4).

1. Introduction and background to the study

1.1 Introduction

The labour market policy review in South Africa seeks to protect ‘vulnerable workers’ while ensuring an appropriate legislative framework for the creation of decent and quality jobs. The biggest economy in Africa is struggling to grapple with new forms of organising work that are now prevalent due to the increasing demand for flexibility. This reality has unravelled robust debates on the notion of labour market flexibility at the National Economic Development and Labour Council (Nedlac). These Nedlac debates unravel within a context of high unemployment, poverty and inequality and use the decent work agenda as the praxis through which different forms of atypical work are examined. This is a policy and legislative research study that seeks to understand the viewpoints of Nedlac’s social partners on flexibisation and how these influence labour market policy development. The study seeks to investigate the manner in which Nedlac stakeholders conceptualise the construct of labour flexibility within the decent work agenda. This research report provides a scientific analysis of the construct of labour flexibility within Nedlac engagements.

The study focused on organisations participating at Nedlac on behalf of Business, Labour, Government and Community constituencies. The prism through which the research considers the discourse in the analysis of labour flexibility is that of the ‘decent work agenda.’ According to Standing (2009:92);

...as flexibility meant a growing fuzziness... ILO conventions began to look inapplicable for a lot of labour statutes.

In 1996 the ILO ratified the Home Work convention, No 177 and in 1997, the Private Employment Agencies Convention, no 181, in an attempt to deal with the changing forms of work and the challenges brought about by labour flexibility (Standing, 2009:92). According to the ILO, the challenge with respect to triangular employment relations lies;

in ensuring that employees in such a relationship enjoy the same level of protection traditionally provided by the law for employees in bilateral employment relationships, without impeding legitimate private and public business initiatives (ILO, 2005 in Benjamin, 2005:16).

In 1999 the ILO promulgated the decent work agenda which provides a broad framework for the setting of labour standards responding to the changes in the organisation of work and the challenges that these

changes usher into the labour markets. According to the ILO Inter – American centre for knowledge development in vocational training (2011:1) the characteristics attributed to decent work indicate whether work is, a) productive and secure work, b) ensures respect of labour rights, c) provides an adequate income, d) offers social protection and e) includes social dialogue, union freedom, collective bargaining and participation. This study attempts to interpret Nedlac’s social partners’ views on labour flexibility within the discourse of the decent work agenda in South Africa.

This is a qualitative research study which uses interpretive tools to understand the view-points of various tripartite social partners on the concept of flexible labour within the premise of decent work. The methodology included a review of literature which explored the theories of labour flexibility. The second component was a document review which composed of the analysis of each (i) constituency’s written submissions to Nedlac, and (ii) other unpublished work on the subject from different social partners e.g. Nedlac reports and minutes of chamber meetings. The third component was data obtained through interviews with ‘key informants’ representing different constituencies at Nedlac. The ‘key informants’ were regarded as persons likely to have knowledge and working experience in the subject matter and were aware of debates on the research problem locally and internationally. The study used purposive sampling to choose the respondents.

The research revealed numerous positional differences between social partners on their conceptualisation of flexible labour in theory and practice. The polarisation of Nedlac’s social partners’ views on flexibility and decent work make it difficult for Government to regulate the labour market in a manner that will create an enabling environment for private businesses to operate without sacrificing the protection of vulnerable workers. Tripartite social partners agree to disagree on a number of issues ranging from whether non-standard forms of employment could contribute to decent work and whether these facilitated employment creation. One of the findings of this study is that organised labour is not opposed to a flexible labour market but is opposed to specific forms of organising work such as triangular employment relationships that allow employers to circumvent labour laws leading to the intensification of exploitation of vulnerable workers.

The research report has six chapters. Chapter one outlines the introduction covering the background, problem and purpose statements, the broader research questions and limitations to the study. Chapter two discusses the review of literature focusing on the theoretical context of the study, with eight thematic areas which include the

definition of flexible labour, theories of labour flexibility, types of flexibility and their decent work implications, flexible agreements and new management practices, contestations in the labour constituency, the nature of labour flexibility in South Africa, employment creation and flexicurity. Chapter three discusses the research methodology explaining the qualitative research approach employed by the study, the research design, and the two data collection tools for both primary and secondary data, data analysis, reliability and validity, looking at both internal and external validity. Chapter four discusses data presentation providing the different responses from social partners collected through interviews and document review. Chapter five is data analysis. The evidence from research findings reveals that the discourse on labour flexibility is important for social partners to continuously explore policy options for managing the labour market under atypical forms of employment. Chapter six provides the conclusion and recommendations arising from this study including areas for further research.

1.2 Background

The organisation of work has evolved over time from non-standard forms of work in the pre-industrial agrarian and handicraft economies, transforming with the development of backyard industries during the feudal era. With the discovery of America, the rounding up of the Cape and the opening up of East India and Chinese markets the feudal closed guild system became insufficient to meet the demands of the growing markets. The organisation of work shifted from division of labour amongst corporate guilds to division of labour within workshops (Marx and Engels, 1844:4). The industrial revolution introduced the factory system with new forms of organising work. Work became more standardised under Taylor's *scientific management systems*, premised on time and motion studies using scientific measurements to find the 'one best' way of doing tasks (Taylor, 1964). Over the years these standard typical forms of employment embodied permanency with open ended contracts underpinned by security of tenure. The Japanese Life Time Employment System is an example as Koshiro (1983:1) expounds that;

Workers become employed right after their graduation from school with a particular company. The employer will not lay off his workers if possible even in the course of depression. The employee in turn will not quit his job at this company but tend to continue working there until he reaches his retirement age.

In the 1980s, during the era of American President Reagan and British Prime Minister Margaret Thatcher, 'free market' economics dominated

Anglo American policy making. New 'post' liberal policies emerged in the form of neo-liberalism which emphasised free markets, lean and mean states, removal of social safety nets as a shift from the welfare states of the 1960s. The new neo-liberal dispensation was also coupled with new forms of organising work, introducing flexible labour practices. Atkinson and Meager (1986), the proponents of the 'flexible firm model', provide an analysis of organisation flexibility in British firms during the 1980s, developing a theory that identified different kinds of flexibility such as functional and numerical flexibility.

The 21st Century has ushered in new kinds of flexible working arrangements beyond the analysis of Atkinson and Meager with the advent of new atypical, non-standard forms of employment in the form of Temporary Employment Services (TES) also known as 'labour brokers'. Flexibility today encompasses numerous forms of organising work such as triangular employment relationships, part-time work, outsourcing, second generation outsourcing, sub-contracting, independent contracting and fixed-term contracting.

The literature review revealed that different countries have unique experiences with flexibisation making it difficult to do trends analysis. The South African case mushrooms out of an exploitative apartheid regime with structural economic mechanisms that were dependent on a large buffer of black cheap labour. According to Cosatu (1997:1) apartheid;

...with its form of institutionalised racism, masked its real content and substance – the perpetuation of a super – exploitative cheap labour system.

Prior to independence South African labour legislation and general apartheid laws were crafted in a manner that created abundant labour reserves to supplement the racially driven apartheid economy. Von Holdt and Webster (2005:13) write on the bifurcated industrial geography of the apartheid system which provided access to cheap labour in the Bantustans. Discourse on labour flexibility is focused on the challenges brought about by the historical legacy of apartheid, especially the structural inequalities in access to opportunities characteristic of the system of job preservation.

Labour flexibility is often associated with the neo-liberal notion of deregulating markets in line with Adam Smith's free market economics (Smith, 1779). The regulation of the labour market is a central issue in dealing with flexibility in South Africa as emphasised by organised business in their advocacy for relaxed labour laws. Business feels that the country's labour legislations are too rigid and cumbersome, discouraging employers from creating new jobs. However Business

Unity South Africa (Busa) is not advocating for total deregulation, which is a fallacy, considering that there can never be a total absence of regulation in the labour market. The views of Busa are different from those of other Nedlac stakeholders as organised labour feels that the current labour laws do not adequately protect vulnerable workers. Government's views are that, while the current labour legislation is flexible enough to allow for business competitiveness, there are categories of workers that are not protected from the abuses unravelling in various atypical labour market practices such as labour broking and rolling over of contracts that have created 'permanent temps.'

The country's labour market is characterised by various types of work organisation. The increasing flexible use of labour by capital is evident with the proliferation of different forms of atypical employment in contrast to the contraction of standard employment practices also known as permanent employment. The core labour force has become smaller and the periphery, bigger and multi-layered (Altman, 2003:3). Literature reveals that paid work is now performed outside of the employment relationship as conventionally understood due to flexible work arrangements of outsourcing, subcontracting etc. According to Standing (1999:585);

...although the dichotomy of 'formal' and 'informal' sectors have always been misleading, a growing proportion of jobs possess what may be called informal characteristics, that is, without regular benefits, employment protection and so on.

This informalisation of work has resulted in circumstances that make the current legal scope of employment law not to be in sync with the realities of employment relationships in South Africa (Benjamin, 2009:14).

In South Africa there has been mixed reactions to labour flexibility from different interest groups which have significantly different ideological undertakings on the subject matter. According to Busa in the Nedlac Report (2009:128);

The trend towards atypical employment and labour broking is a worldwide phenomenon in response to the changing nature of work.

In a labour market characterised by poor labour absorption and/or employment intensity, this flexibility has been identified by Busa as an avenue for new entrants to enter the world of work. The Federation of Unions of South Africa (Fedusa) supports Busa's views, submitting to Nedlac that;

...first-time, part-time students, women that have particular needs in respect of family obligations, older persons who do not

want permanent placements, and other groups of people with specific needs or specialist qualifications or experience, all find a real benefit from temporary placements or assignments (Nedlac Report, 2009:77).

The views of Busa and Fedusa are a direct opposite to what Nactu and Cosatu perceive as the desired outlook of the South African labour market. They have indicated that flexible labour is weakening the strength of trade unions, making workers more vulnerable and susceptible to exploitation. They argue also that flexibility facilitates decent work deficits through weakening social dialogue, the absence of social security, poor social protection and limited rights of workers at the workplace. The Department of Labour (DoL) has adopted a policy direction to further regulate labour flexibility through the Labour Relations Amendment Bill, the Basic Conditions of Employment Act Amendment Bill, the Employment Equity Amendment Bill and the Employment Services Bill of 2010 (Nedlac Report, 2010:3). According to McGuire, Garavan, O'Donnell and Deen (2002:3);

The search for competitiveness is a critical issue facing national governments. Traditional approaches to determining labour market policy have been confronted with the challenge of balancing economic efficiency with adequate levels of social protection.

The DoL is attempting to forge a third way protruding from the impasse between business, Fedusa, Cosatu and Nactu. For Davies and Friedland (2004:10) reconciling the worker's claims to autonomy, dignity and security with the needs of the employing enterprise for efficiency in the performance of its institutional task and maintaining its viability or profitability is a fundamental element that defines government intervention.

The terrain of this research is therefore policy and legislative, attempting to increase our knowledge on a number of questions that the discourse on flexibility and decent work gives rise to, such as, whether policy makers understand labour flexibility and decent work in the same manner and the policy implications of social partners' conceptualisations? How do they view labour flexibility in relation to employment creation? And can there be flexible decent jobs? The prism through which these questions are analysed is that of the ILO's decent work agenda. Analysing flexibility under the prism of decent work raises further questions as the research attempts to understand how labour flexibility relates to each pillar of decent work trying to understand whether flexibility allows workers to have fundamental rights at work, if it provides income and employment opportunities, if it is appropriate for social security and social protection, if flexibility allows for social dialogue and tripartism and whether there can be decent flexible jobs.

Advancing our knowledge on the relationship between labour flexibility and the decent work agenda will enable us to develop models which will show how the pillars of decent work can be used to strengthen standard and non-standard employment relations. Furthermore if this is accomplished it will provide the premise to examine trade-offs associated with utilising flexible labour practices. It is the researcher's analysis that the construct of flexible decent jobs comprises of legislative, active labour market, and patriotic business policies that while enabling competitiveness advance the socio-economic wellbeing of workers.

The scope of Nedlac debates is around the protection of workers in the flexible labour market through improving on what is currently provided in the various pieces of labour legislation (Wentzel, 2009:3). Engagements are bordering on vulnerability and mechanisms to protect temporary or flexible workers. Business suggests that flexibility can lead to full employment, with readily available short term jobs, and full time incomes as people move from one job to the other with better employment security. Trade unions believe that there is no economic logic to why an increase in demand for labour would necessitate a demand for flexible workers. Labour believes that business is camouflaging permanent work as temporary employment in the false pretence of job creation (Nedlac Report, 2009: 6). The different policy positions of Nedlac's social partners have informed the researcher's knowledge gap and the research design.

1.3 Problem Statement

There has been little effort to problematise the construct of flexible labour in South Africa, to explore how it informs debates on job creation and how elements of the decent work agenda can be incorporated into a flexible labour market to create decent flexible jobs. According to (Wentzel, 2009:2);

...the demand for flexible labour has increased three fold in South Africa between 1995 and 2002.

The discourse on labour flexibility is ongoing at Nedlac through the Labour Market Policy Review process where social partners are negotiating the four labour bills introduced by government in 2010. Social partners were coy to use the Regulatory Impact Assessment (RIA) on the bills as an empirical tool to guide their engagements. Only Business was keen to use the RIA while pockets of labour were opposed to it citing credibility issues due to biased views in the report. There has not been a systematic inquiry on flexible labour and decent work to inform the policy discourse on the two constructs at Nedlac.

There have been marked contestations between different social partners on this subject matter. The Capes report, submitted in 2009 to the Parliament Portfolio Committee on Labour, indicated that the labour broking industry was worth R26 Billion, and had created 500 000 jobs each year between 1995 and 2002 (Wentzel, 2009:2). On the other hand, Cosatu and Nactu were engaged in a nationwide strike on the 7th of March 2012 demanding a ban of labour broking. Through this study the researcher intends to establish and examine the contestations unravelling from Nedlac engagements on flexible labour in line with the theories of labour flexibility. The study will explore how Nedlac's social partners understand the constructs of flexible labour and decent work in theory and practice and the impact of their conceptualisation on labour market policy around employment creation and decent work. The research will enrich the knowledge base and influence the direction for policy and legislative debates in the South African labour market landscape.

1.4 Purpose Statement

The purpose of this research is to explore the manifestation of flexible labour as understood by Nedlac's social partners while examining how the practice contributes to employment creation and decent jobs.

1.5 Research Questions

- 1 In the views of the Nedlac's social partners what is the meaning of flexible labour and decent work?
- 2 What are the potential effects of each social partner's conceptualisation of flexible labour and decent work on the debates around employment creation?
- 3 What are the policy implications of social partners' conceptual understanding of the practice of labour flexibility in the context of the decent work agenda?

1.6 Limitations of the Study

The scope of the research is wide and ever changing. The research focused on institutionalised social dialogue using the Nedlac institution and is therefore likely to give a fair and balanced view of the conceptualisation of labour flexibility and how this influences policy formulation.

1.6.1 Limitations

Discussions on flexible labour and decent work are taking place in a number of forums. It is debateable if the Nedlac institution is representative of the views unravelling on the two constructs in the country. However this was a qualitative research study which utilised the Nedlac institution as an illustrative case study in an attempt to provide an in-depth narrative of how social partners understand flexible labour and decent work. Representativity of social partners in their mandating constituencies did not affect the research approach as the study sought to understand the discourse from the views of knowledgeable informants who participate at Nedlac. Organisations that do not participate at Nedlac were not considered as they were not part of the research design. It was not the purpose of this study to be exhaustive on the discussions around labour flexibility, but to provide a rich interpretive analysis of the discourse using the Nedlac institution as an illustrative case study.

1.6.2 Ethical Constraints

It is in every researcher's interest to come up with believable and trustworthy results contributing credible knowledge to improve academic discourse (Merriam, 2009:228). This study is underlined by a lot of political underpinnings representing different interest groups in the labour marketing making it important for all the voices to be heard. The researcher has previously participated at Nedlac, representing part of organised labour and had to be objective in all engagements with data to ensure that the findings reflected information collected from the field.

1.7 Report Structure

This research report is composed of six chapters. As indicated in the introduction section to this chapter;

Chapter one presents a detailed introduction of this research report and consist of the background, research problem, purpose statement, research questions, the limitations and ethical constraints of the study.

Chapter two presents a review of books, journals, reports, unpublished work and other literature on major topics related to labour flexibility and decent work.

Chapter three discusses the research methodology that was used in this study. An extensive description of how qualitative research methods were applied in the study and how document analysis was conducted is provided under the chapter. The presentation of the research

methodology will include the research approach, the research design, data collection, data presentation and data analysis leading to research findings and interpretation.

Chapter four presents primary data that was collected in the field providing answers to the three broad research questions. This chapter is a representation of data as it provides a manifestation of reality from the respondent's eyes together with the findings derived from the literature review.

Chapter five provides an analysis and interpretation of evidence in response to the research questions. The final chapter, chapter six, discusses conclusions and recommendations while also identifying areas of further research. The chapter provides a summative analysis of the research findings, evidence and results while making recommendations to address the knowledge gap.

1.8 Conclusion

The chapter has outlined the premise of the study introducing the research topic while also detailing the background to the study with a particular focus on unfolding debates around labour flexibility and decent work in the Nedlac labour market policy review process. The background section explored the manifestation and development of flexible labour practices in South Africa and the challenges that it ushered into the labour market particularly with reference to the relevance of labour legislation in protecting vulnerable workers.

The study sought to understand how social partners at Nedlac conceptualised flexibility in relation to decent work and how their views impacted on policy development around employment creation and legislative reform. The chapter further outlined the three research questions while also highlighting the limitations and ethical constraints of the study. The researcher noted that the study is underlined by political underpinnings and indicated that it was paramount for the study to afford all the social partners' voices equal chances to be heard and be reflected in the development of research findings and research results. It is therefore the intention of this study to explore the views of social partners on the two constructs on labour flexibility and decent work and their impact on policy development in the South African labour market.

2. CURRENT UNDERSTANDING OF FLEXIBLE LABOUR AND DECENT WORK

2.1 Introduction

This chapter will place the research study within the existing body of knowledge developed by various scholars focusing on the broader research questions to which the study aims to provide answers. According to Neuman (2011: 111);

A literature review is based on the assumption that knowledge accumulates and that people learn from and build on what others have done.

As such through this chapter the researcher will explore research work that has already been done on labour flexibility and decent work including examining work that was done by proponents of the flexible firm model, typologies by Blyton, Hassard, Hilla and Starkey (1989) and other scholarly articles. Similarities between classical theories on labour flexibility and current findings arising from this research study are explored. This literature review will outline the direction of research on flexible labour and decent work and it will show the development of knowledge in the subject area (*Ibid*). The chapter will provide the framework under which the research topic is conceptualised and offers a critical analysis of the research topic in response to the broader research questions.

Thomas (2004:65) regards literature review as a ritual, a chore that has to be endured before getting on to the real business of the research. Neuman (2011:187) further points out that a good review places a research in a context and demonstrates its relevance by making connection to a body of knowledge. This statement is also supported by Tuinamuana (2007:15) who states that a literature review should establish the need for the research and indicate that the writer is knowledgeable about the area. It shares with the reader the results of other studies that are closely related to the study being conducted. A literature review relates a study to the larger, ongoing dialogue in the literature about a topic, filling in gaps and extending prior studies. When writing a literature review, the researcher has to summarise and explain what research has been done on the topic, citing sources of the research information. The researcher highlights connections between data sources, especially where one source is building on work that has already been done. In the subsequent sections of the chapter, different themes from reviewed literature are presented.

2.2. Theorising Flexible Labour

Through this section the researcher will analyse the themes arising from the document review and general literature, published and unpublished work, internet sources and print media in an attempt to understand the large body of knowledge currently available on the research problem.

2.2.1 Definition of flexible labour

There are a myriad of definitions of the term flexible labour. Atkinson and Meager (1986:34) indicate that;

This nomenclature includes a plethora of terms, some with contrasting meanings and others which appear to be different but which, in practice, are similar.

Some of the terms that were uncovered, include, part-time work, tele-working, home-working, short-term or fixed-term contract work, contingent work, non-standard, temporary employment, casual employment, labour broking, atypical employment and temporary employment services. Research around the subject of flexible labour has been very difficult to follow as there are different terms used in different countries. In the South African context TES and labour broking are used interchangeably. Curson (1986: xi) asserts that;

...definitions of flexible labour differ from country to country making it difficult to make comparisons and these definitions change over time which also makes trends analysis over-time impossible.

There is lack of theoretical precision in this area which is why there are numerous terms used to refer to an assortment of types of work (Felstead and Jewson, 1999:2). The ambiguity around the definition of flexible labour has led the researcher to attempt to understand the meanings attached to the term by the Nedlac's social partners.

2.2.2 Theories of Labour Flexibility

2.2.2. a The Flexible Firm Model

The construct of flexible labour has three underpinning tenants; (i) the flexibility of time (regular and irregular working hours), (ii) flexibility of place (home, workplace, tele-working, abroad or always changing) and the (iii) flexibility of conditions of employment such as fixed term contracts, part time work and/or permanent work. According to Altman (2003:1);

...flexibilization refers to the changing work practices by which firms no longer use internal labour markets or implicitly promise employees lifetime job security, but rather seek flexible employment relations that permit them to increase or diminish their workforce, and reassign and redeploy employees with ease.

Academic work in the field of flexible labour markets can be traced back to its proponents such as Atkinson and Meager with their classical analysis of the 'flexible firm model' (Atkinson and Meager, 1986). The flexible firm is a demand side theoretical model of analysing organisational flexibility. In their report to the National Economic Development Office (NEDO) in 1986, Atkinson and Meager (1986) stipulated that the British labour market was experiencing four kinds of flexibility. According to Deakin and Reed (2000:6);

The model of the flexible firm focuses on the micro-level of labour demand, that is to say, employer's strategies with regards to the form in which labour is contracted.

There is emphasis that employers attempt to vary labour according to fluctuations in external demand.

Their analysis of the 'flexible firm model' indicated that business organisations employed functional, numerical, pay and distancing forms of flexibility as different methods of organising work which offered increased flexibility to British industries under neo liberal policies. In theory functional flexibility is the only internal flexible model that can be adopted by an organization through multi-skilling the core workforce. Other forms of flexibility in Atkinson and Meager's analysis were mainly based on strategies of peripherisation through numerical flexibility which includes part-time work, fixed term contracts, casual labour and new patterns of working hours. Peripherisation through pay flexibility included flexible wage systems such as hourly pay, weekly wages and/or monthly salaries. This has been improved by South African businesses with the introduction of 'total cost to company' wage systems where the arrangement of remuneration packages for employees are not standardised, but each individual can structure their total cost to company wage/salary package in line with individual needs.

The last strand in the 'flexible firm model' is the distancing of labour through sub- contracting and outsourcing. Through this theme the research contextualises the conceptualisation of paid work in different forms such as permanent full time employment, permanent part time employment, contract work, labour broking, and casual work, working from home, occasional work, working abroad, and working in a workplace. The workplace has changed under flexible employment relationships with virtual warehouses, home working and tele- working systems. The traditional notion of understanding and regulating employment relations has transformed under flexible labour markets.

2.2.2. b Blyton et.al's Typologies

The Blyton, Hassard, Hill and Starkey (1989) typology is built along the classical 'flexible firm model' identifying (i) task or functional flexibility as referring to the adaptability and mobility of employees to undertake a range of tasks, including multi-skilling and job rotation, (ii) numerical flexibility as relating to varying the size and structure of the work force in response to changes in the level and pattern of demand using strategies such as short/fixed term contracts, reliance on the external labour market, and externalising work through outsourcing, sub-contracting, temporal flexibility which involves various patterns of work hours, shift systems, part-time work, home-working and temporary work; in response to changing economic, technological and demographic demands and, (iii) wage flexibility as including a shift from uniform pay systems towards individualised pay, with variability based on performance. The South African labour market has a new pay system called total cost to company where each employee has the ability and power to structure his/her salary using his/her discretion in choosing the benefits that are most suited to their needs. The researcher analyses the manifestation of flexible labour trends in South Africa using Atkinson and Meager (1986) and Blyton et al.'s (1989) theoretical frameworks in considering organisational flexibility and labour market trends to answer the broader research questions.

2.2.2. c The Core and Periphery Analysis

Through literature the researcher learnt that labour market flexibility is divided into three types of flexibility, i.e., (i) numerical flexibility, (ii) functional flexibility, and (iii) wage flexibility. Numerical flexibility allows for easy hiring or firing of personnel in line with fluctuations in economic demands. Functional flexibility is the ability of firms to reallocate labour in their internal labour markets, relying on training that allows personnel to carry out a wider range of tasks. It includes multiple competencies of workers, such as multi-skilling, multi-tasking, team-working, and the involvement of workers in decision-making (Arvanitis, 2005:5). Functional flexibility provides for opportunities for long-term careers in the same firm. Such long-term commitments may be interpreted as an investment in the trust, loyalty and commitment of individuals (Zhou, Dekker and Kleinknecht 2010:2). These two types of labour flexibility are captured by Curson's (1986:3) core periphery theory of labour flexibility as illustrated below.

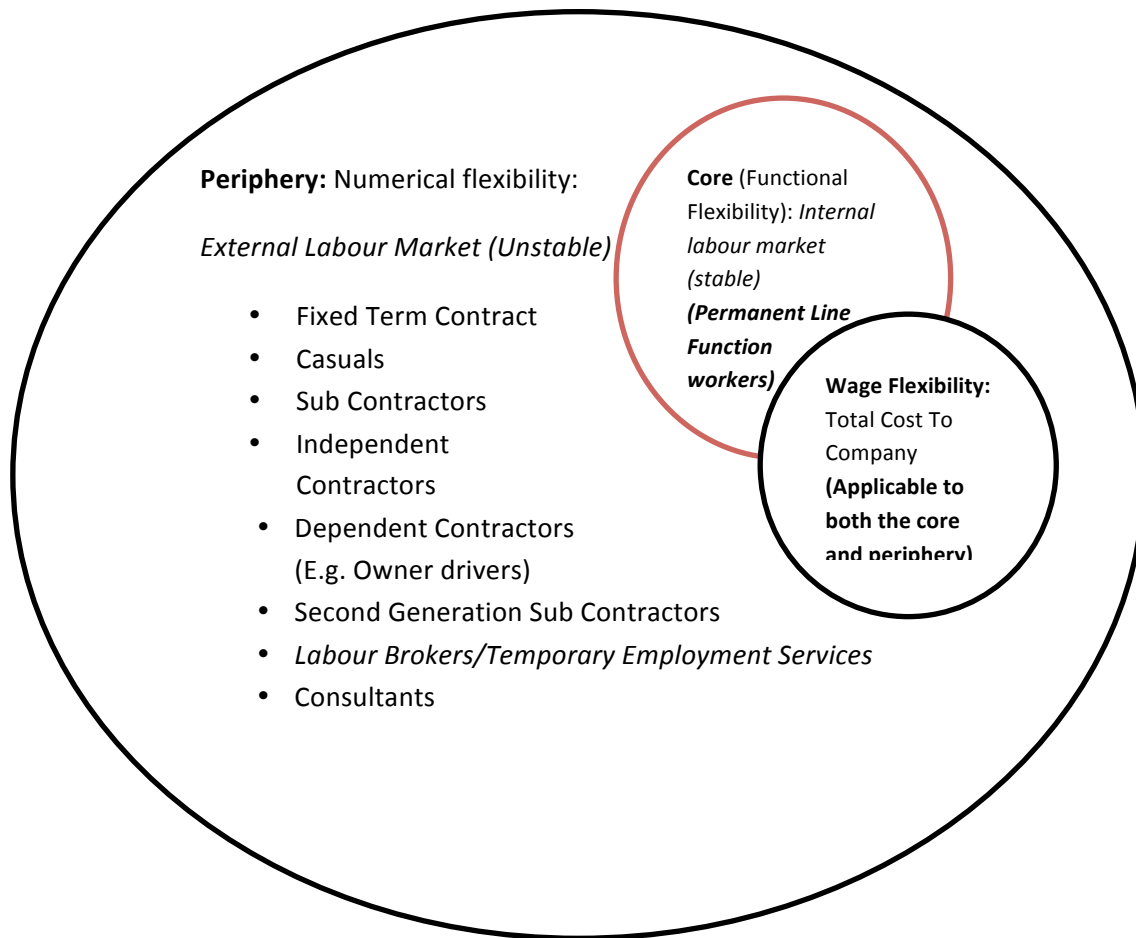


Figure 1 The South African Flexible Firm A

Figure 1 above illustrates the analysis already provided in the preceding paragraph with a pictorial illustration of the three forms of labour flexibility. The core in Curson's (1986:3) analysis is characterised by workers involved in the line functions of the business. These may include for example production workers, warehouse workers, artisans, analysts, technicians and other portfolios that are critical for the generic existence of the body corporate. It is characterised by longevity of engagement and security of tenure. Most of the positions are permanent and internal. However the research unravelled evidence that most businesses in South Africa are further depleting the core, even outsourcing their production lines. Business is complaining that the cost of production in South Africa are high making it better for manufacturing companies to stop producing and venture into buying and selling. The costs of energy and labour are identified as major contributing factors.

The periphery is most characterised by jobs mainly classified under staff functions in business operations. The periphery includes Human Resources functions, Payroll, Accounting, Information and Communication Technology and Marketing divisions in a business, depending on the nature of the business model. In consultancy firms

what is described above as the periphery might be the core for optimal operation of that enterprise. The periphery is said to be characterised by portfolio individuals who are highly skilled and qualified possessing special qualities that are in demand from different enterprises. Davies and Freedland (2004:11) acknowledge that numerical flexibility has shifted management practices fundamentally. They state that there has been a shift of emphasis in the management of the employment relationship by the employing entity rather than the conventional legal notion of the relationship as a mutual interaction with more concern about the skills and capacities of workers as a species of economic goods.

Wage flexibility is applicable to both the core and periphery. Core workers can be paid wages or salaries at total cost to company. This provides for individualised wage flexibility as workers structure their wages or salary packages in the best way they see fit. Other workers for example prefer car bonds to housing bonds. Others prefer health insurance to life insurance, while others prefer pension to provident funds etc. The nature of flexibility in the South African labour market is such that core workers can shape their future in the best way they see fit. A similar practice in the British Labour market has Davies and Freedland (2004:11) noting that;

...a more recent phenomenon has been an increased individuation of workers within enterprises with workers within a firm being subjected to more personalised incentives and risks than previously.

Although they do not have security of income, periphery workers can have wage flexibility in the form of wages or salaries. Others engaged as sub-contractors can decide to charge service fees as and when work is conducted or they have service level agreements with standard fees payable every month on a retainer.

For analysts such as Altman (2003), the core in the South African labour market is becoming thinner and thinner and the periphery is growing more multi layered.

2.3 Types of Labour Flexibility and Decent Work Implications

Under this theme the researcher explores in brief different forms of flexibility within the prism of the decent work agenda. The four pillars of decent work, i.e. fundamental rights at work, social security and social protection, income and employment opportunities, and social dialogue and tripartism, provide a base for the review of the different forms of flexibility.

- a) *Organisational flexibility*: This type of flexibility includes numerical, functional and wage flexibility as these allow

enterprises not only to downsize and hallow themselves but to also recreate and regenerate themselves. These have numerous implications for decent work, particularly around the pillars of social security and social protection. Numerical flexibility has no security of tenure and as such workers do not have security of income. This leads to turbulence and instability, poor occupational welfare, inconsistent social security contributions and a variety of work statutes violations as a result of industry turbulence.

- b) *External flexibility:* is also known as numerical flexibility, rooted in the organisation's ability to hire and fire workers easily in response to economic fluctuations. Many firms are almost contracting out their employment function through sub contracting, temporary labour which includes what is called 'permanent temps', tele-working and the use of TES labour also known as labour broking. These workers have numerous decent work deficits lacking in job security, social security and social dialogue as it is difficult for trade unions to organise temporary employees. Pension companies have not been forthcoming in accepting temporary, adhoc, pay as you can, contributions from flexible workers to ensure that flexible workers are covered by social security mechanisms.
- c) *Functional flexibility:* In the 21st Century change is the only constant and technology is the biggest driver for change. With rapid technological changes and the informatics revolution, and a greater emphasis on "competitiveness", it is becoming easier to restructure jobs. There is an increasing demand for employed and unemployed workers to learn and relearn portable skills to become and/or remain employable. Functional flexibility includes multi-skilling, paying for knowledge, abolition of craft barriers, on-the-job and formal training, manpower forecasting, and improvement of employees' adaptability to change and the performance of multiple tasks. Skills development has become an underpinning determinant for successful employment longevity. As such one of the interview questions sought to understand social partners' views on the country's readiness for flexibility looking at the skills levels and challenges with access to technology in the Country.
- d) *Working time flexibility:* The ILO (1995:4), in an international survey on working time, describes the relationship between new forms of flexible working time and labour protection in the following terms;

Flexibility in working time should not be equated with the dismantling of social protection as regulation is still necessary to protect safety, health and the well-being of

workers and certain forms of flexibility will require the adaptation of existing regulations.

South African employment law provides for working time flexibility through the Basic Conditions of Employment Act, No 75 of 1997 which allows working time to be collectively bargained and agreed upon with examples of compressed working weeks, averaging of working hours, day and night shift work (BCEA, 1997:13 – 22). Business through this study revealed that the statutes were lagging behind as peak business hours were still demanding prime wage rates. Working time is also manifest in the form of part time employees or seasonal workers who are engaged only during specific periods when their labour is demanded. These workers either work shorter working weeks or have specific months during the course of the year when they are not employed.

- e) *Wage system flexibility:* allows for individualised structuring of remuneration as opposed to group remuneration. In South Africa this is manifested through the total cost to company system of remuneration. Decent work deficits arise out of the impact of restructuring the components of the total income per individual preferences with workers having to contribute to their social income without any contributions from the employing enterprise. According to Standing (1999:52) the social income is calculated as follows: $SI = W + CB + EB + SB + PB$. This is when SI is the individual's total social income, W is the money wage or income received from work, CB is the value of benefits or support provided by the family, kin or the local community, EB is the amount of benefits provided by the enterprise in which the person might be working, SB is the value of state benefits, in terms of insurance benefits or other transfers, including subsidies paid to workers or through firms to them, and PB is private income benefits, gained through investment, including private social protection. By individualising the wage in the total cost to company model, workers become fully responsible for their remuneration at total cost to company removing any responsibility and contributions from community, enterprise and state benefits.
- f) *Labour force flexibility:* is understood as providing opportunities for those social groups that were formerly excluded in typical employment practices such as young people, women, people with special needs, pensioners and people who do not want to be engaged full time. Evidence from European countries shows that with the advent of flexible labour practices, more women managed to enter the labour market. There is now flexibility within the labour force as opposed to the rigid discriminatory typical employment relations of the 1970s. In Europe, and elsewhere, many older women in their 50s have been entering or

remaining in the labour force as a result of flexible employment practices (Standing, 1999:6).

2.4 Flexible Agreements and New Management Practices

Through this theme the researcher examines how agreements on flexible working arrangements are arrived at. The researcher has identified through the literature review three types of flexible agreements.

- a) Legislated flexibility: is the regulation of flexible labour market practices. In the South African context Nedlac's social partners are currently engaged in discourse on the Labour Market Policy Review with proposed amendments to the Labour Relations Act (LRA), Basic Conditions of Employment Act (BCEA), Employment Equity Act (EEA) and the new Employments Services Bill (ESB). There are further examples in current employment law on how flexibility has been legislated such as the Code of Good Practice, Schedule 8: Dismissals in the LRA that attempts to simplify the management of discipline without making it cumbersome for employers and workers. The BCEA has a number of flexibilities on working time, conditions of employment and pay systems. According to Section 189 of the LRA (1995), a business can terminate employees from the enterprise on the basis of operational requirements in order to remain profitable (LRA, 1995:188-195).
- b) Negotiated flexibility is concluded through substantive negotiations between business and labour at a bargaining council or enterprise level. This kind of flexibility is either sector focused or enterprise based as agreed between business and labour.
- c) Individualised flexibility may take place together with collective bargaining, or in the absence of much significant bargaining (Rojot, 2004: 380). The term flexibility has more focus on the labour supply side providing the worker with the right to demand flexible working arrangements in order to achieve a better work-life balance. There are continuous engagements on whether all workers should be entitled to this right or should it be confined to certain categories of workers such as working mothers, young parents etc.

2.5 Contestations within the Labour Constituency

Nactu and Cosatu submitted to Nedlac that "non standard forms of employment are exploitative" (Nedlac Report, 2009:14). In contrast another trade union, Fedusa stated that, "there is no doubt that TES play an enormous role in job creation in the world" (Nedlac Report,

2009:47). Fedusa further stated that about 500 000 temporary workers are placed in employment on a daily basis by TES and that annually about 2 million job seekers are placed in employment (Nedlac Report, 2009:48). It is interesting to note that trade union organisations that represent the same labour constituency have strikingly different views on a single labour practice. A statement submitted by Fedusa to Nedlac stated that;

FEDUSA believes that TES provide real support for a portion of the employment market that wants 'flexibility' and temporary assignments (Nedlac Report, 2009:50).

Cosatu and Nactu submitted that "Labour broking, combined with other forms of atypical work, reflects current trends of the *intensification* of the 'rate of exploitation of labour' (Nedlac Report, 2009:12). It is in the researcher's interest to explore whether these differences are embedded in differing ideological stances or not. The approach adopted by Cosatu and Nactu is consistent with international trade union positions on labour flexibility. According to Harvey (1999:1), in the United States;

...employers have been the driving force behind the push for more flexible employment.

The position of Fedusa is uncharacteristic of trade union positions around this issue as Labour organisations find it difficult to organise atypical workers. This lack of consensus even within the same constituent group shows the level of contestations within this discourse.

2.6 Nature of Flexible Labour in South Africa

The proponents of flexible labour view the future as characterised by 'portfolio people' who are highly skilled. The literature revealed that many of these highly skilled technocrats are not vulnerable to client abuse (Felstead and Jewson, 1999:3). In South Africa however flexible labour takes place amongst the low skilled workers who are prone to exploitation and other forms of abuse from employers. Altman (2003:3) questions whether work-place flexibility is relevant in South Africa indicating that the low literacy rate in the labour market is a limiting feature with over 60% of the formal sector work force not having completed high school education. South Africa has serious skills deficiencies especially amongst the black community. If labour flexibility is compatible with high skills, it is inevitable to ask whether the country is ready for this labour market trend. Engagements on the desirability of non-standard employment have roped in tenants of decent work particularly rights, social security, social protection and social dialogue. Debates at Nedlac have centred on the protection of

these vulnerable workers. It was evident that the protection tenants of the decent work agenda were more emphasized by social partners in the Nedlac labour market policy review process, than other tenants of the same agenda, such as employment creation and the eradication of poverty (Nedlac Report, 2009). The study sought to understand why the social partners chose to overlook other parts of the decent work agenda in furthering their debates.

2.7 Employment Creation

The practice of flexible employment is such that non essential business processes are externalised or outsourced. The classical ‘flexible firm’ model by Atkinson and Meager (1986) is underpinned by two types of workers, namely, the stable functionally flexible core and the numerically unstable flexible periphery of workers. According to Sisson and Marginson (1995:166);

The core is made of a numerically stable group of employees responsible for the organization’s critical firm specific activities who work in a functionally flexible manner. The periphery comprises of numerically flexible groups of workers with part time and/or temporary contracts, along with employees of subcontractors, whose activities are not critical to the organization.

Literature revealed that;

....many South African employers adopt strategies to disguise employment in order to deprive employees of labour law protection (Nedlac Report, 2009:2).

Cosatu and Nactu submitted to Nedlac that employers camouflage permanent work under non essential activities leading to the development of the colloquial term ‘permanent temps’. The research will seek to understand whether this ‘camouflaged’ labour represents new jobs created by flexibility or is an innovation by business to evade labour costs. Cosatu and Nactu submitted to Nedlac that;

...we noted our serious concerns with claims made by the labour brokers that they ‘create jobs (Nedlac Report, 2009:15).

The two trade unions stated that there is little explanation as to how exactly fluctuations in the demand for labour justify an orientation towards atypical employment as they believed that these fluctuations require an increased demand for permanent and fulltime employment (Nedlac Report, 2009:16). However Busa and Fedusa submitted that atypical forms of employment are a conduit for young workers and

other new entrants to access the world of work. It is in this research's interest to further understand the view-points of each social partner on employment creation.

2.8 Flexicurity

The concept of flexicurity is a European concept that attempts to develop a labour market practice where there is balanced flexibility and social security for workers. It focuses on both labour demand and labour supply needs by providing for flexible regulation, while having an active labour market policy (ALMP) such as the proposed Youth Employment Subsidy (YES) in South Africa, coupled with unemployment benefits for unemployed workers. The Danish model of flexicurity has been seen as the ideal flexible labour market example. The illustration below identifies the three components required for a flexicurity labour market.

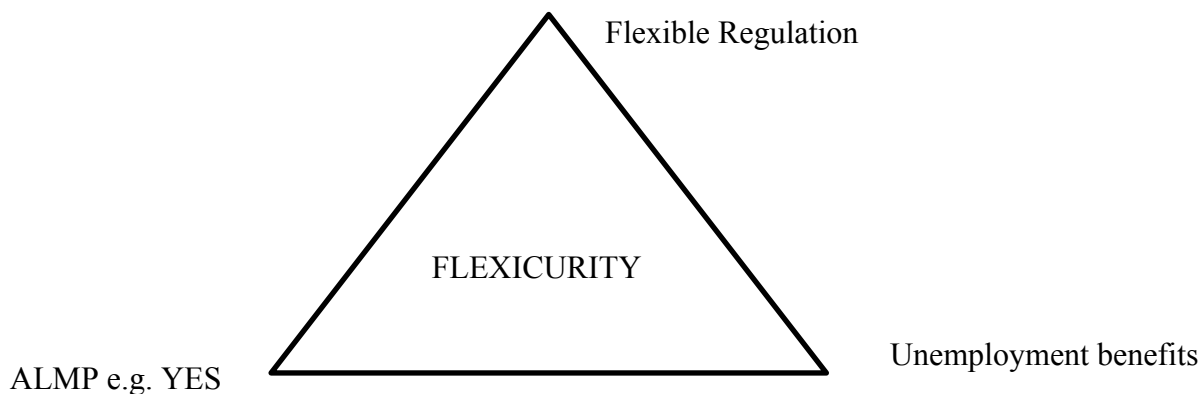


Figure 2 Flexicurity Model

The National Treasury in South Africa issued a discussion document in 2011 on the Youth Employment Subsidy (YES) as an Active Labour Market Policy (ALMP) that will stimulate and incentivise the preferred employment of young workers (National Treasury, 2011:1 – 55). However one fundamental missing link to the flexicurity model in South Africa is the absence of unemployment benefits. The Unemployment Insurance Fund (UIF) is slightly different from other ideal unemployment benefits in that it only covers people who have been in employment, are registered with the Department of Labour (DoL) and must contribute monthly to the fund. The duration of UIF payouts is also an issue of concern as it is paid out for a maximum of 238 days accumulated over a period of four years service (UIF Act No 63 of 2001). Those who have never been in employment or were employed but not registered with the DoL cannot access this benefit. As such there is no unemployment benefit in South Africa for people in the working age but have never accessed the world of work, making it difficult to have a viable flexicurity model in this labour market.

2.9 Labour broking and social contestations

The practice of labour broking is viewed differently by Nedlac constituencies reflecting the interests they represent. The Business constituency views the practice of labour broking as a necessity in a labour market that seeks to be competitive and provide the necessary flexibility for South African business to react to internal and external economic shocks. The DoL which represents the South African Government in the Labour Market Policy Review (LMPR) process at Nedlac has indicated that it intends to improve the protection of vulnerable workers who are employed in the labour broking industry. For organised labour there is no compromise in dealing with this practice as majority labour is calling for a total ban of the practice, with the exception of Fedusa who are advocating for improved regulation of the industry.

As indicated in the preceding chapters, the debates on labour broking are not confined to Nedlac processes. There are commentaries outside Nedlac where other social groups have expressed a view point on the practice, some of which are similar to those pronounced by different constituencies in the labour market policy review process. According to a survey done by TNS Research Surveys in the Johannesburg Metro, 52% adults wanted labour broking banned, 25% disagreed and 23% did not know (www.politicsweb.co.za). These views are also influenced by the fact that people do not understand the role of labour brokers. There is consensus however amongst social commentators that labour brokers need to be regulated to avoid the continued abuse of workers. Some of the identified abuses include continuous engagement of workers in temporary contracts for many years without benefits, unfair dismissal of workers, cumbersome dispute resolution processes due to the ambiguity on who is the employer (labour broker or client company), when referring disputes.

The views expressed above are however opposed by other social groups who view labour broking as valuable to young workers so that they can enter the world of work. The Democratic Alliance in May 2012 threatened to march against Cosatu in order to promote labour broking and show its opposition to the proposed ban (www.iol.co.za). In contrast the ANC Youth League marched together with Cosatu and NACTU on 7 March 2012, against labour broking. The Youth League supports the ban on labour broking stating that “the ANC Youth League would like to emphasise the point that our call for the banning of labour brokers does not amount to some quasi-regulations, which might end up not being overseen by anyone, therefore leaving space for continued brutal exploitation of workers” (Shivambu in Mail and

Guardian 2012:1). The ANC Youth League stated that the practice of labour broking did not fit the kind of society they wanted to live in as the youth. The contestations unravelling in society show deep rooted positional stand points from different interest groups including political parties outside the Nedlac system. This makes the study more relevant as the discourse on labour broking is current and ongoing.

2.10 Conclusion

Two classical theories of labour flexibility have been reviewed in this section. The ‘flexible firm model’ and Blyton et al.’s (1989) typology are instructive to this study and will be used to analyse data collected through interviews and document analysis. The literature review revealed that there is no consensus on the definition of flexible labour which gives impetus to the research question that attempts to establish how Nedlac’s social partners understand this concept. Literature also revealed that labour flexibility is associated with skills development and technological advancement in a country. It is in this research’s interest to find out whether South Africa has the requisite skills for such flexibility. Contestations were revealed on the ability of flexibility to create employment as there are perceptions that business is masquerading permanent employment as temporary work just to avoid or reduce the costs of labour. Social contestations emanating from commentaries outside the Nedlac process were also examined and revealed deeply entrenched differing views from different political parties. The differences may be embedded on the constituencies the parties represent. The ANC Youth League and Cosatu represent more previously disadvantaged people and the DA is perceived to be representing affluent white minorities. This is the underlying problem for this study, using the Nedlac institution as a case study we seek to understand the social partners’ views on labour flexibility and employment creation and how these views influence discourse on labour market policies and decent work.

3. RESEARCH METHODOLOGY

3.1 Introduction

The chapter presents a detailed account of how the research was conducted and specifically addresses the overall research approach selected for the study, the research design and related aspects on data collection, data presentation and data analysis. The research sought to answer the three broad research questions listed below:

1. In the views of the Nedlac social partners what is the meaning of flexible labour and decent work?
2. What are the potential effects of each social partner's conceptualisation of flexible labour and decent work on the debates around employment creation?
3. What are the policy implications of social partners' conceptual understanding of the practice of labour flexibility in the context of the decent work agenda?

3.2 Research Approach

The research study utilised qualitative research techniques to collect primary and secondary data in response to the three broad research questions. The research sought to understand the construct of labour flexibility from the four world views represented by the different social partners participating at Nedlac. As Creswell (2007:37) indicates, qualitative research inquires into the meanings individuals and groups ascribe to a social or human problem. The eight respondents that contributed to the primary data were asked to define their experiences with labour flexibility and decent work in theory and practice. It is from these conceptualisations and assumptions that the researcher derives meanings attached to each constituency's experiences using interpretive social science techniques. The study is inductive exploring the way Nedlac's social partners viewed flexible labour within the prism of decent work and how these views influence labour market policy development (Neuman, 2011:115). Through data analysis the researcher used evidence presented as findings to respond to the research questions. The study unravels that the discourse on labour flexibility is justified in order to develop sensitive labour

market policies that are responsive to the interests of different constituencies participating at Nedlac.

According to Van Maanen (1979:520), qualitative research is defined as,

...an umbrella term covering an array of interpretive techniques which seek to describe, decode, translate, and otherwise come to terms with the meaning, not frequency, of certain more or less naturally occurring phenomena in a social world.

This research seeks to understand the way Nedlac's social partners interpret labour flexibility in line with the decent work agenda and further explore how these interpretations are used to develop policy options for dealing with the two constructs in the South African labour market.

The overall purposes of qualitative research are to achieve an understanding of how people make sense out of their lives, delineate the process (rather than the outcome or product) of meaning-making, and describe how people interpret what they experience (Merriam, 2009:13).

The research collected first account data from primary sources using a semi-structured interview instrument. The researcher conducted eight (8) interviews guided by an interview schedule with ten (10) questions that solicited responses to the three (3) broad research questions. The research also used published literature such as books and journals including internet sources, newspapers and other unpublished data from Nedlac records as tools to collect secondary data through document analysis. A literature review was used to triangulate primary and secondary data providing theoretical lens to juxtapose and validate responses from interviewees and constituency written submissions to Nedlac.

3.3 Research Design and Data Collection

3.3.1 Case study

The study used the Nedlac institution as an illustrative case study to understand the discourse on labour flexibility and decent work. The Nedlac institution is a more formalised structure debating socio-economic policy that influences parliamentary reforms. It is established as per the Nedlac Act of 1996 and is recognised by law makers as a policy development forum that brings government, business, labour and community groups together to discuss policy

alternatives before they are sent to parliament to be enacted into legislation.

3.3.2 Sampling

The study utilised purposive sampling to identify key informants for interviews. According to Flick 1998 in Neuman (2011:220);

For qualitative researchers, it is their relevance to the research topic rather than their representativeness which determines the way in which the people to be studied are selected.

The Nedlac institution is a very important institution for social dialogue in South Africa. Understanding the discourse on labour market flexibility was central to the study. The debates on the labour market policy review take place within the Labour Market Chamber at Nedlac. Constituent representatives participating in this chamber were purposively selected to partake in the study. For Merriam (2002:132), it is crucial that the selected sample be one that can provide the most information through purposive sampling. All the selected individuals for this study participate in Nedlac processes at chamber and task team level.

3.3.3 Limitation

The discourse on labour flexibility and decent work permeates a number of social and economic issues and has a cross cutting impact on other Nedlac chambers. The selection of the Labour Market Chamber was in line with the limited scope of the research exercise which meant that other Nedlac participants in the Development Chamber, Trade and Industry Chamber and Public Finance and Management Chamber were not included in the sample for this study. The Parliamentary Portfolio Committee of Labour members were not included in the sample to evaluate how NEDLAC debates influence legislative reform. If there is going to be further research on this research problem it will be prudent to include the other groups that were left out of this sample.

3.3.4 Primary Data

Primary data was collected from key informants representing different social partners at Nedlac. The group of informants included constituency representatives in the Labour Market Chamber with working knowledge of the two constructs under review in this study. Although all the other informants represented specific interest groups, the Nedlac Executive Director did not have a specific group that he represented. He was chosen on his experience in the discourse as he had chaired many meetings between social partners on the subject matter and for his objectivity in interacting with the constructs since he was not representing a specific interest group.

The study utilised one interview instrument with ten (10) questions that were put to all the respondents. The respondents were recommended by their organisations, i.e., Busa, the DoL, Nactu, Cosatu and Fedusa and the Community constituency. Others were handpicked by the researcher for their role and influence in Nedlac debates on labour flexibility and decent work which included Capes and the Nedlac Executive Director. The respondents included two constituent conveners in the Labour Market Chamber (Busa and Cosatu), the government's lead negotiator in the Labour Market Policy Review process, the community constituency coordinator, the General Secretary of Nactu, the Executive Director of Nedlac, a Capes representative who represents Busa in the Labour Market Chamber and an advocate representing Fedusa in the Labour Market Chamber.

The interviews were conducted over a period of thirty (30) to thirty five (35) minutes. All interviews were recorded and a verbatim transcript was reproduced by the researcher for each interview which was later used for data presentation and data analysis as will be elucidated in the following chapters.

3.3.5 Secondary Data - Documents Review

A literature review was conducted to understand published commentary on labour flexibility and decent work. A review of published and unpublished literature on labour flexibility and decent work was conducted. Published literature included books and peer reviewed journals. Unpublished literature included Nedlac reports, constituency written submissions to Nedlac and internet sources. The researcher focused on published literature as reliable sources of secondary data.

In the main the reviewed literature was used to complement data collected from interviews, triangulating whether the discourse on labour flexibility and decent work at Nedlac was consistent with international literature on the subject area.

3.4 Data Analysis

The researcher identified findings derived from primary data and secondary data which led to the development of thematic areas on the debates around labour flexibility and decent work. These findings are presented as chapter four of this research report. Further, evidence from collected data was inductively analysed using thematic areas related to the broader research questions as expounded in chapter five of this report (Tashakkori and Teddie, 2009:99). The researcher managed to identify key words that were used most frequently by key informants as responses in the interview process. This process of coding interview transcripts enabled the researcher to identify findings across a range of themes through content analysis. The evidence from primary data was triangulated with reviewed literature to improve the validity of research results.

3.5 Reliability and Validity

According to Neuman (2011:188), reliability and validity are central issues in all measurements. There seems to be a general acceptance in social science research that these two concepts are ideals that are impossible to achieve and remain as ideals that researchers strive for (Neuman, 2011:188). Both of these ideals help to ascertain the truthfulness, credibility and believability of the findings. Every research exercise must seek to meet or satisfy the test of reliability and validity. Inevitably it was the objective of this research study to produce truthful, credible and believable findings using qualitative research methods.

3.5.1 Reliability

According to Merriam (2009:220) reliability;

...refers to the extent to which research findings can be replicated.

It is generally accepted therefore that reliability is problematic in social sciences as human behaviour is never static and human beings who are sources of data are cognitive individuals who might provide different information when they are over-researched. Therefore, given the nature of qualitative research, replication or a repeat of a study may not produce the same results. For Neuman (2011:188), reliability refers to dependability and/or consistency of findings, suggesting that if the same thing/study is repeated, similar or identical results will be reproduced.

The study is a qualitative case study focusing on Nedlac engagements. Nedlac social partners are represented by individuals who are purportedly mandated by their constituencies to represent their views. Dependability therefore is derived from the extent to which the views

of these social partners reflect the mandate of the interest they represent. The assumptions of the study are that the people interviewed on behalf of different stakeholder groups were mandated to comment on behalf of these groups. Dependability was also improved through the sampling process as the researcher chose people who represent their organisations at Nedlac and have commented on the subject area in Nedlac meetings using the mandate of their interest groups.

3.5.2 Validity

Validity is the vigour of a research study since it is used to establish whether findings are exact, from the perspectives of the researcher, the participants and the reader (Creswell, 2000:78). Qualitative data is closer to reality as it interprets reality accessed directly from sources through interviews which then improves validity by having authentic results. For Neuman (2011:196);

Authenticity means giving a fair, honest, and balanced account of social life from the viewpoint of someone who lives it every day.

The aim of this research was not to match the findings with an abstract hypothesis, but to capture the inside views and insights of Nedlac's social partners while providing a detailed account of how these knowledgeable informants understand the unfolding labour flexibility practices within the prism of decent work. Validity therefore refers to the extent to which the research results presented, cohere with reality.

The study seeks to ensure both internal and external validity as explained below.

3.5.2.1 Internal Validity

This type of validity is more concerned with the fact that there are no mistakes in the design of the research study. Internal validity concerns itself with whether the research findings are compatible with or reflect the reality (Merriam, 2002:100). While it is usually useful in experimental research, internal validity is used in qualitative research with the understanding that 'reality' is relative and ever changing. The

views of Nedlac social partners on labour flexibility and decent work were triangulated with evidence from reviewed literature to improve validity. The study utilised ‘multi sources of data’ triangulation to enhance internal validity (Denzin 1970 in Merriam, 2002:25).

3.5.2.2 External Validity

The concept of external validity refers to the transferability and/or applicability of research findings to other situations. Such validity makes it possible for people to generalise the research findings to other areas of their social worlds. However in order for other people to decide whether to transfer or apply these research findings, the study must provide comprehensive and detailed information for them to compare the similarities between the research findings and their own situations (Merriam, 2002:97). The social partners participating at Nedlac represent various social groups. The representativity of their views in these broad social groups was not tested by this study considering the duration of the exercise. It is important to mention however that qualitative research is not overly concerned with representativity as a source of validity but the in depth presentation of social reality as interpreted by a social group.

Therefore the findings of this research may be similar to those of other research work done on the sociology of work organisation in South Africa and labour market trends in line with the decent work agenda including similar work by the ILO. Furthermore the research results may resonate with other international experiences captured in various published works together with the ILO work in other countries.

3.6 Conclusion

Through this chapter the researcher attempts to expound on the research methodology used in this study to bring academic sanity in scrutinising the research findings. The study was done objectively in its quest to produce valid and reliable results. The chapter explains the research design, data collection methods, sampling, data analysis processes and the measures for reliability and validity undertaken to ensure that the findings were truthful and closer to reality as far as possible. The research design for the study was qualitative in nature using the interview instrument to collect primary data and document review to extract secondary data. The research utilised purposive sampling identifying knowledgeable key informants who participate in Nedlac processes to participate in interviews.

The process of data analysis was inductive deriving themes, findings, and conclusions from collected data. To ensure reliability the study utilised triangulation on collected data using interviews and document reviews to test information from respondents against already available information in published books and peer reviewed journals. The research design ensured validity by using Nedlac as an illustrative case study, a social dialogue institution where business, government, community and labour constituencies are represented. The research study sought to understand the interpretations and conceptual implications of such interpretations of different social partners on the discourse of labour flexibility and decent work. The researcher was conscious of the fact that the Nedlac reality is relative and ever changing and so was the internal validity of the findings.

4. PRESENTATION OF RESEARCH FINDINGS

4.1 Introduction

This chapter presents the findings arising from primary and secondary data. The purpose of this research is to explore the manifestation of flexible labour as understood by Nedlac's social partners. The research further examines how the practice contributes to employment creation and decent jobs in the views of tripartite social partners. The research uses the Nedlac institution as a case study in an attempt to understand how social partners' conceptualisation of flexible labour influences policy development. The constructs of labour flexibility and decent work are examined within Nedlac engagements in the Labour Market Policy Review (LMPR) process. The study will enhance knowledge on the development of public policy in South Africa. The report provides a narrative assessment of how different interests groups use their constituent worldviews to influence the regulation of employment practices.

The chapter discusses collected data using specific themes that are derived from the broader research questions. The first theme discusses the conceptualisation of flexible labour by Nedlac's social partners. The other themes present Nedlac debates on flexibility and employment creation, the contribution of flexibility to decent work and labour market policy options for dealing with flexibility.

It is of paramount importance however to understand the background of each interest group prior to engaging with data in order to understand the ideological premise that might influence their responses to different interview questions. The Department of Labour (DoL) represents the Government constituency. The South African Government is dominated by the African National Congress (ANC) which has been in power since 1994. The ANC has always projected itself as a Government of the people, with its principles deeply entrenched in the Freedom Charter of June 1955. South Africa is a constitutional democracy that encourages public participation, transparency and accountability in all State process. As such the Nedlac process is a revelation of institutionalised public participation in line with the constitution of the Republic of South Africa. The Business constituency is represented by Business Unity South Africa which was formed in 2003, after the merger of Black Business Council and Business South Africa (www.busa.org.za). The organisation represents South African business on macro and high level issues in an

attempt to ensure that business plays a constructive role in the country's growth, development and transformation. It is important to note that in 2011, the Black Management Forum (BMF) de-affiliated from Busa citing lack of commitment to transformation. Organised labour is represented by three Trade Union Federations. Cosatu is the largest Trade Union Federation with more members than Nactu and Fedusa respectively. Cosatu is a political ally of the African National Congress, the party that is in Government. Nactu and Fedusa are both affiliates of the South Africa Council of Trade Unions (Sacotu) a Trade Union Confederation that was formed by the two Federations in 2011. It is interesting to note that Nactu and Cosatu seem to be more in agreement on a number of issues under discussion than the Sacotu front. The membership of Nactu and Cosatu is predominately the same. The only difference between the two Federations is regarding the principle of political alliance. As for Fedusa they are organising mostly in the management ranks, previously staff association workers. Their membership is a mixture of white and black junior and middle management workers. This might be a contributing factor towards their liberal views on the various areas discussed in this research report. The community constituency is a representation of different Non Government Organisations (NGOs) and they sympathise with Organised labour views particularly Cosatu and Nactu.

4.2. Conceptualisation of flexible labour and decent work by Nedlac's social partners

The study seeks to present a narrative description of how social partners understand labour flexibility and decent work. Nedlac's social partners are advocacy groups whose mandate is to engage in social dialogue with a view of developing policies that are sensitive to and representative of various constituent interests in line with the South African constitutional democracy.

4.2.1 Defining labour flexibility

Nedlac social partners understand and define labour flexibility in line with international literature on the subject matter. According to Felstead and Jewson (1999:1), flexible labour is a labour market practice that involves different typical and atypical forms of organising work. It is conventionally thought of as referring to part-time, temporary and self-employment. It is often thought of as describing non-standard forms of employment characterised by precarious work with no security of tenure and highly vulnerable to unemployment. Other examples of flexible labour include freelancing, sub-contracting, outsourcing, home working, tele-working, franchising, zero-hours contracts, fixed-term contracts, seasonal working, flexi-time, consultancy work and many more.

The above definition of flexibility concurs with the business view of flexibility in South Africa. Capes note that;

...flexible labour is a form of work that departs from the traditional notion of permanent employment (Capes: Interview 15 April 2011).

It is a broad concept covering a wide range of types of employment. The construct of labour flexibility expands beyond the employer – employee relationship incorporating subcontracting, independent contracting, outsourcing and labour broking (Capes: Interview 15 April 2011). Under these triangular employment relationships, there are two types of contracts. The first contract between the client company and labour broker is a business contract, and the second is an employment contract between the labour broker and the employee. Research findings unravel that workers employed by labour brokers are engaged on temporary contracts. This arrangement provides greater flexibility for client companies as they can terminate their relationships with labour brokers (employers) without possible litigation on unfair dismissals. The placing of labour broker workers on permanent temporary contracts enables them the flexibility to terminate employment at any given time based on their arrangements with the client company. In the business' realm the fundamental interest is to maximise productivity at minimum costs. The costs of dismissing workers through rigorous disciplinary procedures, conciliation and arbitration processes are viewed as introducing unnecessary rigidities in the labour market.

Other social partners understand that flexibility refers to flexible work arrangements in relation to hours of work, the ability of employers to hire and fire and the ability of labour laws to make it possible for business to operate without sacrificing the protection of vulnerable workers. According to Cosatu, flexible labour is business';

... ability to change their staffing levels guided by their trading patterns (Cosatu: Interview 30 March 2011).

Cosatu refers to this as numerical flexibility which has intensified the rate of exploitation of workers in a number of ways. Davies and Freedland (2004:11) indicate that numerical flexibility has shifted the emphasis in the management of employment relationships. Rather than the conventional legal notion of the relationship as a mutual interaction flexibility is more concerned with the skills and capacities of workers as a species of economic goods. The Cosatu view is consistent with literature as the social relations that were characteristic of the employment relationship under standard forms of

employment have been transformed by flexibility into an economic interaction. In standard forms of employment, permanent work has benefits accruing beyond the employee's salary. The worker has security of tenure, contributes towards retirement funds and has a potential to grow and develop within the enterprise. It is the researcher's finding that flexibility however is characterised by short term contracts with no security of tenure, no employment benefits and little prospects for training and development.

4.2.2 Defining decent work

According to the ILO (2002:3) decent work is productive work for women and men in conditions of freedom, equity, security and human dignity. The decent work agenda has four pillars in the form of (a) employment and income opportunities for work that is productive while delivering a fair income; (b) social security and social protection for workers and their families offering better prospects for personal development and encouraging social integration; (c) social dialogue and tripartism giving workers the freedom to express their concerns, to organise and to participate in decisions that affect their lives; and (d) fundamental principles and rights at work that guarantee equal opportunities and equal treatment for all.

In defining decent work all social partners make reference to the ILO definition. There is consensus that the concept was developed by the ILO. The DoL indicates that the decent work concept is introducing nothing new to the South African labour market. The understanding by government is that most of the principles espoused by the decent work agenda are already embedded in the South African constitution. The DoL states that;

...We think that those issues that the decent work concept comes up with are embedded in our constitution and all free countries should be able to accept and implement the pillars of decent work as agreed because they are all talking around issues of freedom of association, the right of workers to join trade unions, the rights of workers to negotiate wages and working conditions with their employer, and the issue of social security...(DoL: Interview 11 April 2011).

The Constitution of the Republic of South Africa chapter two, Bill of Rights, section 23 subsections 1 to 6, provides rights that are related to labour relations (Constitution, 1996: 18-19). The rights in the constitution refer to freedom of association (section 18), the right for workers and employers to form and join trade unions and/or employers' organisations (section 23), (Constitution, 1996: 17-18). These rights

are related to the decent work strategic objectives on fundamental principles and rights at work and social dialogue and tripartism. The other pillars of decent work relating to income and employment opportunities are not explicitly captured under the constitutional provisions on the Bill of Rights. It is therefore contestable that all the provisions of the decent work agenda are intrinsic in the constitutional provisions in South Africa.

It is a finding that the interpretation of decent work from the DoL perspective is slightly different from the founding principle by the ILO. The DoL states that;

...if you look on the definition of decent work by the ILO....nowhere does it talk about wages the amount of money that you get... (DoL: Interview 11 April 2012).

This view is not entirely accurate as the decent work agenda talks to;

...employment and income opportunities for work that is productive while delivering a fair income (ILO, 2005:3).

A fair income refers to wages and salaries. The word fair is relative to different countries' circumstances and the collective bargaining power of the parties. However suffice to mention the element of wages and the incomes that people earn in a labour market underpinned by decent work is very important.

According to Busa, it is a misconception to understand decent work as referring to the traditional, typical forms of employment. It is a 'misconception that flexibility of necessity is indecent' (Busa: Interview 26 March 2011). Labour flexibility refers to different types of organising work that include organisational flexibility, wage flexibility, working time flexibility, functional flexibility and labour force flexibility (Standing, 2005:12). These forms of flexibility apply to both permanent and temporary employees. As such decent work principles are applicable under these forms of flexibility.

4.2.3 Dynamics underpinning the definition of flexibility by social partners

The role of government in the LMPR is to create an enabling environment for business to operate without sacrificing the protection of workers.

The search for competitiveness is a critical issue facing national governments. Traditional approaches to determining labour

market policy have been confronted with the challenge of balancing economic efficiency with adequate levels of social protection (McGuire, Garavan, O'Donnell and Deen, 2002:3).

The DoL defines flexibility within the jurisdiction of government to regulate the labour market. Government needs to create a balance between the interests of business and trade unions when regulating labour market flexibility. For the DoL the desirability of labour flexibility is measured by the effects it has on vulnerable workers;

...labour laws should make it possible for business to operate without sacrificing the protection of vulnerable workers. We judge flexibility against the effects it will have on vulnerable workers and we judge the protection of workers that we are putting against the ability of business to continue and do business (DoL: Interview 1 April 2011).

The business constituency defines flexibility as 'that which is not rigid' (Busa: Interview 26 March 2011). They view legislation as a compliance order that defines the parameters within which companies should operate. Business therefore needs the ability to organize its employment practices in line with company performance and fluctuations in economic activity with flexible latitude to hire and fire. During interviews Busa stated that;

...legislation regulates and directs employment practices. As a result employers tend to structure their employment practices according to legislation so that they don't fall foul of legislation, ... if legislation allowed them that space to structure their employment practices as flexible as possible to suit their specific needs, then of course they would do what makes perfect sense for business in any given circumstances ... but having said that I am not advocating for a complete deregulation that also has its own problems (Busa: Interview 26 March 2011).

Trade unions regard flexibility as affecting the social protection of workers. Flexibility is viewed by majority labour (Cosatu and Nactu) as benefiting employers at the expense of workers. For Cosatu flexibility has led to the intensification of worker exploitation. An example provided by the federation during interviews revealed that;

... in the Basic Conditions of Employment Act, there is this concept of averaging working hours, which may mean that you work on a holiday without additional pay. Obviously it benefits the employer in the event that you spend less as would be

expected when you employ somebody who was going to get double pay on that particular day.... the danger here is that employers benefit from high and huge profits via the super exploitation of labour (Cosatu: Interview 30 March 2012).

Nactu concurs with the views of Cosatu stating that flexibility does not improve the economic wellbeing of workers since it does not guarantee longevity of employment. Workers in these forms of employment do not enjoy the same benefits as their permanent counterparts and this is an additional burden on the fiscus as it means that more people depend on the state after their working life. The decent work agenda emphasises social protection and social security. These two pillars relate to permanent employment which has employment benefits in the form of pension, provident funds and/or medical aid. Although decent work acknowledges the need for temporary work, the concept has a preferred emphasis on permanency. Majority labour expressed the need to limit the negative impacts of flexibility as it is pro-business. This has led to the two federations to call for a ban of labour broking with the understanding that this type of flexibility has contributed to the intensification of worker exploitation. Fedusa suggested during the interviews that flexibility should be coupled with strong social security measures in the same fashion as the European flexicurity model.

The community constituency views labour flexibility as triggering poverty in the society. During interviews the community respondent indicated that people engaged in temporary work are left worse off after the expiration of their contracts triggering the worst forms of poverty. The community submission is that once people are employed they adjust their lives, accumulate credit and sometimes change their residence. When these workers lose their employment without any benefits they are forced to return to the lifestyle they had before employment, amid unpaid debts and shattered dreams. The community constituency identifies this as the worst trigger of poverty.

4.2.4 Labour legislation as a manifestation of flexibility

The contestations in the discourse on labour flexibility are embedded on the nature and form (design) of the construct together with the implications the practice has in the labour market. Social partners define labour flexibility in line with reviewed literature. However the Nedlac stakeholders view the impact of the practice differently. Government and Busa define labour flexibility as a labour market process that is influenced by a country's labour legislation. For the two, the outcome of labour market transformation is mediated by

regulation. The two constituencies acknowledge that South African labour laws are flexible although Busa feels that the dismissal laws in the LRA are rigid and discourage employment creation.

The DoL views legislation as flexible since the LRA does not dictate the dismissal procedures to employers. The DoL lays blame on employers who make laws too cumbersome through developing laborious disciplinary codes and procedures that make it difficult for them to dismiss employees. In response to an interview question on whether labour laws were flexible or rigid the government respondent indicated that;

...its employers who settles agreements with labour that end with long processes that get on lawyers, ...consultants and that makes legislation cumbersome and inflexible but it's not because the legislation requires it...the legislation does not require it. Therefore we don't understand this argument about flexibility (DoL: Interview 11 April 2011).

The code of good practice on dismissals in the Labour Relations Act states that before an employer takes the decision to dismiss an employee, that employee must be given the right to be heard. The code expounds on how the hearing is to be conducted, whether it is a formal or informal process (Labour Relations Act, no 66 of 1995). Each employer in consultation with a recognised trade union can refine the hearing procedure to suit the size and operations of the business. The assertion by the DoL during interviews reflects therefore that employers make this procedure difficult leading to them requiring specialist interventions in the form of lawyers and consultants, something that is not envisaged by legislation. This argument by the DoL counters the business view that dismissal laws contribute to labour market rigidity making it difficult and costly to terminate employment.

The ability of labour legislation to protect vulnerable workers is examined in the study. It is contested whether workers employed in flexible arrangements are protected by employment laws or not. For business all workers are protected by legislation and the notion that flexibility creates vulnerabilities in the labour market is a fallacy. Busa states that;

... the kind of legislations we have right now protects all in employment ...it's a myth that there are certain jobs or categories of employees...that are not protected by legislation. If a particular category of employees is identified as vulnerable the Minister of Labour has powers to make special laws by way of

sectoral determinations for that particular category of workers ... The LRA will apply to employees provided they are termed employees. So I am not sure what exactly the big problem with flexibility is as I am saying if a person is seen as an employee...employment legislation applies to them (Busa: Interview 26 March 2012).

The discourse on the protection of vulnerable workers is underpinned by debates on whether workers engaged under flexible arrangements are susceptible to abuse. Examples of protections provided by legislation on flexible workers include the legitimate expectation concept. Under legitimate expectation, workers engaged on temporary contracts have recourse to contest the termination of their contracts if their work is still available and they were unfairly dismissed. Workers in triangular employment relationships can challenge unfair labour practices against their employers and the client company through joint and several liability (Labour Relations Act, 1995). This influences Busa's viewpoint that there is enough protection of flexible workers in the current employment statutes.

The DoL believes that the current legislation is flexible enough. In response to the interview question on whether legislation allowed for business competitiveness the DoL indicated that the BCEA allows employers to average and compress working hours. This provides business with the possibility of not paying for overtime work during holidays and other prime times. Payment in lieu of overtime could be made in the form of days off averaged over a period of time (BCEA, 1997).

Organised labour views the South African labour market as too flexible. For them the notion of averaging hours and compressing working weeks only benefits the interest of capital which makes more profits at the expense of exploited workers. Cosatu states that;

...this concept of averaging working hours, which may mean that you work on a holiday without additional pay... benefits the employer in the event that you spend less as you would expect when you employ somebody who was going to get double pay on that particular day...(Cosatu: Interview 30 March 2011).

Trade unions view flexibility as a conduit for vulnerability and propose the decent work agenda as a policy framework that could be used to improve the protection of temporary workers. This argument is complemented by government. The DoL indicates that the decent work

agenda is not bringing anything new to the labour market as its pillars were already embedded in the South African Constitution.

The regulation of the labour market determines the degree of flexibility. There are contestations on the extent of labour flexibility in the South African context. Business emphasises the importance of flexibility in facilitating competitiveness. The DoL insists that there is enough flexibility in the country. Organised labour views flexibility from the negative consequences it has on temporary workers citing abuses related to unfair dismissals, poor remuneration and intensification of exploitation. The study provides a narrative overview of the social partners' view points on legislated flexibility, business competitiveness and the protection of vulnerable workers in a flexible labour market.

4.3. Nedlac debates on flexibility and employment creation

Nedlac constituencies agree that job creation should be at the centre of all government policies. There is however disagreement on the 'kind' of jobs to be created.

4.3.1 Quality of jobs created

Cosatu and Nactu indicate that they are opposed to the '...notion of creating jobs at any cost' (Nedlac Report, 2009: 45). Busa in response to the interview question on whether flexibility facilitated job creation state that 'half a loaf is better than nothing' (Busa: Interview 26 March 2011). Temporary jobs are viewed as valuable opportunities for the unemployed. Another analogue used by Busa is that;

...it's better to have a Uno than a Rolls Royce, than have no car at all (Busa: Interview 26 March 2011).

This indicates that emphasis should be placed on job creation when discussing the contribution of flexibility in the labour market, regardless of the quality of those jobs. Busa states that they;

... would rather have more people having jobs than worrying about whether these jobs before we even have them are going to be covered by legislation because ... it is a myth that they are not...(Busa: Interview 26 March 2011).

For majority labour, flexibility does not provide opportunities for decent employment. Decent work is leveraged on security of tenure and permanency, pension benefits, provident fund benefits and social dialogue through trade union membership. Nactu states that;

...if you talk about literally employing people for the sake of employing them... but people have... economic and social aspirations and they must satisfy them... and decent work is actually addressing that aspect. It actually says in order to satisfy those aspirations which are social and economic...we need to have rights... we need to have benefits (Nactu: Interview 23 March 2011).

Capes however indicate that flexibility allows for access to employment with two rewards, i.e., income and skills and these could both benefit the economy. Fedusa concurs fully with business on the contribution of labour flexibility to job creation and improved household incomes. The trade union federation states that;

If they use this flexibility properly and they encourage the employers to participate for instance in a temporary job creation project combined adequately with for instance other skills development activities, the SETA's...you can have a lot of job creation... (Fedusa: Interview 30 April 2011).

The study demonstrates that the quality of flexible jobs is contested by all social partners. There is understanding by all stakeholders that temporary jobs are not quality jobs but may be necessary for the economy and for certain categories of employees. Business suggests that having a temporary job is better than being unemployed altogether. Fedusa and Capes indicate that these temporary jobs should be coupled with skills programs to train and develop workers that are engaged on temporary assignments. This will improve the employability of the workers beyond their temporary engagement and may be a conduit to permanent employment. There is consensus that temporary jobs do not satisfy the needs of the workers in their current state leading social partners to suggest coupling the practice with skills development.

4.3.2 New jobs or permanent work coumflaged through temporary employment as job creation

The study seeks to understand the views of social partners on whether labour market flexibility facilitated the creation of 'new' jobs or employers merely converted permanent employment into temporary jobs in pursuit of flexibility. Cosatu and Nactu accept the contribution of flexibisation with limited conviction. They state that;

...there is no justification to why an increase in the demand for labour would justify an increase in the demand for temporary work only (Nedlac Report, 2009:41).

According to the International Labour Review (2002:1) the claim that labour market flexibility, lower wages and less protection, increase employment is a fallacy.

The views on this subject matter are different amongst Nedlac's social partners. Fedusa views flexibility as facilitating employment creation and submitted to Nedlac that;

There is no doubt that TES plays an enormous role in job creation in the world. In South Africa about 500 000 temps are placed in employment on a daily basis. It facilitates employment for about 2 million job seekers per annum (Nedlac Report, 2009:64).

This view that flexibility facilitates job creation was vehemently opposed by both Cosatu and Nactu who stated in their document to Nedlac in a paragraph titled 'exposing the myth, lies and deceit', that;

...there is an urgent need to correct the erroneous notions that labour brokers create jobs, as advanced by the Confederation of Associations in Private Employment Sector (Capes) and organized business more broadly. On the contrary they merely act as intermediaries to access jobs that already exist, and which in many cases would have existed previously as permanent full time jobs (Nedlac Report, 2009:43).

The majority of the trade union movement does not believe that flexibility creates jobs. Their views are that employers are camouflaging permanent work under temporary employment. For Cosatu, employers;

...employ workers on fixed term contracts and keep on extending those contracts, in some instances shift contracts from one contractor or sub-contractor to another but doing the same job. For example if you are a driver and the company knows that it needs that service of a driver in its operation. You can't then employ a driver on a three month contract, change or replace that driver with another driver on three month contracts and say you have created more jobs (Cosatu: Interview 30 March 2011).

Nactu concurs with the views of Cosatu indicating that;

...if there is work which will always be done...which needs to be done at all times but the employer has just decided that in order to cut down costs let me outsource this work...that is camouflaging (Nactu: Interview 23 March 2011).

The debate on flexibility and job creation is taken further by Fedusa noting that there must be criteria that distinguish permanent work from temporary work.

...this must present us to properly define what actually temporary work is or... what is permanent work... we can test and develop criteria against which a test will tell if this post is really temporary in nature or permanent. A similar test to s200A of the LRA on who is an employee? (Fedusa: Interview 30 April 2011).

Through the test suggested by Fedusa, it will be easy to establish if jobs created by employers are permanent or temporary. The criteria will be able to weed abuses such as rolling over of contracts that lead to 'permanent temps' in the labour market. Workers engaged permanently on a temporary basis are denied access to social security benefits such as pension and provident funds as they are not regarded as permanent employees. The criteria suggested by Fedusa will examine if the job is recurrent or just a temporary vacancy which requires flexibility.

Busa admits that there are abuses in the labour market that need to be plugged. However, they state that such abused workers have recourse in current legislation where they can refer unfair dismissal disputes to the CCMA on grounds of a legitimate expectation for their contracts to be renewed. This will mean that workers are contesting their contracts to be renewed at their previous status, i.e. fixed term. Busa states that;

...things like rolling over people employed on a fixed term contract and you just keep renewing them and all that. Yes there is an element of that in some cases but having said that it's not that we would condone that as responsible social partners and I think our laws anyway are sufficient to deal with that problem because where an employer uses a fixed term contract that gets renewed automatically...that employee is entitled to go to the CCMA if that contract is terminated prematurely and say the work is ongoing in nature and so the employer did not have a reason to terminate it... (Busa: Interview 26 March 2011).

The concept of legitimate expectation is contestable as the employer can defend the termination. Furthermore the number of referrals to the CCMA of legitimate expectation cases needs to be explored as there is a need to examine the extent of cover this principle gives to temporary employees.

The prevalence of ‘permanent temps’ and the substitution of permanent work with temporary work camouflaged as new jobs is identified by all social partners as a negative impact of flexibility. Business admits that there is camouflaging and indicates that they do not condone such a practice. Most of the labour market abuses arising from flexibilisation are admitted to by Busa, such as rolling over of contracts. Capes suggest that there must be criteria to upgrade temporary contracts into indefinite contracts where these workers get employment benefits similar to permanent employment. What is not clear is whether these ‘indefinite contract’ employees are another layer or category of employees in between permanent and temporary work.

The research seeks to understand the views of social partners on labour flexibility and job creation. Commentary on the subject matter indicates that flexibility facilitates employment creation as it makes it easier for employers to hire and fire workers in line with economic demand. Business views this as a fundamental stimulus for job creation emphasizing that policy makers should not worry about the quality of jobs before they are even created. While trade unions acknowledge the contribution of flexibility towards job creation they emphasise that the quality of jobs created is equally important. Nactu and Cosatu state that they are opposed to the principle of creating jobs at all costs. Fedusa and Capes attempt to provide a description of quality flexible jobs indicating that temporary work must be underpinned by skills development to provide workers with skills for employment security.

4.4. Contribution of flexibility to decent work

4.4.1 Decent work principles

There is need to explore the link between labour flexibility and decent work. The decent work agenda has four pillars which include (i) worker rights as captured in the ILO Conventions and domesticated in the constitutions and labour legislations of member countries, (ii) employment creation as a bedrock for all economic growth moving away from the financialisation of economies to job rich growth, (iii) social protection which emphasises security of tenure and social security in the form of pension funds, medical aid cover and unemployment benefits, (iv) social dialogue and tripartism which relates to the fact that workers must collectively bargain with employers to determine conditions of employment. This pillar also emphasises that workers must be allowed to join trade unions so that they can participate in bipartite and tripartite forums (ILO, 2002:12). For majority labour these principles of decent work cannot be achieved

under flexible labour conditions. Both Cosatu and Nactu indicate that there can never be flexible decent jobs.

The study unravelled that,

...you can't have something like flexible decent work. You have decent work and in that you can have flexibility (Nedlac Executive Director: Interview 25 March 2011).

Business indicates that flexibility and decent work are not different from one another to the extent that they should be looked at as different concepts. Busa stated that;

... flexibility and decent work are not mutually exclusive. Where the employees themselves have enough of negotiating power to want to determine their working hours and other conditions... if that is not decent work in the context of flexibility then I don't know what it is (Busa: Interview 26 March 2011).

What Busa does not ascertain is whether all temporary workers have bargaining power to determine their working conditions. Most temporary employees have less negotiating power and they are easily replaceable reducing their bargaining power too.

The DoL feel that the principles of decent work are already embedded in the Constitution of the Republic. Government indicates that it was a misperception by other social partners that decent work was bringing inflexibility yet as legislators they did not see any contradiction between the two constructs. The government respondent stated that;

...decent work... talks about social security... about social dialogue...the rights of workers, the right to join trade unions, freedom of association...those are things that decent work talks about and we don't see how that affects flexibility...these can't be regarded as introducing inflexibility (DoL: Interview 1 April 2011).

The Constitution of the Republic provides for freedom of association, the observance of rights at work and the right for workers to form and join trade unions (Constitution 1996:17 - 18).

The flexicurity model is used as a benchmark for flexible decent jobs by Fedusa and Capes. According to Philips and Eamets (2007:1);

Flexicurity is an integrated strategy for enhancing, at the same time, flexibility and security in the labour market. It attempts to reconcile employers' need for a flexible workforce with workers'

need for security – confidence that they will not face long periods of unemployment.

The European Union flexicurity principles include, flexible and reliable contractual arrangements, comprehensive lifelong learning strategies, effective active labour market policies and modern social security systems (Philips and Eamets, 2007:1). Fedusa indicate that;

...If we can succeed in establishing a proper security net, then we actually have the best of two worlds in that you have flexicurity. You have flexibility on one hand that allows you to move between jobs, to be unemployed between the movement, during that time have security of your unemployment and actually ability also at this period to be skilled and up-skilled even if you lose your job ...that allows you to move in a different field ...provided we create a proper flexicurity environment (Fedusa: Interview 30 April 2011).

The view of Fedusa is consistent with international literature on decent work and flexibility. According to the ILO (2002:75) the flexicurity approach is in line with the ILO Decent Work concept. However the ILO recommends that to establish the right balance regarding decent work;

...Governments, employers and social partners must determine together the policy choices of the flexicurity approach (ILO, 2002:76).

This suggests that there is no finite definition and limitation of what decent work entails but the framework provided by the ILO is a context within which social partners can refine their labour market practices sensitive to their unique experiences, priorities and needs.

4.4.2 Process towards Decent Work

The realisation of the decent work agenda is not an event but a process. The ILO has defined the decent work agenda as the ideal that all countries should strive for. The business constituency has identified a process towards decent work which is characterised by labour flexible amongst other things. Busa indicates that the transition from temporary work towards decent jobs includes training, skills development and the acquisition of experience for new entrants into the labour market. A research study conducted by Adcorp Holdings Limited in 2009 revealed that 32% of workers engaged on temporary contracts are converted into permanent workers after 12 months of their engagement and 47% within three years (Adcorp Holdings Limited in Busa Draft Submission to Nedlac, 2009:124). This shows that from a business perspective the process towards decent employment is underpinned by the

transformation of temporary contracts into permanent work. Figure 3 below illustrates the process towards decent employment from the views of business as expounded above.

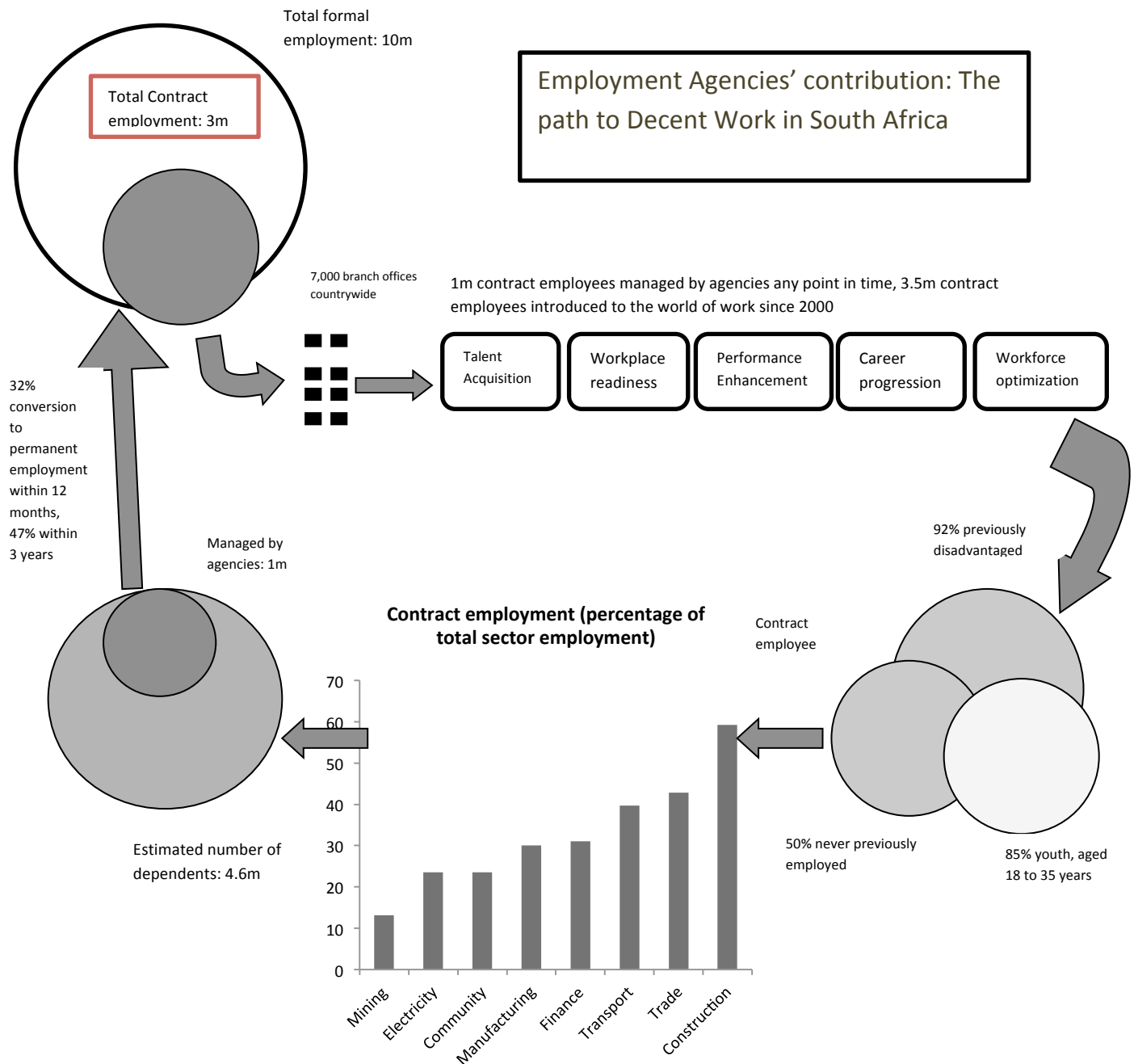


Figure 3 Transition towards decent work

Adcorp Holdings Limited (2009:11) in Draft Busa Submission to Nedlac (2009:125).

Achieving decent work is a process that involves various stages leading to permanent employment. Business believes there are genuine needs

for temporary work in the labour market. Temporary employment provides new entrants, young workers or people without experience an opportunity to access the world of work, be trained and gain experience. Through this process temporary workers can then be converted to permanent employees and access decent work opportunities.

From a government perspective there is no doubt that people have a constitutional right to choose trades and professions of their choice. However every right has a limitation and it is government's intention to regulate the Temporary Employment Services (TES) sector so that vulnerable workers can enjoy the same protections in employment law as those conferred to full time permanent employees. Decent work in the eyes of government is reflected in the country's legislation and therefore by strengthening employment law, all workers will enjoy decent working conditions. The DoL's study titled, '*Decent work and non-standard employees: options for legislative reform in South Africa*' (Benjamin, 2009), identifies a number of decent work deficits and labour market abuses in South Africa. There is general agreement within government that;

... an exponential increase in the incidence of labour broking (temporary employment services) has deprived many employees of basic labour law protection (Benjamin, 2009:1).

The extension of protection to non-standard forms of work is in line with the ILO concept of decent and productive work, which has as its objective to promote 'opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity' (Nedlac Report, 2009:24). The DoL indicates that,

...our labour laws need to be re-evaluated to ascertain the extent to which they provide employees with decent work (Nedlac Report, 2009:15).

Government's proposal is to regulate the operation of TES and proposes reforms to protect workers from abuses associated with labour broking as well as fixed term contracts, sub-contracting and outsourcing.

TES abuses range from camouflaging permanent work as temporary employment, depriving workers of collective bargaining rights, paying them low wages, unfair dismissals and rolling over fixed-term contracts to create 'permanent temps' in the labour market. As expounded by Benjamin (2009:10);

Many South African employers adopt strategies to disguise employment in order to deprive employees of labour law protection.

The other problem with TES is that they are defined by legislation as providing ‘temporary’ services, but are not limited to supplying temporary employees. Government noted in its submission to Nedlac that;

...arrangements that meet the criteria of Section 198 have been increasingly used as a basis for engaging employees on an indefinite basis (Benjamin, 2009:6).

This has led to camouflaging of permanent employment as temporary work, where previous open-ended contracts are converted into indefinite contracts and moved from the client company to the labour broker in a triangular employment relationship. Such practices have led to the erosion of permanent employment and a growing trend towards temporary, atypical and non-standard forms of work.

Trade unions have undertaken a radical stance against the practice of TES calling for a total ban of the industry. The two big trade union federations in South Africa, i.e., Cosatu and Nactu have labelled such practices as ‘slavery’, ‘human trafficking,’ and arrangements that ‘intensify’ the exploitation of workers. These two federations discredit the reasons provided for flexibility by business stating that;

One of the key motivations advanced for the reliance on labour broking and other atypical forms of employment is ascribed to the need to respond to industry, workplace and technological changes. However, little explanation is advanced as to how exactly these changes justify an orientation towards atypical employment. In fact in certain sectors these changes would justify the exact opposite with an increase in the number of permanent and full time employees. For example, in the retail sector ordinary business operating hours have in recent years progressively extended to the extent that many businesses are open seven days a week and on most public holidays. However, the increase in operating hours has in fact been accompanied by a commensurate increase in atypical employment (Nedlac Report, 2009:16).

Decent work for trade unions involves security of tenure, permanency, full time employment, unionisation and collective bargaining, employment benefits, equal pay for work of equal value and protection by employment laws. Most of these protections and benefits are not

available in flexible working arrangements. Employees are engaged and dismissed very easily. Workers are transferred from one employer to the other with no structured learning, skills transfer and recognisable work experience. As such the migration between jobs does not add any real value to the employability of the job seeker as they become what in the old adage would be called ‘jack of all trades and master of none.’

There is no consensus amongst social partners on whether flexibility can contribute to decent work. Business indicates that flexibility and decent work are not mutually exclusive. The DoL concurs with the business view indicating that decent work cannot be viewed as introducing inflexibility as its principles are already captured in the Constitution of the Republic. Organised labour has slightly different views. Trade unions indicate that decent work must be the overarching framework for all employment practices. In their view flexibility should protrude from a decent work environment ensuring that temporary employees have rights at work, social security and can collectively bargain in their workplaces. The study unravelled different social partners’ views on labour flexibility and decent work.

4.5. Labour market policy options for dealing with flexibility

The desirability of labour flexibility is measured through the impact it has in the labour market. In the Nedlac Labour Market Policy Review (LMPR) engagements social partners laboured on discussions around labour brokers reviewing their impact on vulnerable workers. Social partners weighed policy options for dealing with labour brokers. The government constituency is reviewing options to regulate labour flexibility while majority labour is calling for a ban of Temporary Employment Services (TES). In the Nedlac Report (2009), Nactu stated that it joins;

... the call by millions of workers and their trade unions to Parliament and the executive to prohibit this illegal, immoral and politically reprehensible practice of labour broking, as it reduces the human dignity of workers and their families (Nedlac Report, 2009:1).

The views of Cosatu and Nactu have led to the majority of workers to call for a total ban of labour broking. The TES are conduits for temporary workers into the labour market and epitomise flexible working arrangements. Government seeks to provide an appropriate regulatory framework to curb the widespread abuses that arise from temporary employment practices.

Comparative experience shows that there are two broad approaches that can be adopted for regulating labour brokers. The one is to limit the categories of work for which employees can be placed by labour brokers. The other approach is one that does not seek to restrict the categories of work for which employees can be supplied by labour brokers but to have the same protections for all the workers (Nedlac Report, 2009:20).

Busa agrees that TES and other flexible labour practices have been abused by certain employers. They submit that;

...the proper regulation of labour brokers (i.e. the legal entity) is one of the primary mechanisms required to prevent the abuse of temporary assignees (Busa: Interview 26 March 2011).

The study identifies two policy options advanced by Nedlac social partners as a mechanism to deal with numerous abuses necessitated by labour flexibility. The TES which is regulated through the Labour Relations Act, no 66 of 1995 under section 198 is the focal theme for discussion in the Nedlac Labour Market Policy Review process. The DoL and Busa agree that this practice famously known as labour broking must be regulated. Trade unions and community, however, are calling for a total ban. The research seeks to understand the meanings attached to these policy positions.

4.5.1 Regulation

Nedlac's social partners are exploring methods of further regulating the flexibility of the South African labour market to provide greater protection of vulnerable workers and limit worker abuses arising from temporary employment practices. The flexibility of the labour market is very important for any economy. In South Africa flexibility is manifested through a number of employment practices such as fixed term contracts, TES, outsourcing, independent contracting and sub contracting. The LMPR process at Nedlac seeks to provide further regulatory measures to legislate these employment practices. Business, the DoL and Fedusa indicate that regulation will provide enough protection of vulnerable workers who are currently susceptible to abuse from their employer. Fedusa uses the Danish model of flexicurity as an example for the ideal flexible labour market. They indicate that;

...if you have a proper regulatory environment you are going to have a proper flexible market. If we can succeed in establishing a proper security net, then we can actually have the better of two worlds through flexicurity. You have flexibility... that allows you

to move between jobs; during periods of unemployment you have...unemployment benefits and opportunities to be skilled and up-skilled... (Fedusa: Interview 30 April 2011).

The Busa approach to regulation emphasises a stronger regulatory framework in the TES sector through the establishment of a Co-Regulatory Private Employment Agency Board that will register TESs and enforce compliance with all labour standards. A similar approach is proposed by Government through the Employment Services Bill (ESB) with the establishment of a Public Employment Services Board. The government constituency indicates that;

An appropriate framework is required to prevent the widespread abuses that have resulted from the exploitative TESs. ...Effective regulation will also require the introduction of a regulatory framework which would include requirements such as registration or licensing, minimum threshold requirements, security and complaints and investigation procedures (Nedlac Report, 2009:41).

This submission is in line with the business policy submission to register TES and monitor their compliance. The DoL's proposed ESB (2010) limits the duties of TES to placement agencies removing the employer responsibilities from these entities. Furthermore the Bill establishes an Employment Service Board (ESB) which is a tripartite structure with representatives from government, business and labour. The ESB will establish the rules and procedures for the TES industry (Employment Services Bill, 2010 in the Labour Market Policy Review at Nedlac).

Fedusa supports the regulation of a flexible market stating that with a proper legislative framework that allows for flexicurity, this practice could boost employment creation and help to alleviate unemployment. Fedusa extended their support for the practice by concluding an MOU with Capes an association of labour brokers agreeing to work together in areas of mutual interest. The MOU was submitted to Nedlac demonstrating how trade unions and TES could work together in a regulated environment to nurture flexibility without compromising the protection of vulnerable workers. Fedusa believes that there is real value from TES as they place first time workers, old people, professionals and other people who have a real need for temporary work in employment. TES also allows businesses to structure their manning levels according to economic demands.

Fedusa believes that the TES industry should be regulated, because through regulation most aspects of decent work can be addressed (Nedlac Report, 2010:60).

Nactu and Cosatu are not opposed to the regulation of flexible work practices. The two federations are calling for more stringent measures to be introduced in the country's labour laws. Such measures include the reduction of fixed term contract work to six months, after which an employee is deemed an indefinite contract worker, the clear definition of contract work and the banning of TES. These views are not against flexibility or meant to introduce rigidities. However, Nactu and Cosatu believe that the labour market can remain flexible without triangular employment relationships such as TES. The call for a ban of these practices arises out of difficulties to enforce current labour laws. The Labour Relations Act has a provision for joint and several liabilities on matters related to unfair labour practices. However Nactu and Cosatu argue that it is impossible to enforce this at the CCMA as employers are evading liability and it is difficult to site the appropriate employer when referring disputes to the CCMA in triangular employment relationships as there are two companies, i.e. the client company (enterprise) and the TES (labour broker). This has resulted in Nactu and Cosatu advocating for another policy option in dealing with flexibility in South Africa, i.e. banning the TES practice.

4.5.2 Banning

It must be understood from the on set that the policy option proposing a ban to TES or labour broking is not necessarily against all flexible employment practices in the labour market. The trade unions that are calling for a ban of TES are against triangular employment relationships. Their view is that flexibility between the employer and the employee is acceptable as there are inherent circumstances that require flexible work arrangements. However the definition of the TES as the employer under section 198 of the Labour Relations Act (LRA 1995) creates challenges in the enforcement of the legislation which make temporary workers to be vulnerable to abuses by both TES and client companies. Nactu and Cosatu cited numerous examples arising from the vulnerability of temporary workers such as unfair dismissal, unfair labour practices and poor wages. The two trade union federations stated that:

Since the handing down of the 2008 Namibian High Court decision confirming the validity of Namibian legislation banning/prohibiting the practice of labour broking, and the pronouncements by the South African labour Minister supporting

the ban, organised business has mounted an intense campaign to discredit this approach. We note that with the Department of Labour (DoL) discussion paper proposing a more watered down approach that leans towards increased regulation (as opposed to complete prohibition) of labour brokers, it would suggest that the balance has at least for the time being swung in favour of regulation. Notwithstanding this, we are strongly maintaining our call for a complete ban on labour brokers, and intend pursuing this objective in the forthcoming engagement at Nedlac and at a political level (Nedlac Report, 2010:54).

In more recent events, on the 7th of March 2012 the two federations engaged in a mass stay away protesting against labour broking and calling for a ban of the practice. This was following a section 77 Notice as per the Nedlac Act No 35 of 1994 where the two Federations declared a deadlock in the Nedlac negotiations on labour broking.

4.6. Conclusion

The chapter provides an in-depth presentation of data collected from primary and secondary sources. The data seeks to provide answers to the broader research questions on the manner in which Nedlac social partners understand flexible labour and decent work and how their views impact on policy discussion regarding the regulation of the labour market. The chapter reveals areas of consensus by Nedlac social partners especially on the manner in which they define flexible labour. The definitions provided by social partners are consistent with international definitions unravelled through the literature review. The study examines if Nedlac constituencies have the same understanding of the construct or not.

There are differences on how the social partners viewed the constructs of labour flexibility and decent work in practice. Busa sees real value from flexibility as it enables businesses to be competitive. Government states that flexibility should be measured by the impact it has on vulnerable workers. Parts of organised labour indicate that flexibility has led to the intensification of exploitation of workers.

There are contrasting views between social partners on whether labour flexibility can contribute to employment creation. Labour views the practice with mixed conviction with the majority of labour indicating that there is no justification as to why an increase in the demand for labour would lead to a demand for temporary jobs. Trade unions indicate that employers substitute permanent workers with temporary employees in the name of job creation. This view was supported by

international literature on the Dutch experience with flexibility within the European Union. However Fedusa sees real value from flexibility as it allows new entrants, older people, women and people with special needs to access the world of work. Fedusa suggests the flexicurity model as a recommended approach to achieve decent work through flexible labour. This view is in line with the ILO provisions on decent work and flexibility.

A detailed analysis of how TES can contribute to decent work was also presented from the view point of Busa. The chapter also presents the policy options underpinning Nedlac engagements arising from the way social partners' conceptualise labour flexibility. However differences were sustained between labour and business on whether to regulate or ban certain flexible labour practices such as labour broking.

5. ANALYSING DATA

5.1 Introduction

The chapter analyses evidence presented by Nedlac's social partners on flexible labour and decent work. The research seeks to explore the views of social partners on whether the worker interests espoused in the decent work agenda are attainable under flexible labour practices. The purpose of this study is to explore the manifestation of flexible labour as understood by Nedlac's social partners and to examine how the practice contributes to decent work.

The chapter presents an analysis of evidence while revealing the researcher's opinion using qualitative research methods as per the research approach. The study analyses Nedlac's social partners' understanding of labour flexibility and decent work. The chapter concludes by evaluating the policy implications of Nedlac's social partners' views on flexible labour and decent work.

This chapter will discuss and interpret data against a set of thematic criteria in order to make sense of the findings in response to the broader research question. The themes discussed under this chapter include:

- 5.2 The meaning of flexible labour and decent work
- 5.3 Discourse on employment creation and labour flexibility
- 5.4 Flexible decent jobs
- 5.5 Policy options for dealing with labour flexibility within the decent work agenda

5.2 The meaning of flexible labour and decent work

5.2.1 Understanding labour flexibility

Social partners define labour flexibility in line with international definitions in the literature. In the researcher's view, Nedlac stakeholders understand what the construct of labour flexibility entails.

Literature reveals that the construct of labour flexibility can be defined from different spectrums. According to Deakin and Reed (2000:6) the definition of labour flexibility is elusive, defying a water tight definition. They further indicate that scholars focus on different aspects of flexibility when defining the construct. The definitions differ as;

...Some analyses focus on changing patterns of demand and supply for labour; others see the issue primarily in terms of the system of regulation (Deakin and Reed, 2000:6).

This phenomenon was a finding of this study as social partners focused on different aspects of flexibility when defining the practice. Busa and government focused on legislation in their definition of flexibility. Cosatu centred on the use of the construct with particular reference to numerical flexibility (Cosatu: Interview 20 April 2011). Capes indicate that flexible labour refers to that which is not permanent (Capes: Interview 15 April 2011). All these definitions are correct as they refer to different aspects of flexibility.

Definitions of flexible labour focus on elements such as demand side flexibility, supply side flexibility and legislated flexibility. Atkinson and Meager's (1986), 'flexible firm' model defines demand side flexibility through analysing organisational flexibility which focuses on micro-level labour demand and analyses employers' strategies with regards to the form in which labour is contracted. The proponent of the 'flexible firm' model, identifies different kinds of organisational flexibility in the form of numerical flexibility, working time flexibility, financial flexibility and functional flexibility (Atkinson, 1985).

Nedlac's social partners place emphasis on different elements of flexibility when defining the practice. Cosatu in their definition of labour flexibility refer to numerical flexibility as an exploitative practice which benefits employers more than workers. They indicate that numerical flexibility;

...refers to the ability to change their staffing levels guided by those trading patterns. Basically that's what they regard as labour market flexibility and they regard this as numerical flexibility, the ability to change numbers from time to time depending on changes in their business. From a workers' point of view it has intensified the rate of exploitation... (Cosatu: Interview 20 April 2011).

The Cosatu definition focuses on demand side labour flexibility. Fedusa concurs indicating that flexibility is;

...labour/employment that is used by business to satisfy their needs of changing business circumstances in their business environment... (Fedusa: Interview 30 April 2011).

Demand side flexibility focuses on organisation needs for flexibility. It refers to the ability of companies to hire and fire workers responding to economic fluctuations (numerical flexibility) and the ability of workers to multi-task (functional flexibility) to improve the broader organisational flexibility. The prediction by the flexible firm is that organisations are segmented into core and periphery workforces. The core is composed of permanent, full time workers where functional flexibility in the form of multi-tasking is utilised and periphery workforce composed on part-time, casual and fixed term contract workers, where numerical flexibility is prevalent (Deakin and Reed, 2000:6).

Supply side labour flexibility focuses on the workforce requirements for flexibility. Capes define labour flexibility as work that departs from the traditional notion of permanent employment (Capes Interview 15 April 2011). It is argued by Capes and Fedusa, that there are certain categories of employees who need flexible working arrangements, such as first time employees, elderly workers, women with special needs and professionals. Fedusa state that flexibility;

...provides real support for a portion of the employment market that wants 'flexibility' and temporary assignments (Nedlac Report, 2009:50).

Labour market flexibility can provide access to employment for people without experience or workers that have retired and want to work on a consultancy basis. In the researcher's view supply side flexibility is necessary for the engagement of temporary assignees who do not want full time engagements such as students, consultants, women with family commitments and retirees who want to work in flexible engagements.

It is a finding of this study that Nedlac social partners also understand labour flexibility as legislated flexibility. According to Busa flexibility;

...simply means that which is not rigid. In the labour market one will obviously be looking at the types of laws that we have that seek to protect employment relations, regulate the employment and maybe protect employment and job security. Rigidity... those

that are created by statutes like the Labour Relations Act that may have general application and say you may not dismiss a person except for certain permitted reasons ...that may be rigid that it does not suit the interest of employers when it comes to dealing with certain categories of employees... (Busa: Interview 26 March 2011).

The assessment of Busa is similar to Deakin and Reed's (2000:8) analysis that in the United Kingdom the widely held view is that legal and other regulations facilitate rigidities in the labour market. In this view, flexibility is the absence of regulation, a condition of unregulated markets.

Although Nedlac social partners agree that legislation does contribute to the flexibility of a labour market they are not entirely in agreement with the view espoused by Deakin and Reed (2000:8) above. Even Busa does not advocate for the deregulation of the labour market as they admit that deregulation has its own problems (Busa: Interview 26 March 2011). The DoL indicates that flexibility is embedded in the labour laws of the country. Government makes reference to the Labour Relations Act and BCEA as examples of legislated flexibility. The LRA Code of Good Practice Schedule 8 requires employers to provide workers undergoing disciplinary action with an opportunity to be heard prior to terminating employment (LRA, 1995:283 – 288) . This Code does not prescribe processes employers need to follow to implement this principle. The DoL states therefore that it does not agree with the business view that dismissal laws are rigid in South Africa indicating that;

...it is employers that go out and set up complicated dispute processes with their employees...there is nowhere in the law that the law says do A B C D...the law says you must have a fair process...give the employee a hearing. That hearing can last thirty minutes...it can last two hours...depending on the processes of the company there is nowhere in the law that says each process should take a specific number of hours...the legislation does not require it (DoL: Interview 1 April 2011).

This view was not disputed by Busa in the interview process. However Busa states that the provisions of the LRA must not be applicable to all employees since the LRA limits the ability of employers to dismiss workers outside specific permitted reasons. It is the research's finding that the LRA allows employers to dismiss workers on grounds of

misconduct, incapacity and operational requirements. The submission by Busa that these permitted reasons be limited to ‘certain categories’ of employees suggests that employers would want to dismiss workers for unjustifiable reasons in the name of flexibility, especially temporary workers. Busa state that the LRA;

...does not suit the interest of employers when it comes to dealing with certain categories of employees... employers tend to structure their employment practices according to legislation so that they don't fall foul of legislation, whereas if legislation allowed them that space to structure their employment practices as flexible as possible to suit their specific needs, then of course they would do what makes perfect sense for business in any given circumstances ...but having said that I am not advocating for a complete deregulation that also has its own problems (Busa: Interview 26 March 2011).

Notwithstanding the contradictions in this submission by Busa, the categories suggested above will be measured by the employee's length of service and their level in the organisation (Busa: Interview 26 March 2011). This therefore suggests that Busa is advocating for flexibility in arranging work for lower level workers and workers who have fewer periods of service. In a labour market where the number of permanent employees is dwindling and the number of temporary employees is ballooning this will mean that the majority of workers are not covered by dismissal laws of the country. By suggesting differential coverage of workers by employment law Busa wants to create a two tier labour market with workers that enjoy full coverage by employment legislation and workers with a limited cover. In conjunction with the Busa submission such deregulation will present problems in the labour market and will make ‘certain categories of workers’ susceptible to abuse by employers who may dismiss them outside permitted reasons. It is the researcher's view that employment law must be accessible to everyone and workers must not be discriminated against merely on the basis of their length of service or their level in the organisation.

Legislated flexibility in South Africa is also manifested in conditions of employment. According to the DoL the fact that there is no minimum wage in South Africa shows that there is greater flexibility in the labour market (DoL: Interview 1 April 2011). The BCEA provides Employers and Trade Unions with the right to conclude collective agreements to average working hours. The concept of averaging hours

provides flexibility in remunerating workers for overtime work or working during holidays (BCEA, 1997: 17). Under rigid labour markets overtime and holiday work demand a prime wage. The concept of averaging working hours in the BCEA provides employers and unions with the flexibility to conclude agreements where employers pay for ordinary and overtime hours of work for a period of up to four months as normal time. According to the BCEA section 12;

...the ordinary hours of work and overtime of an employee may be averaged over a period of up to four months in terms of a collective agreement (BCEA, 1997: 17).

It is important to note that this flexibility applies to both permanent and temporary employees. The impact of this flexible practice is viewed as exploitative by trade unions. Cosatu notes that;

...From a workers' point of view it has intensified the rate of exploitation in a number of ways... this concept of averaging working hours, which may mean that you work on a holiday without additional pay... it benefits the employer in the event that you spend less as you would expect when you employ somebody who was going to get double pay on that particular day... (Cosatu: Interview 20 April 2011).

The views of Cosatu scrutinise the effects of legislative flexibility on workers. However what the trade union federation does not consider in their analysis of averaging working hours is that these are agreed upon by workers through a collective agreement. This therefore means that there is a consultation process prior to employers instituting averaged working hours where trade unions participate. It is therefore difficult to understand why labour views this as an exploitative instrument. The BCEA also provides checks to reduce abuse of this particular principle. The BCEA limits the period of averaging hours to a maximum period of four months. This therefore means that employers cannot continuously require workers to work on averaged hours throughout the year. The researcher views this as a protection measure instituted to protect the rights of workers in line with the broader principles of decent work.

The study makes a finding therefore that Nedlac's social partners view the impact of legislated flexibility differently. Busa advocates for increased flexibility around dismissal laws, whereas government views employment laws as flexible enough. Trade unions' view legislated flexibility as benefiting employers at the expense of workers. The debate on the desirability of legislated flexibility in the country is

ongoing and justified. In the researcher's view social partners should thrive to find a balance to accommodate constituency interests for flexibility without facilitating the exploitation of workers, and continuous debate is important to achieve this.

5.2.2 Social partners understanding of decent work

The decent work agenda is an ILO concept that provides indicators for measuring labour market practices. The agenda was promulgated in 1999 by the ILO Director General and has been domesticated by ILO member countries into legislation or policies in the form of decent work country programs. The South African Decent Work Country Program was concluded and signed off by Nedlac's social partners in November 2010 (South African Decent Work Country Program, 2010). In defining decent work the ILO submits that;

...decent work is captured in four strategic objectives: fundamental principles and rights at work and international labour standards; employment and income opportunities; social protection and social security, and social dialogue and tripartism (Benjamin, 2009:1).

The theme discusses how Nedlac social partners understand the concept of decent work. Literature reveals that the construct of decent work involves opportunities for work that is productive and delivers a fair income, provides security in the workplace and social protection for workers and their families, offers better prospects for personal development and encourages social integration and social dialogue (ILO, 1999:13). Social partners understand the decent work agenda in line with the definition provided by the ILO. During interviews, respondents made reference to the ILO in their definition of the concept.

The DoL states that the principles of decent work are compatible with labour flexibility. The government respondent states that;

...decent work... talks about social security... about social dialogue...the rights of workers, the right to join trade unions, freedom of association...those are things that decent work talks about and we don't see how that affects flexibility...these can't be regarded as introducing inflexibility (DoL: Interview 1 April 2011).

The contribution of labour flexibility to decent work is contested however. Busa views flexibility and decent work as not mutually

exclusive. Business states that flexibility of necessity is not indecent. They indicate that;

...decent work should be that which not exploitative (Busa: Interview 26 is March 2011).

The Nedlac Executive Director concurs indicating that the principle of decent work solves all problems of flexibility. The decent work agenda is taken to be the overarching framework for regulating the labour market. In a decent work environment there can be flexible temporary jobs (Nedlac Executive Director: Interview 25 March 2011).

The Constitution of the Republic provides for freedom of association, the observance of rights at work and the right for workers to form and join trade unions (Constitution, 1996:17-18). The government's understanding of the decent work agenda is that it is not introducing anything new to the labour market. The DoL states that;

...we think that those issues that the decent work concept comes up with are embedded in our constitution and all free countries should be able to...accept and implement the pillars of decent work as agreed because they are all talking around issues of freedom of association, the right of workers to join trade unions, the rights of workers to negotiate wages and working conditions with the employer, and the issue of social security...this can't be regarded as introducing inflexibility...we don't see a contradiction in terms of these issues because of what it is intending to do...it's not introducing anything new in the labour market (DoL: Interview 1 April 2011).

The Constitution of the Republic of South Africa talks to freedom of association and the rights of workers and employers to fair labour practice, to join and form trade unions and employers associations and to collective bargain (Constitution 1996: 17–19). The right to social security and assistance is also part of the constitutional mandate. This however is affected by the absence of a comprehensive social security system. The National Health Insurance Plan has been muted in the corridors of Government but is yet to see the light of day. It is important to note however that investments in social assistance have increased by 50% between the year 2000 and 2006 demonstrating a larger Government focus on this constitutional imperative (Cohen and Moodley, 2012:332). The decent work agenda has four strategic objectives addressing fundamental principles and rights at work, social security and social protection, income and employment opportunities

and social dialogue and tripartism. In the researcher's view the Constitution does entail all the strategic objectives of the decent work agenda. Most of the tenants of the Constitution have been passed into laws thereby operationalising the principles of the Decent Work Agenda within the South African State machinery. Although the development of certain statutes has not realised real value as in the comprehensive social security process, work is being done to ensure that this is the case.

5.3 Discourse on employment creation and labour flexibility

Employment creation is the process through which a country develops employment intensive economic policies and/or job creation programs that facilitate the creation of jobs in both the public and private sector to enable those not in employment to access the world of work. The study explores how the views of Nedlac's social partners on labour flexibility and decent work influences their debates on employment creation.

5.3.1 Job creation

It is a finding for this research study that social partners are not unanimous in their views on the contribution of labour flexibility to employment creation. Government and business view flexibility as providing an enabling environment for job creation. Business believe that there is flexibility of necessity which leads to employment creation with the view that;

...it's better to have an Uno than a Rolls Royce, than have no car at all (Busa: Interview 26 March 2011).

According to Nactu and Cosatu they are opposed to the notion of creating jobs at any costs (Nedlac Report, 2010:50). It is important to examine the nature of jobs created. Further it is a finding from primary data that organised labour finds no justification as to why an increase in the demand for labour creates a demand for temporary work. For trade unions flexibility does not facilitate job creation. The assertion by trade unions is that employers transform previously permanent work into temporary employment in the name of job creation. This means where one permanent worker was employed, employers are now employing two temporary employees, for example, who are paid less and they claim that they have created more jobs. Another research finding in support of this view came from Busa's interview submission where they state that;

... if I am having one person employed on this highly rigid and regulated basis, and I am paying that person whatever is negotiated or agreed between us as X and then they can support their families on that...it only benefits that person and their immediate families whereas if I could appoint or employ four people on a flexible basis and those people have got other people depended on them ...if rigid and highly regulated employment limits the number of people who have access to jobs and the income...but flexible arrangements can spread that a bit more...I think it goes without saying that the latter would stimulate the economy even faster (Busa: Interview 26 March 2011).

Literature reveals that one of the negative effects of flexibility is the substitution of permanent workers with young temporary workers. According to Philips and Aemets (2001:2);

In practice it (in the Dutch system) is also reported that employers are hesitant to offer less skilled workers open ended contracts and more experienced workers are continuously replaced by fresh, new and inexpensive workers.

The substitution of permanent work with a plurality of temporary assignees is not in the researcher's view job creation. Work that was previously available is perpetuated under new terms of employment. In the researcher's view, job creation should be the net head count of new employment opportunities available in the labour market. The explanation provided by Busa is not convincing and leads to trade union views that employers are camouflaging permanent work as temporary employment in the name of flexibility and employment creation.

Capes recognise that while it is difficult to regulate employment creation, labour market policies do facilitate job creation. There is general admittance from business that flexibility does incentivise aggregate labour supply which encourages companies to employ more. Capes indicates that if labour flexibility is coupled with other active labour market policies such as youth subsidies or tax breaks to decrease the costs of production, more jobs could be created. According to Capes, in 2010, 50 000 opportunities were created in the labour broking industry as companies got tax rebates of up to R60 000 for engaging young people on learnerships and internships (CAPES: Interview 15 April 2011). In 2011 the National Treasury introduced the Youth Employment Subsidy (YES) which is a subsidy to young workers who are unemployed. The YES is a portable 24 months subsidy which seeks to stimulate employment by incentivising the preferred

employment of young workers. The National Treasury justified the YES by indicating that employers are reluctant to employ young people due to their lack of experience. Further the costs of engaging young people are said to be high due to high labour costs in South Africa making it very difficult for employers to engage young workers. This analysis is supported by evidence on the unemployment demographics in South Africa which shows that the majority of unemployed workers are the youth (www.africaneconomicoutlook.org). Although the YES has been opposed by Trade Unions who criticise that there is no guarantee of continued employment beyond the subsidy and that the subsidy might have displacement and substitution effects in the labour market with employers terminating permanent older workers in preference for subsidised young workers, discourse on this policy option is continuing.

Labour is divided on this notion of employment creation with Cosatu and Nactu indicating that the nature of jobs created by flexibility are precarious and do not promote the quality of work. Both federations indicate that they struggle to understand why an increase in the demand for labour would lead to an increase in temporary work (Nedlac Report, 2010:57). This leads to the argument that employers are camouflaging permanent work as temporary employment in order to evade employment costs. The DoL concurs indicating that;

...our view is that labour broking is not job creation, as the same number of employees that would have been employed by the company directly are employed by third parties and they are paid less creating vulnerable workers in the labour market (DoL: Interview 1 April 2011).

In the researcher's view flexibility does incentivise employers to employ with the understanding that they can terminate temporary workers when the need arises. The flexibility to hire and fire incentivises employers to employ more than they would otherwise have done under rigid labour markets. The arguments by trade unions and government that labour brokers do not create employment is true but is however limited. In a pragmatic sense labour brokers do not create employment but place people looking for work. However their service provides employers with the flexibility to engage temporary workers with ease and less liability. The role of labour brokers reduces employment costs on the part of the client companies as they spend less time to hire employees and to dismiss them. Client companies do not need to advertise, interview and hire workers directly and they also do not have to conduct disciplinary hearings, go to the CCMA or the Labour Court to dismiss workers and defend dismissals respectively. This is made easier by labour brokers who have flexible contracts with

their appointees. As such it is the researcher's view that under such arrangements employers are incentivised to employ more than they otherwise would have done under typical labour markets.

5.3.2 Quality of work that is created under flexible labour markets

According to the South African Decent Work Program (2010:8);

The concept of decent work is based on the understanding that work is not only a source of income but more importantly a source of personal dignity, family stability, peace in community, and economic growth that expands opportunities for productive jobs and employment. The goal is not just the creation of jobs, but the creation of jobs of acceptable quality.

Literature reveals that employment refers to work of all kinds and has both quantitative and qualitative dimensions. Further, it refers to both adequate opportunities and remuneration for work. Decent work also embraces safety at work and healthy working conditions (ILO, 1999:27). It is a finding that the attainment of decent work in flexible employment relations is a process that involves the transformation of temporary jobs into permanent work according to Nedlac's social partners. Permanent employment is therefore a precursor to decent work. Literature reveals that in South Africa, 32% of workers engaged in temporary work arrangements are converted into permanent contracts within 12 months and 47% are converted into permanent engagements within three years (Adcorp in Nedlac Report, 2010: 11). As such the transition from temporary employment to permanent work is viewed as a transition towards decent work. The researcher concurs with this view as permanent workers are more protected by legislation and enjoy more benefits in the form of provident funds and pension funds. Although there are decent work deficits amongst permanent workers with regards to pension benefits these provisions are currently accessible to permanent employees. This view led to Busa suggesting that the pension fund rules must be changed to accommodate temporary and irregular contributions (Busa: Interview 26 March 2011). If this was to happen it would extend social security benefits to temporary employees thereby improving the quality of temporary work.

The Capes 'analysis of the decent work progression cycle is illustrated below in five (5) steps.

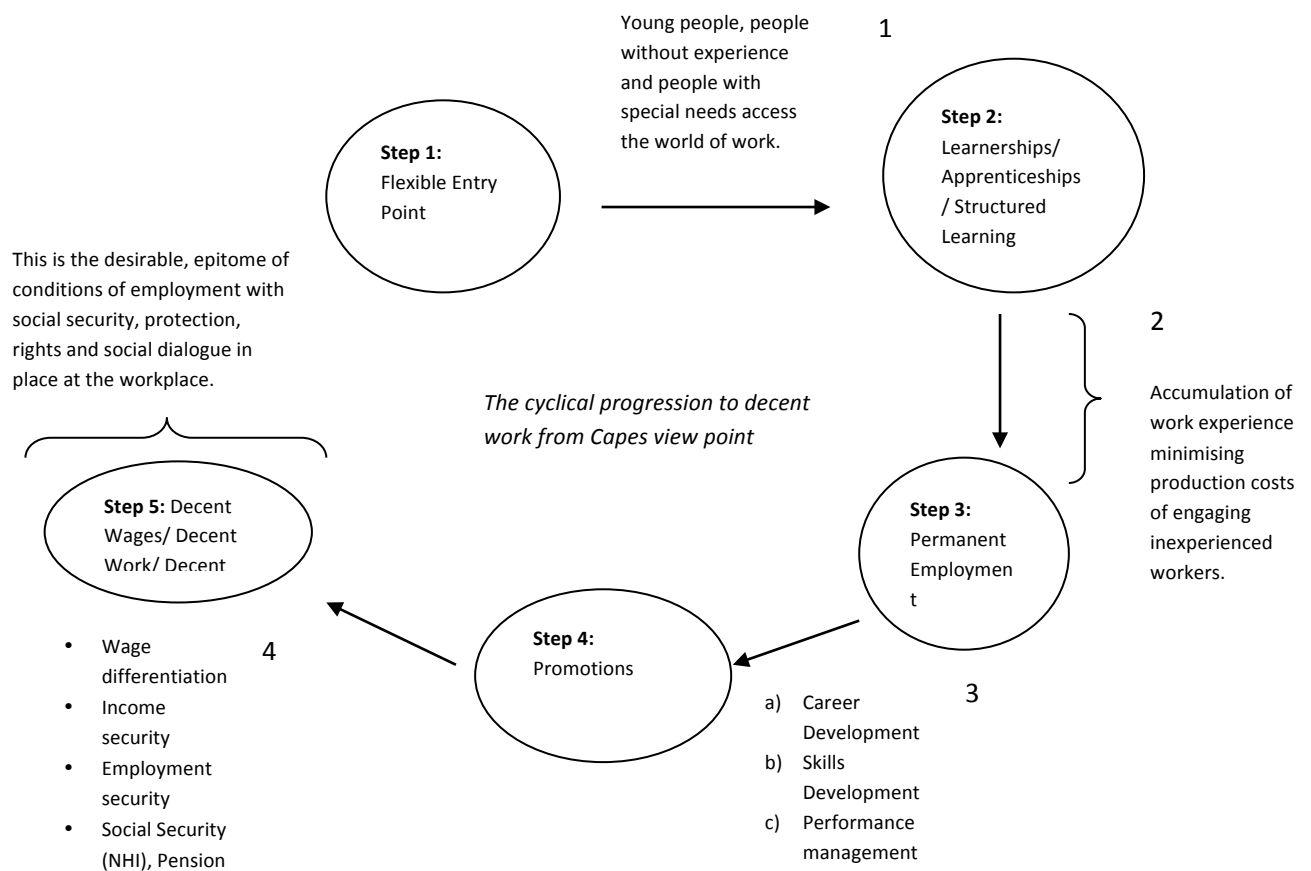


Figure 4 Progression towards decent work
(Nedlac Report, 2010)

From the illustration above, the precursor to decent work is permanent employment. There is general consensus from social partners that there are justifiable reasons for labour flexibility through fixed-term contracts that act as a 'panado' to cure the temporary increase in demand for labour or reliefs during normal business operations (Nedlac Executive Director Interview: 25 March 2011). However in this analogue one cannot take a 'panado' every day as it is meant to provide temporary relief. If there is need for permanent relief then a permanent cure is required. This therefore means that temporary work should be treated as temporary. The advent of 'permanent temps' in the labour market is a decent work deficit as it means that employers are abusing the temporary employment practices to evade engaging workers on a permanent basis.

5.4 Flexible decent jobs

The discourse on labour flexibility and decent work is ongoing and justified. There are a lot of contestations on the desirability of labour flexibility within the prism of the decent work agenda. The study seeks to understand the Nedlac social partners' views on whether there could be flexible decent jobs.

5.4.1 Flexicurity

In the literature we are told that in Europe, Denmark fused labour flexibility with strong social security mechanisms in a system called 'flexicurity'. According to Beukes (2011:4), flexicurity is a labour market practice where there is a balance between labour flexibility and social security. The concept is derived from a combination of the words 'flexibility' and 'security' and is the dominant labour market strategy in most European countries. Flexicurity is said to provide a balance between protection and risk, security and opportunity, collective solidarity and individual responsibility, public authority and private exchange (Streeck, 1999:58). This system facilitates labour market flexibility while protecting workers against loss of income during periods of unemployment. Workers engaged in temporary work are able to access unemployment benefits when they are out of employment.

The flexicurity model is also underpinned by skills development to ensure that temporary workers are developed to be able to look for other employment opportunities during periods of unemployment. This improves employment security as opposed to the traditional notion of job security. Literature reveals employment security as providing individuals with the confidence, based on their experience that they will be able to continue their employment career, either in another job with their current employer or in another job with another employer, whenever they need or want to. It provides employees with the flexibility to float within the labour market without fear of loss of wages (Wilthagen and Tros, 2004:19). Fedusa indicates in the interview process that they viewed flexicurity as a framework that could lead to decent flexible jobs in South Africa (Fedusa: Interview 30 April 2011).

The other pillar of flexicurity is the availability of active labour market policies to stimulate job creation so that there is aggregate demand for labour. This will enable temporary employees to be absorbed back into the world of work soon after the termination of their contracts of employment. Labour absorption is a central part of flexicurity. In a labour market with high unemployment, the period of

re-employment is long as there are limited opportunities which may limit the employment security of temporary workers in South Africa.

In the researcher's view flexicurity does provide flexible workers with decent work opportunities to a limited extent. Flexicurity relates to two pillars of decent work, i.e., income and employment opportunities and social security. However the flexicurity model does not address rights at work and tripartism and social dialogue. Although advancing strategic objectives of decent work, flexicurity as a practice is not encompassing all decent work principles and would not suffice to provide decent work opportunities for flexible workers as a standalone.

5.4.2 Decent work strategic objectives

Decent work refers to productive work for women and men in conditions of freedom, equity, security and human dignity. The construct has four pillars in the form of (a) employment and income opportunities ; (b) social security and social protection; (c) social dialogue and tripartism; and (d) fundamental principles and rights at work (ILO, 2005:3). An analysis of the decent work principles in relation to flexible labour practices indicates that flexibility is not mutually exclusive to the decent work agenda. It is a finding of this study that there are decent work deficits amongst standard and non standard forms of employment. The study unravels the process towards decent work indicating that from the social partners' views the precursor to decent work is permanent employment. Business provides an analysis of the stages towards decent work revealing that temporary work that is coupled with skills development can be transformed into permanent employment leading to decent work.

The study explores whether, in the views of Nedlac's social partners, the worker rights espoused in the decent work agenda can be achieved through flexible labour practices.

5.4.2. i Fundamental principles and rights at work

The sub-theme examines the decent work principle on fundamental rights in relation to the Nedlac discourse on labour flexibility. It is important to note that there is no constituency that advocates for labour market rigidity as an alternative to flexibility in this study. The construct of decent work incorporates basic rights of workers, underpinned by the notion that all those who work have rights at work (ILO Report, 1999: a). Examples of these basic rights include freedom of association, non-discrimination at work, and the abolition of forced and child labour. In South Africa most of these rights are embedded in the country's employment laws. The Labour Relations Act, no 66 of 1995 confers workers with basic rights to fair dismissal, fair labour

practices and to join and form trade unions. The DoL states that when reviewing flexibility it examines the LRA and Basic Conditions of Employment Act (BCEA, 1997). According to the DoL;

...the basic conditions of employment act and the labour relations act ...ensure flexibility at collective bargaining where you can agree on overtime work, change and/or scrap the working hours, what we call averaging out, you can average out working hours. There is no minimum wage in South Africa...but we have sectoral wages precisely to cater for flexibility in different sectors.... each sector is different and each sector has its own circumstances and productivity levels differ in each sector and therefore you have different sectoral minimum wages in South Africa...not one minimum wage. Therefore for us the argument that people are putting that the labour market is not flexible...we really don't buy ...if you look at the LRA they normally raise the issue around dismissal and say on these areas it is inflexible... it is employers who settles agreements with labour that end on long processes that get on lawyers, that get on consultants and that makes legislation cumbersome and inflexible but it's not because the legislation requires it...the legislation does not require it. Therefore we don't understand this argument about flexibility (DoL: Interview 1 April 2011).

The submission by the DoL indicates that flexibility is legislated in South Africa. The rights of workers to fair dismissal are legislated in the Labour Relations Act, no 66 of 1995.

The views of social partners on the legislation of rights to cover temporary and permanent employees reveal that there is no consensus on this matter. Busa indicates that certain categories of employees must not be covered by dismissal laws. Busa states through the primary data that workers who are not employed permanently, have less service and are below certain levels (positions) in their workplaces must not be covered by the 'rigid' dismissal laws (Busa: Interview 26 March 2011). In a similar submission to that of Busa as expounded above, Capes suggest that:

...we can build in a whole lot of criteria similar to s200A who is an employee, we can say which criteria must an employee be indefinite and at that point we say what kicks in is a whole range of rights, the right to fair dismissals, the right to severance pay, the right to I don't know....all the rights, same rights as a permanent employee kick in at that particular point. So I am saying if you do that at least you don't undermine job creation because companies can now use flexible labour you still comply with minimum law, trade unions and employers have to look at innovative organisational rights and collective bargaining models that can accommodate a flexible environment... (Capes: Interview 15 April 2011).

This view indicates that temporary workers start having rights when they are deemed indefinite workers. Suffice to mention, the decent work agenda does not discriminate between permanent, temporary and 'indefinite' contract workers. The innovation of Capes, an association of labour brokers, is against the principles of decent work as it suggests that temporary workers be excluded from employment rights until they are deemed 'indefinite' contract employees. This will create different layers of employees in the labour market, those with and without rights. In the researcher's view the understanding by Capes makes flexible labour a contested terrain within the decent work agenda. In the researcher's view all workers regardless of their employment status must access fundamental principles and rights at work if we are to achieve the decent work strategic objectives.

5.4.2. ii Income and employment opportunities

According to the South Africa Decent Work Country Program (2010:8), the decent work agenda strategies for employment promotion seek to support on-going national efforts at creating an enabling policy environment for job rich growth, the promotion of sustainable enterprises and enhancement of national capacities for relevant skills development.

The income inequality levels of South Africa are rated amongst the highest in the world. The income inequality levels have increased between 1993 and 2008 from a gini-coefficiency of 0.66 to 0.70 with 1 being the worst measure. The measurements of the gini-coefficiency range from 0 – 1, with 0 representing complete equality and 1 representing complete inequality. It is generally accepted that both extremes are unattainable (South Africa Decent Work Country Program, 2010:11). This context makes wage incomes very important for the wellbeing of the South African labour force. According to Cosatu labour flexibility impacts negatively on the incomes of millions of workers in the labour market;

...in the context of a high rate of unemployment, very low wages paid to black workers with little or no benefits... people who are employed in these flexible contracts... there tend to be high levels of abuse on those workers as a result of the fact that some believe that half a loaf is better than no bread at all....
(Cosatu: Interview 20 April 2011).

The views of Cosatu are complemented by Nactu who view flexibility as facilitating the exploitation of workers.

However according to the DoL the decent work agenda does not refer to the wages or the amount of money people must earn. Government states that;

...if you look on the definition of decent work by the ILO...nowhere does it talk about wages the amount of money that you get... (DoL: Interview 1 April 2011).

It is the researcher's understanding that the decent work strategic objective on income and employment opportunities is underpinned by the need to improve the quality of wages for workers to enjoy decent lives and lives of human dignity. The view of the DoL is not entirely accurate. Literature reveals that at the centre of the decent work agenda is the principle of productive work that delivers a fair income (ILO 2005: 3).

5.4.2. iii Social security and social protection

According to the ILO (1999:a), everybody regardless of where they live needs a minimum level of social security and income security, defined according to the society's capacity and level of development. While the first two components of decent work refer to opportunities, remuneration, security and conditions of work, the last two emphasize the social relations of workers (ILO, 1999: a). Social security can be in the form of social grants and unemployment benefits. Social protection on the other hand refers to employment benefits or contributions towards pension or a provident fund, medical aid cover and/or health insurance.

Social protection refers to the broader cover of workers under pension and provident funds. South Africa does not have an unemployment benefit. The Unemployment Insurance Fund (UIF) is a social insurance mechanism provided to workers who have been employed and have contributed towards their UIF. It is provided over a temporary period of time, up to a maximum of seven months. The expectation is that during this period of cover, workers will be able to look and find employment. It is the researcher's view that the UIF does provide for social security cover but is not sufficient for a labour market where there is a high unemployment rate and the period between finding jobs is more than the duration of cover. Suffice to mention not all workers who are eligible are contributing towards UIF. Statssa (2010:3) indicates that only 56.8% of workers are contributing towards UIF. This shows that a significant number of employees are not contributing to this social security provision even where legislation provides for it.

The other social security mechanism is that of provident or pension fund contributions. However literature reveals that this is a decent work deficit as not all employees are contributing towards pension benefits. According to Statssa (2010: 5), only 45.9% of workers have their employers contributing to pension funds indicating that the majority of workers have no access to social protection. With reference to medical aid, only 30.3% of the total labour force is contributing

medical aid (Statssa, 2010:6). According to the South African Decent Work Country Program (2010:13);

...South Africa has a weak system of mandatory contributions for the working population and has no mandatory retirement provision. Occupational retirement and medical insurance does not extend to those outside of the coverage of collective bargaining agreements in the formal wage economy.

In the researcher's view while labour market policies provide for social security measures in the labour market there are still decent work deficits. These deficits are not necessitated by labour flexibility as they are prevalent amongst permanent employees as well. The absence of flexibility in the South African pension fund rules to allow for irregular contribution of pension funds is affecting temporary workers. This is contributing negatively to the impact flexible labour has on decent work opportunities.

It is important to mention however that the views on social security and social protection must be understood within the efforts by Government to improve investment in social assistance. According to Cohen and Moodley (2012:323) the social grant spending increased by 127% between 1995 and 2006. In 2011 of the R979.3 billion in the national budget, R577.3 was allocated to social spending and specifically R189.5 billion to education, R121.9 billion to housing, R112.6 billion to health and R146.9 billion to social protection. With the development of the community health scheme and the national health insurance there is a targeted focus in Government on extending social security both formal and informal sector employees. Suffice to mention however the South African social security system remains fragmented and does not provide adequate cover for economically active individuals which contributes to some of the decent work deficits identified in the preceding paragraphs. However it is also important to mention that these short falls do not assist in the establishment of a flexicurity system creating vulnerabilities for employees engaged in temporary assignments (Cohen and Moodley, 2012:323).

5.4.2. iv Tripartism and Social Dialogue

This decent work strategic objective gives workers the freedom to express their concerns, to organise and to participate in decisions that affect their lives. It guarantees equal opportunities and equal treatment for all (ILO, 2005:3). Social dialogue refers to the right of workers to engage in discussions with employers and authorities over matters bearing on their work. Social dialogue requires participation and

freedom of association. It is also a means of ensuring conflict resolution, social equity and effective policy implementation. It is the means by which rights are defended, employment promoted and work secured. It is a source of stability at all levels, from the enterprise to society at large (ILO, 1999: 5). The South African constitution and employment law allows workers to form and join Trade Unions. This applies to all categories of employees temporary and permanent. Trade Unions in South Africa have a total membership of 3.11 million workers representing 25% of all workers in formal employment (Wikipedia, 2012:1). The other 75% are not organised and hence have no access to the decent work pillar of social dialogue. This therefore means that the majority of workers are not members of trade unions creating vulnerabilities in the labour market. The ability of workers to organise freely in order to collectively bargain and defend their interests is important for equitable employment relations and effective social dialogue.

The pillar of social dialogue also relates to collective bargaining which includes the negotiation of salaries and conditions of employment. In measuring decent work in the South African labour market only 32.6% employees have their salaries and conditions of employment negotiated through collective bargaining, 9.7% employees have their salaries and conditions of employment negotiated through the Bargaining Council and 46% have their employers decide on an increase unilaterally. This applies to both permanent and temporary employees (Statssa, 2010:8).

The advent of labour flexibility has reduced the strength of trade unions in the country. It is more difficult for trade unions to organise temporary workers. The majority of workers that are not unionised are in the temporary employment services sector. Temporary workers do not have security of tenure as they are never in a particular job for a long period of time and they change sectors from time to time. It is difficult for trade unions to organise them as unions operate within specific scopes or sectors. Flexibility therefore makes it difficult for trade unions to grow and strengthen tripartism and social dialogue, hence weakening decent work in the labour market. If trade unions could organise temporary workers or workers under flexible arrangements this strategic objective of decent work could be achieved. However there is nothing stopping trade unions from organising workers in flexible employment practices except the fact that they are finding it difficult to do so. The contribution of labour flexibility in limiting the ability of trade unions to organise temporary workers needs to be further explored.

5.4.2. v Equal pay for work of equal value as a manifestation of flexible decent jobs

The ILO standard on equal pay for work of equal value underpins the Employment Equity Act, no 55 of 1998 and is a fundamental right at work. Labour flexibility has facilitated the discrimination of temporary workers merely because of their employment status. Nedlac debates unravelled that employers engaged workers on temporary contracts for many years, up to 12 or 15 years and these workers continue to be paid less. The proposed amendments to current legislation introduce a limitation to the duration of temporary work after which an employee is deemed an indefinite contract worker (Nedlac Report, 2009:48).

The protection of all workers by legislation is in line with the decent work principle of observing fundamental principles and rights in the workplace. It is the researcher's view that amendments to the current labour statutes to enable greater protection of workers are justified. The discrimination of temporary workers in violation of equal pay for work of equal value is a decent work deficit. The researcher further notes that this deficit is not only necessitated by employment status, i.e., permanent or temporary, but by race and gender as well. According to Statssa (2010) the proportion of workers who earn less than two thirds of the median earnings was greater amongst women (44%) than men (29%). Further the monthly median earnings for men (R3 033) were higher than those for women (R2 340). This therefore meant that women in paid employment earned 77% of what men earn. These are decent work deficits against the principle of equal pay for work of equal value in the decent work agenda. However this deficit applies to both permanent and temporary employees. Statistics reveal that in 2010 the median monthly earnings for white workers were R9500 and Indian/Asian workers R6000, which was substantially higher than R2 652 for Coloureds and R2 167 for Black African workers. In 2010 therefore black african workers earned 22% of what white workers earned. The median monthly earning for informal workers was calculated at R1600, 43% of the monthly earning of formal sector workers (Statssa, 2010).

The study also reveals differential wages between employees engaged by labour brokers and those traditionally referred to as permanent who are engaged by client companies. Triangular employment relationships introduce new forms of work where work that was previously done by a permanent worker is outsourced to a labour broker who hires people to do the same work on behalf of the client company. The client company pays the broker money for the worker depending on the hours of work

and the broker pays the employee after deducting administration and other fees. Where the worker used to be paid directly, he/she is now paid through a broker, his/her contract is reviewed and it is permanently on a temporary basis and they do not have benefits that they used to get when they were ‘employed’ by the client company even though they still do the same job for the client company. With the change of terms of contracts, the labour broker workers earn less than their counterparts who are still engaged by the client company. This arrangement introduces new dynamics of unequal pay for work of equal value as the productivity levels of labour broker workers do not change except for their employment status. This is discriminatory. Figure 5 below illustrates the relationship between the TES and worker as expounded above.

This is the researcher’s assessment of triangular employment relationships and how it is interlinked.

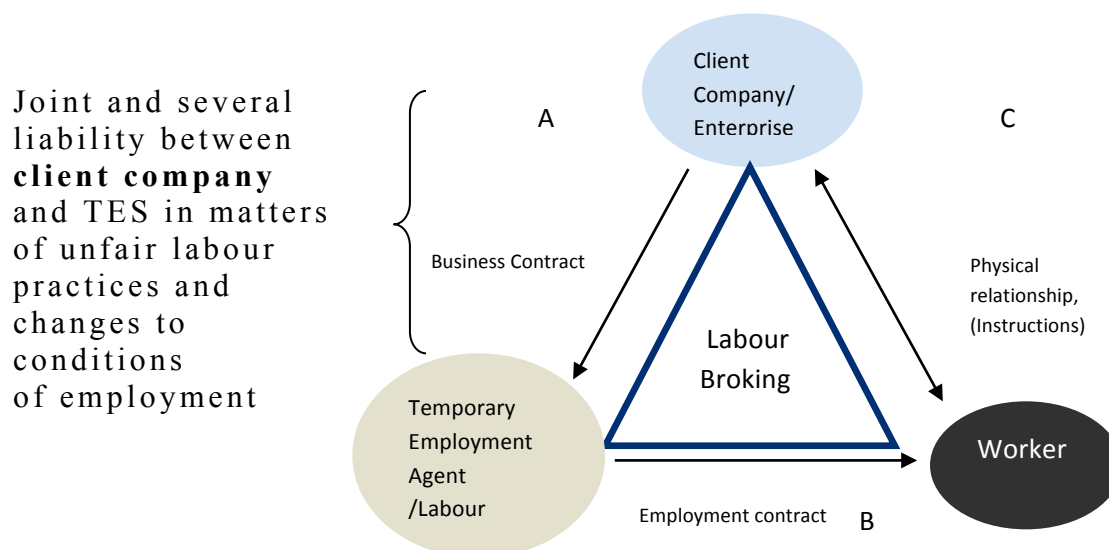


Figure 5 Triangular employment

Triangular employment can be described as an employment relationship in which the recruitment, dismissal and employment functions conventionally performed by an employer are outsourced to an intermediary while the ‘task side’ of the relationship is not outsourced (Davies and Friedman, 2004 in Benjamin, Unpublished). This therefore involves partial outsourcing where the intermediary ‘B’ administers the employment relationship while the employer exercises control over the worker’s day to day activities in relationship ‘C’. Internationally TES are described by the ILO as ‘firms which offer services for matching offers of and applications for employment without becoming a party to the resultant employment relationships (ILO, 2005:15).

The challenge seen by labour, government and the community constituency is that there is no real reason why client companies cannot employ workers directly without engaging them through a broker in an employment relationship that can reflect 'C'. The relationship in 'C' is characterised by the worker getting instructions from the client personnel and the worker uses the client company's resources, premises and materials in furtherance of the client company's business. There is little interaction between the worker and his/her 'deemed' employer in terms of the employment contract, who in this case is the labour broker. This has led Cosatu and Nactu to describe labour broking as slavery;

...as it amounts to the trading of human beings as commodities. Generally the main commercial contract is agreed to between the labour broker and the so-called 'client' enterprise, and which sets out the various stipulated labour services to be supplied and the price at which these services are to be supplied. Whereas the true suppliers of labour (namely the workers) are excluded from this process, thereby undermining their rights to negotiate the wage and employment conditions (Nedlac Report, 2010:21).

The parties in the business contract 'B' are jointly and severally liable to litigation by the employee on disputes of unfair labour practices, unilateral changes in conditions of employment, breaches of the BCEA, sectoral determinations, collective agreements and arbitration awards (Benjamin 2009:4). The joint and several liability have limitations in litigating the client directly as the client is only liable to a default by the TES. It is a default liability for the client since they are not employers. Government noted in Nedlac engagements that there is ambiguity on who is the employer and such ambiguity disadvantages the weaker party, in this case the worker. The DoL makes an example of the United Kingdom stating that;

...in the UK courts have concluded that the placed worker is an employee of the agency, an employee of the client, employed by both and employed by neither. The resultant uncertainty works to the disadvantage of the weaker party (employees) who are not certain as to against whom they should enforce their rights (Benjamin, 2009:4).

It is the researcher's view that the limitation of workers to be able to enforce their rights to employment practices that are instituted by business in pursuit of flexibility is ushering in decent work deficits that are directly impacting negatively on the principle of observing rights at work.

The argument between Nedlac's social partners goes further to discuss the employment conditions of workers engaged through labour brokers as precarious and necessitating vulnerability. In 2009 the labour

broking industry submitted to parliament that they were contributing over R20 billion to the South African economy, facilitating the employment of over 500 000 workers (Nedlac Report, 2009:11). Trade unions viewed this money as potential income for workers if they were engaged directly by client companies. Interviews revealed that trade unions viewed labour brokers as super exploiters of workers, paying them very little while making super profits. Furthermore business is also benefiting from reduced employment costs as these labour broker workers have no benefits. For Cosatu this is a risk for the South African economy and the fiscus as it means that there are more people that will be dependent on the state in their retirement age (Cosatu: Interview 30 March 2011).

In the researcher's view, flexible labour presents challenges for policy makers in South Africa. The advent of triangular employment relationships necessitates decent work deficits violating rights to equal pay for work of equal value and the enforcement of worker rights at the workplace. This assertion is done with the understanding that differential wage payment arising from skills levels and work experience is justifiable. Where the productivity level of workers is the same and their skills and experience can be matched it is wrong to pay these workers differently merely on the basis of their employment status, i.e., permanent or temporary.

5.5 Policy options for dealing with labour flexibility and the decent work agenda

The theme discusses how the Nedlac social partners' conceptualisation of flexible labour and decent work influences debates on policy formulation in the labour market. According to Standing in Bezuidenhout and Kenny (2000:1);

We are told South Africa suffers from 'labour market inflexibility', that investors are put off by the regulations and trade union power, and that it has 'the highest unemployment in the world'. Although there is no evidence to support those claims (except for what all agree are woefully inadequate data), the images feed into financial brochures and shape perceptions of the country's policy. In turn, policymakers are pushed into contemplating reforms to gain credibility.

Nedlac's social partners are not unanimous in how flexibility should be managed in the South African labour market. There are predominately two views amongst social partners, to regulate and to ban. Government, Fedusa and business advocate for the regulation of labour flexibility to provide for greater protection of vulnerable workers. Cosatu, Nactu and the community constituency have been vocal in their call for a ban of

specific flexible labour practices. The latter are not against flexibility however they want triangular employment relationships to be banned in South Africa. The majority of labour indicates that labour brokers have intensified the rate of exploitation of workers and employers are using these non-standard forms of employment to evade labour laws.

However, it is a finding of this research study that the ban proposed by labour would still have to be regulated through the repealing of section 198 of the LRA. Either way any policy intervention by social partners will lead to regulation, but the difference is the extent of regulation.

5.5. i Regulation

In 2010 the DoL submitted four labour bills to Nedlac for debate by social partners under the theme, Labour Market Policy Review. This was a process arising from the research done by the Department on the protection of vulnerable workers by current labour statutes. The report by Prof Benjamin (2009) identified various labour market abuses on vulnerable workers arising from the limitations available in the existing statutes. It suggested that employers were using flexibility to evade labour laws. As such there was justification to review labour laws to provide greater protection for vulnerable workers. Parts of the abuses identified in the report include rolling over temporary contracts by employers for many years creating ‘permanent temps’ in the labour market. Other abuses included unfair dismissal of labour broker workers, unfair labour practices and differential pay of workers in temporary and permanent employment based on this worker’s employment status (Benjamin, 2009:15). As such;

Fedusa believes that the TES industry should be regulated, because through regulation most aspects of decent work can be addressed (Nedlac Report, 2009:46).

Government has a similar view to that of Fedusa regarding the regulation of the labour broking industry to create a balance between necessary flexibility and the protection of vulnerable workers. For government;

An appropriate framework is required to prevent the widespread abuses that have resulted from the exploitative TESs. ...effective regulation will also require the introduction of a regulatory framework which would include requirements such as registration or licensing, minimum threshold requirements, security and complaints and investigation procedures (Nedlac Report, 2009:45).

The government view is to increase the protection of workers without suffocating the economy. Business supports the views of government indicating that they recognise the abuses of vulnerable workers by certain employers and would want stronger regulation of this industry to limit these abuses. The debate on either to regulate or to ban labour broking is important making the analysis of social partner's views on the discourse justified.

5.5. ii Banning

Sections of the Nedlac stakeholders are advocating for a ban of certain categories of flexible labour engagements. The researcher emphasizes that these sections are not entirely opposed to flexibility but to triangular employment relationships that have posed numerous challenges in the enforcement of labour laws. Cosatu, Nactu and community constituencies view labour broking as another form of slavery. They indicate that the primary commodity in the relationship between the labour broker and the client enterprise is the worker. The practice of labour brokers is therefore reduced to trading in human beings or human trafficking. As such the only alternative for these social partners from their understanding of flexibility and decent work is to ban this practice in order to have bi lateral employment relationships between the employer and the employee to remove ambiguity that has increased the fuzziness in enforcing labour legislation. In the Nedlac Report (2009:34), Nactu stated that it joins;

... the call by millions of workers and their trade unions to Parliament and the executive to prohibit this illegal, immoral and politically reprehensible practice of labour broking, as it reduces the human dignity of workers and their families (Nedlac Report, 2009:1)

The views of Cosatu and Nactu are opposed by another trade union federation in the same labour constituency at Nedlac; i.e., Fedusa. Fedusa states that;

...if I ban something it will cause all temporary workers to become permanent. We cannot agree with that, because it's not facing reality, that's why we differ with Nactu and Cosatu we say let's ban all labour brokers whilst we know international experience have shown that labour brokering is alive and well is adding value; a lot of value internationally provided is properly regulated... (Fedusa: Interview 30 April 2011).

It is an interesting finding that a single constituency which is purportedly representing the same interest (labour/workers) can have such distinct views on a single matter.

It suffices to note however that the proposed ban of labour broking practices will be done through a legislation amendment process. The Employment Services Bill (2010) submitted to Nedlac by government proposes the repealing of section 198 of the Labour Relations Act. The repealing of this section, if passed into law will effectively ban the practice. This research study has therefore revealed that regulation and banning are achieved through a process of reviewing the country's legislation. Social partners are divided on the extent of this review with business and government advocating for increased regulation of TES through registration and licensing and trade unions suggesting a ban to the practice. The study seeks to answer the research question on how the conceptualisation of labour flexibility by social partners influences policy development.

5.6 Conclusion

This chapter discusses data analysis in an interpretive manner in line with the research approach. The analysis of evidence was in line with the broader research questions. The views of social partners in defining labour flexibility and decent work are analysed. The research makes a finding that social partners define labour flexibility in line with international definitions available in literature. The understanding of labour flexibility by social partners is in line with experiences identified through the review of literature. The research explores the influence of the social partners' understanding of labour flexibility and decent work on their debates around employment creation. The study unravels different views on this subject matter as social partners are divided on the contribution of labour flexibility to employment creation. The nature and quality of jobs created by flexible labour markets are examined within the prism of decent work. The worker interests as espoused in the decent work agenda are reviewed amongst different forms of flexibility exploring if flexibility could be compatible with decent work. It is the researcher's view that flexibility does impact negatively on the decent work pillars of rights at work and income and employment opportunities.

However flexibility does contribute to decent work deficits in the other decent work pillars that address the social relations of employment. In reference to social security and social protection the study reveals that the flexicurity model proposed by Fedusa and Busa for the South

African labour market is not sufficient to address the overall provisions of decent in a flexible labour market. Further the absence of flexibility in pension fund rules to allow temporary workers to contribute towards their pension and or provident funds is limiting the contribution of flexibility towards decent work. The researcher concurs with the suggestion by Busa that pension funds rules should be relaxed to allow for irregular contribution of pension benefits in order to cater for flexible workers. This will improve greater cover of workers under social security measures. In reference to tripartism and social dialogue the researcher argues that flexibility has limited the strength of trade unions in South Africa as many unions find it difficult to organise temporary workers. However the researcher can not conclusively attribute the failure of trade unions to organise temporary workers exclusively to their employment status as temporary workers. This is due to the fact that labour laws allow all those deemed as employees, both permanent and temporary to form and join trade unions. This decent work deficit therefore needs to be explored further as there is no conclusive correlation established between the employment status of temporary workers and the failure of trade unions to organise beyond the 30% membership they currently have.

The chapter further analyses evidence on how the understanding of labour flexibility and decent work by social partners influences their debates on labour market policy formulation. Two positions are unravelled as a finding of this study. Nedlac's social partners are divided on whether to regulate or ban certain flexible labour practices such as labour broking that have increased the abuse of vulnerable workers. The DoL issued four labour bills to improve the protection of vulnerable workers. Business agrees that there must be improved regulation of the labour broking industry. This view is supported by Fedusa. However Cosatu and Nactu are advocating for a ban of labour broking through the repealing of section 198 of the Labour Relations Act. The researcher notes therefore that the regulation or banning of labour broking will happen through legislative amendment. The difference between the two policy positions is the extent of amendments that legislators need to effect. These include either improving the regulation of the industry or and outright ban of the practice.

Based on the evidence discussed in this chapter the next chapter outlines conclusions and recommendations that the researcher found to be relevant in line with the research questions.

6. CONCLUSION AND RECOMMENDATIONS

6.1 Introduction

The study seeks to explore the manifestation of flexible labour in Nedlac debates within the prism of decent work. The research uses qualitative interpretive techniques to examine the views of social partners and explores how these views influence debates on employment creation. The worker rights principles espoused in the decent work agenda are explored under flexible employment practices. The policy options arising from the way social partners understand labour flexibility and decent work are also examined. This chapter discusses conclusions and recommendations arising from the analysis and interpretation of evidence. Additionally areas that require further research are identified.

The research utilised qualitative research methods using interviews to collect primary data and documents review for secondary data. The Nedlac institution was used as an illustrative case study to explore the South African context of flexibility and decent work. The discourse on these two constructs is important in the regulation and policy framework of the South Africa labour market. This study therefore seeks to develop knowledge on the conceptualisation of flexible labour and decent work by Nedlac's social partners and how their views influence discourse on policy options to either regulate or ban certain forms of labour flexibility in South Africa.

Different viewpoints of social partners were solicited in response to the research questions. The findings from primary and secondary data were triangulated with evidence from the literature review to improve the validity of results.

The study concludes that the discourse on flexible labour and the decent work agenda is justified if inclusive labour market policies are to be developed.

6.2 Competent understanding of constructs

Social partners define labour flexibility in similar concepts that are also in line with evidence from the literature review. Although emphasis is placed on different aspects of labour flexibility in the definitions such as demand side, supply side or legislated flexibility the researcher concludes that all Nedlac's social partners provided definitions that could fit the different elements of defining labour

flexibility. The views of Nedlac's social partners differ when considering the impact and contribution of flexible labour practices to the South African labour market.

In respect to understanding decent work all social partners made reference to the ILO definition of decent work. The major difference which was a finding of this research is that different social partners emphasise different principles of the decent work agenda in defining the construct. According to DoL the decent work agenda is introducing nothing new to the South African labour market and all free countries should embrace and implement its strategic objectives (DoL: Interview 1 April 2011). The DoL views the principles of decent work as embedded on the South African labour market and the researcher concurs with this view. Having examined the constitutional imperatives it is clear that the pillars of decent are captured in the national statutes. There is however room for improvements as there are a number of decent work deficits when we measure the application of decent work in the South African labour market. Suffice to mention there have been significant strides to institutionalise the decent work strategic objectives in the Country. Busa states that there is no contradiction between decent work and labour flexibility. This view is supported by the DoL who view decent work as not introducing any inflexibility. However Busa contends that with respect to social security systems, pension fund rules must be relaxed to accept irregular contributions in order to cater for temporary employees who do not have regular and guaranteed employment. This will increase cover for temporary or flexible employees. This will go a long way in reducing the burden on the fiscus when these workers reach their retirement age as Cosatu assets (Cosatu: Interview 20 April 2011).

The views of social partners are not homogenous on whether flexibility is compatible with decent work. Fedusa and Capes indicate that a model similar to the flexicurity model in European countries will enable flexible decent opportunities in the labour market. However Cosatu and Nactu indicate that flexibility must develop out of a labour market that is underpinned by decent work principles. Therefore there cannot be flexible decent jobs, but decent work with elements of flexibility inside. The researcher concurs that the decent work agenda should be the overarching labour market framework for both permanent and temporary assignees.

6.3 Impact of labour flexibility on job creation

There are contestations on the contribution of flexible labour practices to employment creation. Social partners are divided on the impact of a

flexible labour market on job creation with business and Fedusa expressing that the practice has a positive impact while Nactu and Cosatu indicate that there is no justification as to why an increase in jobs will lead to an increase in the demand for temporary employment. The two federations state that they are opposed to the principle of creating jobs at all costs. Cosatu in the *Mail and Guardian* (13 January 2011) state that the labour market is full of a large number of unemployed workers ready to accept any job in almost in any condition at any pay rate. The rise of casualisation, outsourcing and use of labour brokers is seen as ‘exploitative flexibility’ by Cosatu (Cosatu in the *Mail and Guardian*, 13 January 2011). The debate on the contribution of flexibility is ongoing as some social partners view flexibility as substituting permanent employment with temporary assignees in the name of job creation. There is need to explore the extent of ‘exploitative flexibility’ as Busa acknowledged that there is ‘flexibility of necessity’ which should not be treated as exploitative and indecent. The assertion by Busa suggests that there unnecessary flexibility in the labour market which is indecent (Busa: Interview 26 March 2011). Further research may unravel the prevalence of either necessary or unnecessary flexibility to test if the views of Nedlac social partners are influenced by empirical findings. This was not part of the purpose of this study.

Nevertheless, business views flexibility as incentivising employers to employ more than they would otherwise do under rigid labour market frameworks. Capes in conjunction with Busa see real value in flexible arrangements. Capes indicate that they;

... have no doubts that flexible employment creates employment opportunities, no doubt what so ever (Capes: Interview 15 April 2011).

Busa expagorates on the Capes view indicating that;

...if an employer is happy to have people working on flexible arrangements but not happy to have people working on say rigid, long term, permanent, stripped or heavily protected on regulated basis then it makes sense that the employer will prefer those that are flexible and make sense to him and stay away from those not... (Busa: Interview 26 March 2011).

As indicated in the opening paragraph to this theme, social partners’ views are not homogeneous on this matter. Government concedes that flexibility contributes to efficiency and while providing opportunities for the unemployed. However the DoL states that there are certain

flexible labour practices, such as labour broking, that are not adding value in the labour market. They state that;

... labour broking is not job creation... temporary employment by third parties does not really create jobs, what it does it reduces the standard of work; it reduces their income, their standard of living... And then what happens is that the same number of workers that would have been employed directly by companies, would be employed by a third party and they would earn less, they would earn half of what they were going to earn and fewer people make more money out of the process. And that undermines their rights to a democratic society, freedom of association, social security and job security. And as a result you have got workers who are working but who are vulnerable, who...are filling the ranks of the poor when they are working...you have got two factors in South Africa...those who are not employed who do not have a job and those that are employed through this system but who fall in the vulnerable sector precisely because of this system and the effects of this is what they call job creation (DoL: Interview 1 April 2011).

The Nedlac Executive Director expounds on the labour position and the dynamics of the discourse on flexible labour and employment creation. He indicates that;

...you can't take a facility that has to deal with special circumstances and make it a permanent feature in the labour market, it does create a problem, it was created to cater for special circumstances... the tendency now is what was meant to be temporary or a facility for special circumstances has become a permanent feature in the labour market...you only need a 'panado' when you have a headache or pain somewhere. When you got no pain there is no...reason why you should. Now if you continue ...even health professionals will tell you that it becomes unhealthy for you if you just take 'panados' permanently. It is meant to deal with special circumstances ...so organised labour is saying that hey guys (business) you are putting us on 'panado' every day (Nedlac Executive Director: Interview 25 March 2011).

The analysis by the Nedlac Executive Director is that flexibility is a special provision for economic shocks in the labour market. It is a facility that allows business to respond quicker to changes in the demand for labour enabling greater organisational flexibility. The creation of 'permanent temporaries' in the labour market is seen by

trade unions as an abuse of this facility leading to ‘exploitative flexibility’. This debate is not a fallacy as there are reasonable grounds for the different views on the impact of flexibility on job creation which still need to be fleshed out through tripartite engagements.

6.4 Transition to decent work

The study unravels that in achieving decent work there are stages that temporary workers should pass. The precursor to decent work is permanent employment. Busa and Capes provide evidence of the stages that temporary workers go through towards decent work, which include training and development, workplace exposure and the appointment to permanent positions. Evidence from business reveals that 47% of workers engaged on a temporary basis are converted into permanent assignment within three years (Busa submission to Nedlac, 2009:35). The business view point is that achieving decent work is a process, and a proper regulatory and monitoring mechanism can facilitate the transformation of precarious jobs into ‘indefinite’ decent employment.

The advent of permanent temps is a reflection that transition towards decent work has stagnated. The cycle towards decent work must be continuous in the absence of labour market abuses such as rolling over of contracts.

6.5 Decent work deficits in a flexible labour market

The strategic objectives of the decent work agenda provide measurable objectives for different employment practices. It is a finding that employment has both qualitative and quantitative measures. The decent work agenda provides for rights at work and income and employment opportunities. The other pillars of decent work facilitate improved social relations through social security and social protection and tripartism and social dialogue. In examining flexible labour within the prism of decent work the study unravels that there are gaps in what is happening in the labour market and the provisions of the decent work agenda.

Identified decent work deficits include poor coverage of temporary workers by employment law. It is a finding that there are a lot of abuses against temporary workers discussed by social partners. Parts of the abuses include rolling over of contracts, the advent of permanent temps, unfair dismissals and unfair labour practices. The study further makes a finding that all social partners admit that there is limited cover of temporary workers by labour legislation. Busa insists that all workers by virtue of their definition as employees are covered by labour law and have recourse in law against any abuses. The research

unravels however that social partners, including Busa, admit that employers exploit vulnerabilities in the labour market necessitated by flexibility. The research examined flexibility within the prism of different pillars of decent work in the views of the Nedlac social partners. The study identifies that the rights of temporary workers are violated by employers. Busa insists that these employees can refer legitimate expectation cases to the CCMA to challenge unfair dismissals. There is however little evidence on the number of employees that have managed to do this successfully, let alone who are aware of this legal provision.

In examining other pillars of decent work such as income opportunities the study makes a finding that temporary workers are predominately paid less than their permanent counterparts. Evidence was provided that there is discrimination of temporary workers on the grounds of pay merely on the basis of their employment status. The equal pay for work of equal value principle is not realised in the South African labour market. This has led trade unions to campaign against certain flexible labour practices such as labour broking. Organised labour views these as facilitating the intensification of exploitation of temporary employees. The community constituency views flexible labour as the worst trigger of poverty.

The other identified decent work deficit pertains to social security and social protection. The pension fund rules for many pension schemes are not flexible to allow for temporary or irregular contributions towards pension. As such temporary employees are not covered by these social security measures. Business calls innovation in managing social security to ensure that temporary workers are covered (Busa: Interview 26 March 2011). The researcher concurs with the views of Busa as this could improve the coverage of temporary workers improving their savings for life under retirement under a comprehensive social insurance system. When social assistance and social insurance is used as a trampoline to trigger development in line with the flexicurity mechanism, labour flexibility can contribute to employment creation. It is the researcher's view that UIF benefits and other social grants should be attached with conditionalities such as training programs that beneficiaries should engage in when or before accessing them. This will ensure that people are trained and retrained improving their opportunities for employment and/or reemployment when they have lost their jobs. There is potential that should be further explored in this area.

6.6 Policy options for dealing with labour flexibility

The different conceptualisations by Nedlac social partners of the constructs of flexible labour and decent work have different impacts on the formulation of policy positions. Trade unions and the community constituency have called for the banning of labour broking as a lawful practice. The South African government has proposed four labour bills with an attempt to further regulate labour flexibility. The bills seek to protect ‘vulnerable workers’ from abuses in the labour market. According to Altman (2003:8);

... there is always regulation that enables and guides appropriate balances between efficiency and equity. The regulatory environment enables the exercise of democratic rights and some minimum standards. The central question is what regulatory environment underpins an appropriate balance between equity and efficiency.

This area remains an opportunity for further research to measure the compliance of employers with available legislation and the impact of regulation on the efficiency of business and the equity provisions for protecting vulnerable workers.

Policy options arising from social partners’ debates on flexible labour and decent work reveal two proposals that differ on the extent of regulation that is required to protect vulnerable workers. There is general consensus from Nedlac’s social partners that flexibility must be regulated to reduce labour market abuses on temporary employees. Although Busa strongly views the labour laws of South Africa as sufficient to cover all workers, they also indicate that a proper regulatory framework from the labour broking industry is required. The Busa view is consistent with the other views of Capes, Fedusa and the DoL. Fedusa, a part of organised labour, is also in favour of regulation stating that the view of majority labour that to ban labour broking and wish away the problems of flexibility is naive and a fallacy (Fedusa: Interview 30 April 2011). Fedusa suggests a flexicurity model as an alternative to labour market abuse of temporary workers. The policy position of regulating the labour market is in line with the Labour Market Policy Review process at Nedlac.

However Nactu and Cosatu are calling for sterner measures to ban labour broking in South Africa. The researcher notes however that the lack of empirical evidence on the impact of legislation on the ban advocated by Nactu and Cosatu will be an outcome of regulation through the repealing of section 198 of the Labour Relations Act, no 66 of 1995. It suffices to mention therefore that all stakeholders refer to regulation in their engagements as alternative policy development. The difference between social partners is the extent of regulation with

Nactu and Cosatu calling for a total ban of certain flexible labour practices.

In the researcher's view labour brokers contribute towards improved flexibility of the labour market and incentivise the employers to engage more temporary workers with limited liability. This does contribute to employment creation. In a labour market where there are millions of people without work, the intermediary role of labour brokers in matching job seekers with vacancies in the world of work becomes very important. It is therefore difficult for one to argue for a total ban of the practice merely because it facilitates the abuse and vulnerability of temporary workers. A plausible solution to the vulnerabilities emanating from this practice will be important to improve the protection of these workers. Regulation of the labour broking industry to provide for more control is a reasonable policy option under the circumstances.

6.7 Recommendations

There is need to strength the Nedlac institution with strong representation. Organisations that participate at Nedlac should be representative of the interest they represent. For example according to Wikipedia (2012:1) trade unions only represent 25% of the total labour force. The LRA is underpinned by the principle of majoritism. It therefore suffices to mention that 25% representativity does not confer organised labour (all federations combined) with majority rights. The three federations participating at Nedlac represent less than three (3) million workers when there are over thirteen (13) million workers in the country (Statssa, 2010:2). Nedlac engagements are based on mandated positions which then mean the views of the minority are used to determine the future of the majority in the case of the labour constituency. The same views apply to Busa who are the only business organisation speaking on behalf of all the South African businesses. The representativity of Busa needs to be explored especially after the Black Management Forum (BMF) withdrew their membership from Busa to form the Black Business Council (BBC). The community constituency also needs to account on its representativity levels to ensure majority views are considered in policy development. Government is also encouraged to bring senior officials to Nedlac engagements for improved engagements and decision making.

6.8 Areas for further research

The researcher identified a few areas that are recommended for further research as these will improve the knowledge base on labour market issues.

6.7.1 Measuring decent work in the South African flexible labour market

In analysing the qualitative measures of decent work, it is important to explore the extent to which temporary employees are covered by employment statutes.

6.7.2 Protection of vulnerable workers

There is also a need to review the number of CCMA referrals for legitimate expectation cases and the prospects of success for workers, research will improve knowledge on the application of the legitimate expectation principle.

6.7.3 Trade Union representation amongst flexible workers

Further research can be conducted to examine why trade unions are failing to organise temporary workers. This will advance the social dialogue pillar of the decent work agenda if scientific reasons are identified and recommendations for creative and innovative organising strategies are identified.

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8. Appendix A: Research Interview Schedule

RESEARCH QUESTION ONE:

- ***In the views of the Nedlac social partners what is the meaning of flexible labour and decent work?***

- 15.1.1 Define flexible labour.
- 15.1.2 Has your organisation interacted with flexible labour in practice? What were your experiences?
- 15.1.3 How does your organisation conceptualise flexible labour practices in relation to the debates on decent work?

RESEARCH QUESTION TWO:

- ***What are the potential effects of each social partner's conceptualisation of flexible labour and decent work on the debates around employment creation?***

- 15.1.4 Do you think the employment creation and eradication of poverty aspects of the decent work agenda should be more emphasised when dealing with the practice of flexible labour?
- 15.1.5 In your view do employers camouflage permanent work as temporary work?
- 15.1.6 Does the practice of labour flexibility facilitate the creation employment opportunities?

RESEARCH QUESTION THREE:

- ***What are the policy implications of social partners' conceptual understanding of the practice of labour flexibility in the context of the decent work agenda?***

- 15.1.7 Can flexible labour create aggregate demand and improve consumption in the South African economy?
- 15.1.8 Is flexible labour affected by the skills levels and technological developments in the labour market?
- 15.1.9 Do you think South Africa is ready for labour flexibility looking at the country's skills level and access to technology?
- 14.1.10 Do you think South Africa can have flexible decent jobs?