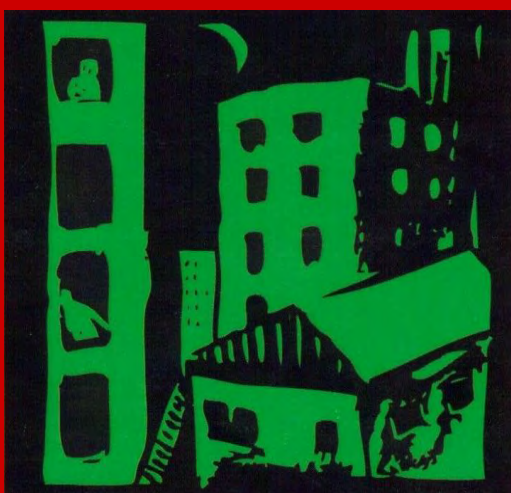


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**From precarity to
pandemic: How the
Covid-19 pandemic
has exacerbated
poverty,
unemployment, and
inequality in South
Africa**

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ABSTRACT

The pre-Covid-19 world of work was rife with inequalities and difficulties, with more than 40 per cent of working-age South Africans unemployed. The majority of those in employment were barely able to eke out a living – between 20 per cent to 30 per cent were working in the informal economy,¹ mostly without labour rights and social protection and earning low incomes that trapped them in poverty. The precarious nature of the South African labour market before the Covid-19 pandemic was characterised by casualisation, informalisation, and externalisation of work. This resulted in

¹ Skinner C et al. “Informal work in South Africa and COVID-19” (2021) *Wiego Policy Brief* available at https://www.wiego.org/sites/default/files/publications/file/WIEGO_PolicyBrief_N22%20UN%20South%20Africa%20COVID%20for%20webn.pdf (accessed 13 October 2022).

the reduction of the number of workers employed for definite periods and rising levels of precarious workers. This article investigates the precarious nature of work and the various work paradigms present in the South African labour market before the Covid-19 pandemic struck. New challenges arising from the Covid-19 pandemic and new forms of work in the South African labour market are also considered, together with measures taken to address precarity.

Keywords: precarity, pandemic, inequality, poverty, unemployment, Covid-19

1 INTRODUCTION

The world of work is constantly changing. The COVID-19 pandemic has underscored deep-rooted labour market fragilities and structural inequalities in South Africa, with precarious workers, low-paid workers, the youth, women, the self-employed, and workers in the informal economy among the hardest hit by the pandemic.² Full-time positions with job security, commonplace in days gone by, are being replaced by precarious or non-standard arrangements that have no benefits, little protection, and lower pay.³ The outbreak of the Covid-19 pandemic and its rapid spread across the world turned into a public health crisis unparalleled in living memory and propelled the global economy into the deepest recession since the Great Depression.⁴ To contain the spread of the virus and its deadly effects, many states around the world, South Africa included, introduced unprecedented restrictions on individual mobility and economic activity at the beginning of 2020. These steps succeeded in limiting the contagion in South Africa. Nonetheless, the combination of uncertainty, fear of infection, safety restrictions and compulsory lockdowns precipitated a sharp contraction in economic activity and tested the resilience of labour markets, social-protection systems, and communities at large.⁵

Unlike during the global financial crisis of 2008, the South African government reacted swiftly to put in place an unprecedented set of fiscal and financial measures. These measures were important to protect employment, contain the social effects of the crisis, and provide people and businesses with appropriate incentives and support to adhere to limitations that the government imposed.⁶ Notwithstanding these measures, the

² The World Bank “The Poverty Podcast: Gender and Covid-19” (2022) available at <https://www.worldbank.org/en/news/podcast/2022/06/21/gender-and-covid-19> (accessed 12 October 2022).

³ Loprespub “Understanding precarious work in Canada” (2020) *HillNotes* available at <https://hillnotes.ca/2020/12/01/understanding-precarious-work-in-canada/> (accessed 12 October 2022).

⁴ Wheelock DC “Comparing the COVID-19 induced recession with the Great Depression” (2020) *Economic Research* available at <https://research.stlouisfed.org/publications/economic-synopses/2020/08/12/comparing-the-covid-19-recession-with-the-great-depression> (accessed 12 October 2022).

⁵ OECD “An assessment of the impact of COVID-19 on job and skills demand using online job vacancy data” (2021) 3 available at https://read.oecd-ilibrary.org/view/?ref=1071_1071334-wh692jshet&title=An-assessment-of-the-impact-of-COVID-19-on-job-and-skills-demand-using-online-job-vacancy-data (accessed 15 October 2022).

⁶ See Supplementary Budget Speech 2020 6 available at <http://www.treasury.gov.za/documents/national%20budget/2020S/speech/speech.pdf> (accessed 12 October 2022).

immediate effect on the South African labour market was considerably greater than during the first months of the global financial crisis.⁷ However, it is significant to note that the impact of the pandemic is fading with the availability of vaccine to all South African citizens. Many people have now returned to work and the economy is now returning to some level of normalcy. Further, now that the South African government has eased containment policies. Policymakers confront the daunting task of moving the economy from “intensive care”, with massive assistance, to “long-term care.”

This article provides an assessment of the precarious nature of the South African labour market before the Covid-19 pandemic. It also addresses the socio-economic challenges facing South Africa and the effects of the Covid-19 pandemic on the South African economy, before addressing new forms of work and a future world of work. The article also briefly examines some of the attempts made by the International Labour Organisation (ILO) to address precarious or non-standard work. The article draws on a series of policy briefs on the labour market, social policy, and health issues released since the beginning of the Covid-19 pandemic.

2 PRECARIOUS AND VARIOUS PARADIGMS OF WORK IN SOUTH AFRICA BEFORE THE COVID-19 PANDEMIC

Precarious or non-standard work arrangements, such as temporary work, fixed-term work, and part-time work, have taken centre-stage in research and discussion on labour and employment relations.⁸ How we currently describe precarious or non-standard work is precisely the opposite of the Fordist version of standard employment that peaked in the 1950s.⁹ Non-standard employment, as the expression implies, is described by what it is not – it is not standard employment.¹⁰ Edgell¹¹ lists the characteristics of standard employment that sprang from the Fordist production system: job security; an expectation of rising living standards through high wages; workplace participation by workers; the presence of strong trade unions; free collective bargaining; and a strong welfare state.

⁷ ILO-OECD “The impact of the COVID-19 pandemic on jobs and incomes in G20 economies” (2020) 6 available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_756331.pdf (accessed 13 October 2022). The global financial crisis (GFC) refers to the period of extreme stress in global financial markets and banking systems between mid-2007 and early 2009. During the GFC, a downturn in the US housing market was a catalyst for a financial crisis that spread from the United States to the rest of the world through linkages in the global financial system. Many banks around the world incurred large losses and relied on government support to avoid bankruptcy. Millions of people lost their jobs as the major advanced economies experienced their deepest recessions since the Great Depression in the 1930s. Recovery from the crisis was also much slower than past recessions that were not associated with a financial crisis.

⁸ See generally Krahn H “Non-standard work arrangements” (2004) 5 *Perspectives on labour and income* 35; Mokofoe W “The changing world of work and further marginalisation of workers in South Africa: An evaluation of the relevance of trade unions and collective bargaining” (2022) 54 *Comparative and International Law Journal of Southern Africa* 1.

⁹ Edgell S *The sociology of work: Continuity and change in paid and unpaid work* USA: Sage (2012) 146.

¹⁰ Theron J, Godfrey S & Visser M *Keywords for a 21st century workplace* Cape Town: UCT Institute of Development and Labour Law (2011) at 62.

¹¹ See Edgell (2012) at 146.

Non-standard work is employment that differs from the conventional, standard work relationship where work is generally full-time and anticipated to continue until the regular retirement age or until either party gives notice of termination. Researchers have adopted distinctive terminology for this category of work arrangement, including, for example, “non-standard employment relations”,¹² “alternative work arrangements”,¹³ “flexible staffing arrangements”,¹⁴ “contingent work”,¹⁵ and “precarious employment”.¹⁶ However, it is important to note that non-standard work is not necessarily precarious (although it often is). For purposes of this article, the terms “precarious work” and “non-standard employment” are used interchangeably and refer to work undertaken by part-time workers, temporary workers, workers supplied by employment agencies or labour brokers, casual workers, workers in fixed-term contracts, and workers engaged in a variety of contractual relationships.

Generally, precarious work relationships are associated with the denial of entitlements and privileges, poor wages, absence of job security, loss of status, an uncertain future, and the threat of contract termination. Those in such work relationships, particularly the less-skilled of them, are also frequently more vulnerable to exploitation.¹⁷ Furthermore, they are not always covered by collective agreements, and generally have no trade union protection.¹⁸ Precarious workers are more inclined to depend on statutory protection enacted to ensure basic working conditions.

It is worth noting that workers trapped in precarious employment, both formal and informal, have been among those most affected by the Covid-19 pandemic.¹⁹ Against this background, the various forms of precarious or non-standard employment are examined.

2.1 The various forms of precarious or non-standard employment

2.1.1 Temporary employment agencies (labour brokers)

“Temporary employment agency” and “labour broker” are the terms generally used in South Africa to describe a person who procures or provides workers to work for a client (the core business), with these workers being paid by the agency or broker. The Labour Relations Act (LRA) defines a “temporary employment service” (TES) as “any person

¹² Kalleberg AL “Non-standard employment relations: Part-time, temporary and contract work” (2002) 26 *Annual Review of Sociology* 341.

¹³ Polivka AE “Contingent and alternative work arrangements defined” (1996) 119 *Monthly Labour Review* 55.

¹⁴ Houseman SN “The benefits implications of recent trends in flexible staff arrangements” Working Paper No. 02-87 (2001) 2.

¹⁵ Polivka AE & Nardone TJ “On the definition of contingent work” (1998) 12 *Monthly Labour Review* 9.

¹⁶ Treu T “Labour flexibility in Europe” (1990) 131 *International Labour Review* 497.

¹⁷ Fourie ES “Non-standard workers: The South African context, international law, and regulation by the European Union” (2008) 11(4) *Potchefstroom Electronic Law Journal* 111.

¹⁸ See Fourie (2008) at 111.

¹⁹ Matilla-Santander N et al. “COVID-19 and precarious employment” (2021) 51(2) *International Journal of Health Services* 1 available at <https://pubmed.ncbi.nlm.nih.gov/33430684/> (accessed 12 October 2022).

who, for reward, procures for or provides to a client another person who performs work for the client; and who are remunerated by the temporary employment service”.²⁰ Therefore, three parties are involved in a triangular relationship of agency work: the worker(s); the employment agency or labour broker; and the client or core business for whom the worker(s) work. For purposes of this article, the term “agency worker” refers to a worker who is placed by an employment agency (labour broker) to work for a client or the core business.²¹

In South Africa, in the ground-breaking Constitutional Court judgment *Assign Services (Pty) Limited v National Union of Metalworkers of South Africa & Others*,²² the Court dismissed Assign Service’s appeal and upheld the Labour Appeal Court (LAC) ruling. The Court held that for the first three months of employment, the TES is the employer of the placed worker but thereafter the client becomes the “sole” employer. In *NUMSA*, the Court held:

The declared purpose of the LRA is to advance economic development, social justice, labour peace and the democratisation of the workplace. This is to be achieved by fulfilling its primary objectives, which include giving effect to section 23 of the Constitution. It lays down the parameters of its interpretation by enjoining those responsible for its application to interpret it in compliance with the Constitution and South Africa’s international obligations. The LRA must therefore be purposively construed in order to give effect to the Constitution.²³

2.1.2 Fixed-term workers

Fixed-term workers are a sub-group of non-standard workers, and are important not only on account of their numbers²⁴ but also because they are unequal bargaining parties in the employment relationship. The employment relationship in South Africa is fraught with legal responsibilities, and it is trite that employers treat fixed-term workers differently from workers who are employed indefinitely. Many employers use the fixed-term contract of employment to avoid their statutory responsibilities under the Basic Conditions of Employment Act (BCEA), the LRA, and the Employment Equity Act (EEA).²⁵

Temporary employment relationships are frequently linked to the denial of rights and employment benefits, the absence of medical aid benefits, avoidance of the processes required for the termination of employment, the absence of job security, loss of status,

²⁰ Section 198(1) of the LRA.

²¹ Labour Relations Amendment Act 3 of 1983.

²² *Assign Services (Pty) Limited v National Union of Metalworkers of South Africa & others* (CCT194/17) (2018) ZACC 22, (2018) 9 BLLR 837 (CC) (hereafter *NUMSA*).

²³ See *NUMSA* (2018) at para 41.

²⁴ See ILO “Non-standard employment around the world” (2016) available at https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_534326.pdf (accessed 12 October 2022).

²⁵ Mills SW “The situation of the elusive independent contractor and other forms of atypical employment in South Africa: Balancing equity and flexibility” (2004) 25 *Industrial Law Journal* 1203.

and poor earnings.²⁶ The employers, in turn, save money by denying their employees these benefits. Fixed-term workers, especially the less-skilled among them, are often left unprotected and open to exploitation.²⁷ Furthermore, they frequently do not benefit from trade union protection and are not sheltered by collective agreements. While they may benefit from equal statutory protection in theory, in practice the conditions of their employment render it difficult for them to enforce their rights.²⁸

In broad terms, a fixed-term contract of employment is concluded between an employer and worker and linked to a determinable period or to the completion of a specific task that will bring the contract to an end.²⁹ These contracts are generally concluded for a comparatively restricted period, the implication of which is that both parties must have agreed initially that the duration of the contract would be limited.³⁰ Fixed-term contracts serve the need for temporary appointments. In terms of the common law, the termination of a fixed-term contract of employment is generally not unfair if the reason for which the employee was employed no longer exists.³¹ Section 198B of the LRA,³² as amended, provides a new definition of a “fixed-term contract” which is the definition used in this article. A fixed-term contract is a contract of employment that terminates on:

- (a) the occurrence of a specified event;
- (b) the completion of a specified task or project; or
- (c) a fixed date, other than an employee’s normal or agreed retirement age, subject to subsection (3).

Given the insecurities associated with fixed-term contracts, workers in precarious employment may face unemployment without being officially laid off – for example, by not having contracts renewed, or seeing a reduction in working hours to zero – which thus excludes many from eligibility for unemployment benefits.

2.1.3 *Part-time work and casual work*

In general, it is difficult to distinguish between “temporary”, “part-time” and “casual” workers, since they overlap. Nevertheless, it is essential to deal with these groups of non-standard workers individually, as their circumstances differ. Temporary workers are workers hired on a fixed-term contract of employment.³³ Casual workers, also referred to as occasional or irregular workers, are “employees hired periodically when

²⁶ Edgell (2012) at 146.

²⁷ However, certain fixed-term positions may require highly developed skills.

²⁸ See Fourie (2008) at 111.

²⁹ Grogan J *Workplace Law* 11 ed (2014) at 49.

³⁰ Grogan (2014) at 49.

³¹ *National Union of Metalworkers of SA & Others v SA Five Engineering (Pty) Ltd & others* (2007) 28 ILJ 1290 (LC) at paras 39 and 42.

³² Section 198B of the LRA.

³³ Theron J “Employment is not what it used to be” (2003) 24 *Industrial Law Journal* 1250.

the need arises”.³⁴ They are hired on individual fixed-term contracts generally for a day at a time,³⁵ and frequently work irregular, long daily hours at weekends, on holidays, and at night.³⁶ This category is the most vulnerable group. In South Africa, these workers enjoy differentiated protection, as full protection is offered by the LRA but restricted protection by the BCEA. A casual employee was defined in terms of the former BCEA³⁷ as an employee not working more than three days a week; section 6 of the current Act now only excludes workers who work less than 24 hours a month. This means that protection is extended to many casual workers who were previously excluded.

Casual workers are often found in labour-intensive sectors such as the retail, domestic and agricultural sectors. Casual work is temporary, and earnings and availability are uncertain. These jobs are generally low-paid and present few opportunities for training that would offer the hope of improvement, as employers would prefer to train permanent employees.³⁸ Workers in precarious employment, and casual workers in particular, may experience barriers in accessing health care, as many do not have health insurance,³⁹ together with difficulties in maintaining adequate housing conditions and accessing sufficient food given reduced income. These stressors and dramatic life changes may lead to a rise in diseases of despair, such as problems with substance abuse, mental health disorders, and suicide attempts.⁴⁰

Part-time workers are described as those who work considerably less than the “normal working hours”.⁴¹ They are usually hired frequently. It is submitted that part-time workers are comparatively better placed than their casual and temporary counterparts, as their employment is often indefinite.⁴² Part-time work allows employers greater flexibility in planning work, aligning schedules with peaks in customer demand, and retaining workers who are not in a position to commit to full-time work.⁴³ The LRA defines a “part-time worker” as “someone who is remunerated wholly or partly by reference to the time that the worker is employed and who works less than a comparable full-time employee”.⁴⁴

³⁴ Theron (2003) 1250.

³⁵ Basson AC, Christianson MA, Dekker A, Garbers C, Le Roux PAK et al. *Essential labour law* 5th ed Cape Town: Labour Law Publications (2009) at 32.

³⁶ Mills SW “The situation of the elusive independent contractor and other forms of atypical employment in South Africa: Balancing equity and flexibility” (2004) 25 *ILJ* 1219.

³⁷ Basic Conditions of Employment Act 3 of 1983.

³⁸ Thompson C “The changing nature of employment” (2003) *Industrial Law Journal* 1803.

³⁹ See the ILO “COVID-19: Social Protection Systems Failing Vulnerable Groups” (2020) available at https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_739678/lang--en/index.htm (accessed 5 October 2022).

⁴⁰ Clay JM & Parker MO “Alcohol use and misuse during the COVID-19 pandemic: A potential public health crisis?” (2020) 5(5) *Lancet Public Health* 259.

⁴¹ Grogan (2014) at 49.

⁴² Grogan (2014) at 49.

⁴³ Grogan (2014) at 49.

⁴⁴ Section 198C(1)(a) of the LRA.

Part-time workers generally work fewer hours than the norm established by a wage-regulating measure, a collective agreement, or in terms of the contract of employment applicable to the employer's other employees.⁴⁵ This could include, for example, morning work, or the permanent domestic worker who works one day per week for five different employers. Workers who work for short periods as and when required by the employer perform casual and temporary work. Here, both parties know that the worker does not expect that the employment relationship will continue.⁴⁶

During the Covid-19 pandemic, the rise of unemployment was undoubtedly followed by an increase in precarious work,⁴⁷ a phenomenon also observed during the 2008 financial crisis. As a result of expanded precarious employment, workers are likely to face long-term labour market disadvantages. One example is the group referred to as the "lockdown generation",⁴⁸ meaning young workers who suffered disruptions in education and training and who were pushed into insecure, low-wage jobs with reduced working hours.

In what follows, models of work that were present in South Africa before the pandemic are examined.

3 PARADIGMS THAT RESULTED IN PRECARIOUS WORK IN SOUTH AFRICA

3.1 Paradigms of work in South Africa

Globalisation has transformed patterns of engagement in labour markets not only in South Africa but the world over. As noted by Osterman, in the United States, "the ties that bind the workforce to the firm have frayed ... New work arrangements, captured by the phrase 'contingent work' imply a much looser link between firm and employee".⁴⁹ In an in-depth study of economic reorganisation and changing corporate forms, Weil⁵⁰ contends that the growth of supply chains and the popularity of franchising have culminated in "fissured" workplaces, leading to a reduction in the pervasiveness of direct employment relationships, growth in more non-standard categories of work, and an erosion of labour's capacity to bargain for better employment conditions.⁵¹

There is evidence of significant change in the labour markets globally, including the South African labour market, particularly in the last 20 years of the twentieth century,

⁴⁵ Baker R & Holtzhausen D *South African labour glossary* (1996) at 109–110.

⁴⁶ Baker & Holtzhausen (1996) at 21, where "casual work" is defined as "work performed by a temporary employee".

⁴⁷ See the ILO "World employment and social outlook – Trends 2022" (2022) available at <https://www.ilo.org/global/research/global-reports/weso/trends2022/lang--en/index.htm> (accessed 14 October 2022).

⁴⁸ See the ILO Monitor "COVID-19 and the world of work" 4th ed (2020) available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_745963.pdf (accessed 14 October 2022).

⁴⁹ Osterman P *Securing prosperity: The American labour market: How it has changed and what to do about it* New Jersey: Princeton University Press (2000) at 3–4.

⁵⁰ Weil D *The fissured workplace: Why work became so bad for so many and what can be done to improve it?* (2014) at 158.

⁵¹ See Weil (2014) at 158.

with a meteoric rise in precarious work relationships.⁵² The South African government investigated the need to amend the LRA in the light of these developments, which resulted in the adoption of the Labour Relations Amendment Act (LRAA) in 2014.⁵³ At the heart of the LRAA is the understanding that work today is less secure than it used to be. The amendments take the position that labour laws and regulations adopted in the decades following World War II, when the standard work relationship was more widespread, no longer serve the needs of South African workers.⁵⁴

3.2 Informalisation of work

The growth in precarious work often gives rise to informalisation⁵⁵ and separation of the worker from his or her place of work.⁵⁶ Factors such as globalisation, socio-economic and technological developments, and amendments to legislation to adapt to increasingly competitive surroundings, have added to the informalisation of the workplace.⁵⁷ This process of informalisation, one in which workers are obliged to move from conventional employment to the informal economy, results in deregulation – that is, workers move beyond the protective scope of labour law.⁵⁸ Informalisation relates to the situation of “employees who are *de jure* covered by labour law but who are *de facto* not able to enforce their rights, as well as to those employees that are *de jure* not covered by labour law because they are independent contractors”.⁵⁹

Workers in employment that was already precarious before the pandemic, for example, informal workers, risk becoming even more precarious – with limited bargaining power, they are more vulnerable to unfair treatment, abuse, and exploitation.

3.3 Casualisation of work

Casualisation in the literature on non-standard work is used as a “catch-all” term to describe how employment is changing, and can be used more or less interchangeably with the terms “contingent” or “precarious” employment.⁶⁰ In South Africa, the term has been used in the above sense by both organised labour and the Department of Labour to justify policy reforms.⁶¹ The term has, however, also been criticised for conflating direct employment (whether part-time or temporary) and indirect or triangular employment, where employees are also commonly employed temporarily albeit through an agency,

⁵² Quinlan M “The effects of non-standard forms of employment on worker health and safety” (2015) 1 available at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_443266.pdf (accessed 15 October 2022).

⁵³ Labour Relations Amendment Act 6 of 2014.

⁵⁴ See LRAA (2014).

⁵⁵ Fenwick C, Kalula E, Landau I “Labour law: A Southern African perspective” in Tekle T (ed) *Labour law and worker protection in developing countries* (2007) at 20.

⁵⁶ Fenwick, Kalula & Landau (2007) at 20.

⁵⁷ See the introduction to Theron J (2003) at 1247–1282.

⁵⁸ Fenwick, Kalula & Landau (2007) at 20.

⁵⁹ Fenwick, Kalula & Landau (2007) at 20.

⁶⁰ Theron (2003) at 1247.

⁶¹ Theron (2003) at 1247.

intermediary, or service provider.⁶² In the latter case, the employment contract between the core business and its employees is replaced by a commercial contract between the core business and an agency, an intermediary, or a service provider.⁶³ This is referred to as externalisation.

The BCEA distinguishes between workers who work less than 24 hours a month for an employer and those who work 24 hours or more a month.⁶⁴ This difference adds no value to the cause of casual workers, as only employees who work for more than 24 hours a month fall within the safety net of protection in respect of benefits such as payment for overtime and paid leave. However, it is worth noting that the National Minimum Wage Act (NMWA) offers some measure of protection to employees who work for less than four hours on any day. It reads as follows:

9A. Daily wage payment – (1) An employee or a worker as defined in section 1 of the National Minimum Wage Act, 2018, who works for less than four hours on any day must be paid for four hours of work on that day.

(2) This section applies to employees or workers who earn less than the earnings threshold set by the Minister in terms of section 6(3).

3.4 Externalisation of work

Externalisation is an additional element that gives rise to an increase in precarious employment in South Africa. Fenwick et al. are of the view that “externalisation is more radical and complex than casualisation”.⁶⁵ The rationale behind externalisation is that enterprises wish to concentrate on their core functions, i.e., those activities in which they have gained a comparative advantage or are most competent.⁶⁶ Deregulation⁶⁷ and privatisation are policies that emerged in the 1980s and 1990s.⁶⁸ The predominant means by which deregulation has been achieved in South Africa is through a process of industrial restructuring which includes, and is at the same time broader than, what is conventionally understood as outsourcing.⁶⁹

Externalisation may be achieved in several ways, such as outsourcing, franchising, transferring assets to satellite firms, and using labour brokers. Although it is challenging to differentiate clearly between the contrasting ways due to differences in the methods used and the definitions provided by scholars, the most common means by which

⁶² Fenwick, Kalula & Landau (2007) at 20.

⁶³ Fenwick, Kalula & Landau (2007) at 20.

⁶⁴ Section 6(1), 19(1) & section 28(1) of the BCEA.

⁶⁵ Fenwick, Kalula & Landau (2007) at 20.

⁶⁶ Fenwick, Kalula & Landau (2007) at 20.

⁶⁷ Fenwick, Kalula & Landau (2007) at 20. Literally, it implies the removal of government regulations, although it is not concerned with all types of government regulations but rather with those that affect how business is done.

⁶⁸ Henry JM “The wave of privatisation in the 1980s and 1990s: Was it inevitable?” (2006) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1293910 (accessed 15 October 2022).

⁶⁹ Theron, Godfrey & Visser (2011) 1 at 18.

externalisation is achieved is by triangulation.⁷⁰ One type of externalisation that does not necessarily include triangulation is the use of independent contractors who are dependent on the core enterprise.⁷¹ It is worth noting that many workers in precarious employment continued to work in environments that lack adequate virus control and safety measures.⁷² These factors increased the risk of infection among workers, their families, and the broader public.

4 SOCIO-ECONOMIC CHALLENGES FACING SOUTH AFRICA

South Africa, like other southern African countries, is faced with a myriad socio-economic challenges.⁷³ Poverty, unemployment, low levels of education, HIV/Aids, migration, and, most recently, Covid-19, have resulted in serious socio-economic challenges for the governments of these developing states. This is particularly true in South Africa, which is at the receiving end of most migrants, who barely manage to eke out a living in the informal economy.⁷⁴

To illustrate the point, in South Africa the results of the Quarterly Labour Force Survey (QLFS) show that the unemployment rate was 35.3% in the fourth quarter of 2021. Compared to the third quarter of that year, the number of employed persons increased by 262,000 to 14.5 million, while the number of unemployed persons increased by 278,000 to 7.9 million. While the number of those not economically active decreased by 397,000 to 17.4 million in this quarter, the number of discouraged work seekers decreased by 56,000 (1.4%), while the number who were not economically active for reasons other than discouragement decreased by 341,000 (2.4%) between the two quarters.

These changes in the labour market resulted in the official unemployment rate increasing by 0.4 percentage points from 34.9% in the third quarter of 2021 to 35.3% in the fourth quarter. The unemployment rate according to the expanded definition of unemployment decreased by 0.4 percentage points to 46.2% in quarter 4 of 2021 compared to quarter 3 of 2021. Formal sector employment increased by 143,000 jobs between Q3:2021 and Q4:2021, while the informal sector shed 48,000 jobs in the same period. Between the Q3:2021 and Q4:2021, a net increase in employment of 262,000 was due mainly to an increase recorded in private households (129,000), trade (118,000), and community and social services (73,000). Decreases were observed mainly in manufacturing (85,000), followed by construction (25,000).

After a brief look at the socio-economic conditions, it is necessary to view the effects of Covid-19 on the South African economy. The latest statics come in the wake of a recent

⁷⁰ Theron (2005) at 293–294.

⁷¹ Fenwick, Kalula & Landau (2007) at 20.

⁷² ILO “Beyond contagion or starvation: Giving domestic workers another way forward” (2020) at https://www.ilo.org/global/topics/domestic-workers/publications/factsheets/WCMS_743542 (accessed 5 October 2022).

⁷³ Olivier MP & Mpedi LG “Coordination and integration of social security in the SADC region: Developing the social dimension of economic co-operation and integration” (2003) 28 *Journal of Juridical Sciences* 15.

⁷⁴ Olivier & Mpedi (2003) at 15.

World Bank report which found that South Africa remains the most unequal country in the world.⁷⁵ Furthermore, unemployment itself has a corrosive effect on investment, as it is surely behind much of the social unrest that has been rocking South Africa. After the 2021 July riots,⁷⁶ the question that arises is whether any boardroom would agree to a massive new investment to build a factory in Durban.

Unemployment also hurts consumption, savings, and investments – it is difficult to do any of those things without a steady income. Meanwhile, the ranks of the indigent are swelling, and children are starving to death.⁷⁷ Further, in South Africa, domestic inflationary pressures increased throughout 2021, which saw headline consumer price inflation accelerating from a low of 2.9% in February to 5.9% in December, before slowing somewhat to 5.7% in January 2022.⁷⁸ Similarly, producer price inflation for final manufactured goods accelerated to 10.8% in December 2021 before slowing to 10.1% in January 2022.⁷⁹ Inflationary pressures emanated mainly from record-high fuel prices following the continued increase in international crude oil prices and, to a lesser extent, higher electricity and food prices.⁸⁰

5 EFFECTS OF THE COVID-19 PANDEMIC ON THE SOUTH AFRICAN ECONOMY

South Africa entered the Covid-19 pandemic with low levels of employment and a decade of weak job creation far below the levels of most upper-middle-income countries.⁸¹ Despite the government's solid response to the pandemic, jobs have been severely impacted and recovery is slow. The "Building back better from Covid-19 with a special focus on jobs in South Africa" World Bank report found that job losses in Covid-19 times are disproportionately concentrated among low-income earners, worsening already severe inequalities despite the government's decisive and pro-poor response with transfer programmes that partially cushioned the negative impacts of the pandemic. Low-wage workers suffered almost four times more job losses than high-

⁷⁵ Stoltz E "South Africa remains most unequal country, World Bank Report finds" (2022) available at <https://mg.co.za/news/2022-03-10-south-africa-remains-most-unequal-country-world-bank-report-finds/> (accessed 14 October 2022).

⁷⁶ Erasmus D "Attempted July insurrection left two million jobless and wiped R50bn from the economy" (2022) <https://www.dailymaverick.co.za/article/2022-04-01-cyril-ramaphosa-attempted-july-insurrection-left-2-million-jobless-and-wiped-r50bn-from-the-economy/> (accessed 12 May 2022).

⁷⁷ Ellis E "Seven children starve to death, others fight for their lives while malnutrition ravages eastern cape" 2022) available at <https://www.dailymaverick.co.za/article/2022-03-24-seven-children-starve-to-death-others-> (accessed 13 May 2022).

⁷⁸ Statistics South Africa "South African statistical release of the Consumer Price Index" (2022) available at <http://www.statssa.gov.za/publications/P0141/P0141March2022.pdf> (accessed 14 May 2022).

⁷⁹ Statistics South Africa "Producer Price Index" (2022) available at <http://www.statssa.gov.za/publications/P01421/P01421January2022.pdf> (22 May 2022).

⁸⁰ Statistics South Africa (2022).

⁸¹ See the World Bank "South Africa economic update: South Africa's labour market can benefit from young entrepreneurs, self-employment" (2021) available at <https://www.worldbank.org/en/country/southafrica/publication/south-africa-economic-update-south-africa-s-labor-market-can-benefit-from-young-entrepreneurs-self-employment#:~:text=The%20report%20finds%20that%20South,impacted%2C%20and%20recovery%20is%20slow> (accessed 15 October 2022).

wage earners.⁸² In addition, the report shows that the Covid-19 pandemic crisis exposed structural weaknesses in the job market. Young people in particular face acute unemployment rates, with incidence twice as high as among older age groups. Among 15–24-year-olds, 63% are unemployed and looking for work, whereas among 25–34-year-olds, this rate reaches 41%.⁸³

Estimates by the ILO in 2020 showed that, assuming a situation without alternative sources of income, lost labour income would increase relative poverty for informal workers and their families in lower- and low-income countries.⁸⁴ This included workers in sectors such as accommodation and food services, manufacturing, wholesale, and the retail trade. Because those in the informal economy need to work, lockdowns and other containment measures were a source of social tension and led to the transgression of regulations which, in turn, endangered the government's efforts to protect the population and fight the pandemic.⁸⁵ In a quest to protect South African citizens from Covid-19, the government announced a national lockdown that resulted in a shock to the labour market and a wide-ranging change in the way people went about doing their work. Furthermore, logistical challenges within supply chains – cross-border and domestic restrictions on movement – led to disruptions in the food supply that undermined precarious workers' food security.⁸⁶

Informal food markets play an essential role in ensuring food security in South Africa both as a source of food and as a place for small-scale farmers to sell their produce. Closing these down results in street and market vendors, domestic workers, or home-delivery workers plunging deeper into poverty and facing still greater food insecurity. For many, home is their workplace, and given the conditions described above, most workers in the informal economy – particularly migrant workers – face heightened exposure to occupational health and safety risks, including increased likelihood of illness, accident, or death. Covid-19 added to these risks. If they fall ill, most workers, including migrants,⁸⁷ have no guaranteed access to medical care and no income security in the form of sickness or employment injury benefits. As we study the effects of the

⁸² World Bank “Building back better from COVID-19 with a special focus on jobs” (2021) available at <http://documents.worldbank.org/curated/en/161431626102808095/Building-Back-Better-from-COVID-19-with-a-Special-Focus-on-Jobs> (accessed 14 May 2022).

⁸³ See the Quarterly Labour Force Survey (“QLFS”) Q2:2022 available at <https://www.statssa.gov.za/?p=15685> (accessed 15 October 2022).

⁸⁴ See ILO Monitor “COVID-19 and the world of work” 3rd ed (2020) available at https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/briefingnote/wcms_743146.pdf (accessed 10 February 2022).

⁸⁵ ILO “Jobs for peace and resilience: A response to COVID-19 in fragile contexts” (2020) available at https://www.ilo.org/wcmsp5/groups/public/ed_emp/documents/instructionalmaterial/wcms_742182.pdf (accessed 14 October 2022). See also Mokofe W & Van Eck S “COVID-19 at the workplace: What lessons are to be gained from early case law” (2022) 55 *De Jure* 1.

⁸⁶ ILO “COVID-19 and the impact on agriculture and food security” (2020) available at https://www.ilo.org/sector/Resources/publications/WCMS_742023/lang--en/index.htm (accessed 14 October 2022).

⁸⁷ World Health Organisation and the International Bank for Reconstruction and Development/World Bank “Tracking universal health coverage: Global monitoring report” Geneva: WHO and World Bank (2017) at 4.

pandemic on precarious workers, we must examine the further challenges posed by new forms of work.

South Africa is one of Africa's premier tourist destinations, and, with a total of 4 million tourists in 2020, ranked 46th in the world in absolute terms.⁸⁸ The country generated about 2.72 billion US dollars in the tourism sector alone.⁸⁹ This corresponds to 0.65 per cent of its gross domestic product and approximately 88 per cent of all international tourism receipts in southern Africa.⁹⁰ South Africa's natural beauty, game parks, historical sites, and value for money are all factors that explain its appeal to international tourists. However, the growth of the tourism industry came to a grinding halt in 2020 with international travel restrictions implemented across the world to curb the Covid-19 pandemic. Although South African borders to international travellers were reopened on 1 October 2020,⁹¹ continued travel restrictions in South Africa's major source markets such as the UK and Germany hampered recovery in the tourism sector.

In addition, the Covid-19 restrictions led to the closure or downsizing of some businesses, which left many without jobs. Many people work in the informal economy, where they survive from hand to mouth. The lockdown meant that many could not engage in their daily survival strategies. To ease the impact of the lockdown measures on the economic well-being of individuals and families, governments introduced relief measures. South Africa used the existing UIF (Unemployment Insurance Fund) to distribute a special grant it introduced to help cope with the effects of the pandemic.⁹² However, some individuals could not benefit from this fund as a result of not meeting the criteria or their employers' not submitting the required documents or lodging claims.⁹³ Furthermore, some breadwinners in families were employed in precarious situations where they have no access to social grants or relief measures. With reduced or no income, it meant families were not able to afford necessities, including food.

South Africa responded to the stressors of the Covid-19 pandemic and lockdown using a combination of existing social protection programmes, unemployment insurance, and additional measures to support those most affected. The government's most important economic intervention in response to the pandemic was a fiscal stimulus package. The stimulus package included substantial additional and reprioritised spending targeted at

⁸⁸ WorldData "Tourism in South Africa" (2020) 1 available at <https://www.worlddata.info/africa/south-africa/tourism.php> (accessed 13 October 2022).

⁸⁹ See WorldData (2022) at 1.

⁹⁰ See WorldData (2022) at 1.

⁹¹ Business Insider "SA's borders open on 1 October: Here's what we know about the rules for tourists" (2020) available at <https://www.businessinsider.co.za/international-travel-to-and-from-south-africa-reopens-on-1-october-with-caveats-2020-9> (accessed 14 October 2022).

⁹² South African Government "Minister Lindiwe Zulu: Re-introduction of special COVID-19 SRD grant" (2021) available at <https://www.gov.za/speeches/minister-lindiwe-zulu-re-introduction-special-covid-19-srd-grant-4-aug-2021-0000> (accessed 20 May 2022).

⁹³ Mukumbang FC, Ambe AN, & Adebisi BO "Unspoken inequality: How COVID-19 has exacerbated existing vulnerabilities of asylum-seekers, refugees, and undocumented migrants in South Africa" (2020) available at <https://equityhealth.biomedcentral.com/articles/10.1186/s12939-020-01259-4> (accessed 15 May 2022).

both firms and individuals and amounted to about 6.5 per cent of GDP.⁹⁴ The scale of this spending was large relative to most other emerging-market economies – possibly one of the largest in a sample of middle-income countries. However, there were concerns about how easily relief measures would be implemented and consequently accessed by the various government departments that oversaw their delivery.⁹⁵

The government adopted a two-pronged and largely cash-based approach: unemployment benefits for formal sector workers and cash transfers to vulnerable individuals, informal workers, and beneficiaries of existing grants. Top-up payments for existing grants were rolled out efficiently; the new Special Relief of Distress (SRD) grant posed challenges, but ultimately succeeded in reaching over six million previously uncovered beneficiaries. It may even become a permanent feature of South Africa's social protection system.⁹⁶ In an apparent attempt to accommodate these concerns, the social assistance package announced by the President and explained by the Department of Social Development involved a trade-off comprising the following three interventions. Specifically, the government's social grant Covid-19 package was composed of the following:

1. A one-month, R300 increase in the child support grant (CSG) of all beneficiaries, followed by an R500 per month increase for each caregiver (recipient) for five months.
2. A R250 monthly increase for all other social grants for six months.
3. The introduction of a special Covid-19 grant of R350 per month for unemployed individuals not receiving any other form of state assistance also for six months.⁹⁷

It must be noted that even with these measures, Covid-19 brought to the fore systemic weaknesses, highlighted a lack of capacity in addressing Covid-19-related challenges, and underscored disparities in South Africa.

Disruptive technological changes and increasing socio-economic imbalances have affected the entire world in recent times.⁹⁸ The Fourth Industrial Revolution is characterised by the blending of the digital, physical, and biological worlds, as well as an increasing application of new technologies such as artificial intelligence, robotics, and wireless technologies. These developments have heralded a new period that accelerates the process of disruption by making room for new forms of precarious work.⁹⁹

⁹⁴ Bhorat H, Oosthuizen M & Stanwix B "Social assistance amidst the Covid-19 epidemic in South Africa: An impact assessment" (2020) Working Paper 202006 Development Policy Research Unit: University of Cape Town at 2.

⁹⁵ Bhorat, Oosthuizen & Stanwix (2020) at 2.

⁹⁶ Gronbach L, Seekings J & Megannon V "Social protection in the COVID-19 pandemic: Lessons from South Africa" (2022) available at <https://www.cgdev.org/publication/social-protection-covid-19-pandemic-lessons-south-africa> (accessed 22 May 2022).

⁹⁷ Bhorat H "Social assistance amidst the COVID-19 epidemic in South Africa" (2020) at 2 available at https://www.dpru.uct.ac.za/sites/default/files/image_tool/images/36/Publications/Working_Papers/DPRU%20W202006.pdf (accessed 15 October 2022).

⁹⁸ Du Toit D "Platform work and social justice" (2019) 40 *ILJ* 1.

⁹⁹ Du Toit (2019) at 1.

Notwithstanding the positive outcomes that technological developments may have on the economy and growth in new jobs, they also have negative results. Convoluted networks make the problem of identifying the parties to the employment relationship an international concern.¹⁰⁰ In the words of Weiss, “digitalisation contains many risks, but it also is a chance to improve working and living conditions to the benefit of workers. It is not an apocalyptic evil but something which needs to be shaped”.¹⁰¹ The question regarding digitalisation is – to put it simply – whether labour law, the legislator, and collective actors will succeed in ensuring that human beings do not become the slaves of this new technological phenomenon.¹⁰²

The entrance to labour and social security protection is through an employment relationship.¹⁰³ However, the line between a situation where there is an employment relationship and where there is independent contracting is blurry and a matter of dispute.¹⁰⁴ The application of labour law in its narrowest sense does not include either the self-employed or independent contractors. As a result, persons engaged in modern forms of work such as on-demand platform work might not be viewed as employees and, as such, would not fall within the safety net of labour law.¹⁰⁵ However, the government has a significant role to play in addressing the situation, as illustrated by the NMWA.¹⁰⁶ This Act applies to all employees and their employers and, given that the expanded definition of an employee includes “any other person who in any manner assists in carrying or conducting the business of an employer...”,¹⁰⁷ this broadens the application of the NMWA to cover “independent contractors” – including casual labourers – who personally undertake to perform work or services.

The digital platform economy, typified by online suppliers of goods and services such as Uber, represents a vital stage in this development. The question that arises is whether the reversal of the eroding effect of new forms of work, such as Uber, rests solely in the broadening of the definition of employee. Uber drivers in South Africa, like their counterparts in many other countries, have tried to gain labour law protection through the gateway of classification as employees. In *Uber South Africa Technology Services (Pty) Ltd v NUPSAW and SATAWU obo Tsepo Morekure*,¹⁰⁸ the Commission for Conciliation, Mediation and Arbitration (CCMA) held that Uber drivers whose services have been “deactivated” are employees under the LRA. However, in a disappointing development, the South African Labour Court upheld an application for review and

¹⁰⁰ Du Toit (2019) at 1.

¹⁰¹ Weiss M “Challenges for labour law and industrial relations” in Kim D & Rönmar M (eds) *Global labour and employment relations: Experiences and challenges* (2020) at 133.

¹⁰² Weiss (2020) at 133.

¹⁰³ Van Niekerk A, Smith N, Christianson MA, McGregor M & van Eck BPS *Law@work* (2019) at 59.

¹⁰⁴ Brassey M “The nature of employment” (1990) *ILJ* 889 refers to *National Labour Relations Board v Hearst Publications* (1944) 322 US 111 at 121.

¹⁰⁵ Du Toit D, Fredman S & Graham M “Towards legal regulation of platform work: Theory and practice” (2020) 41 *ILJ* 1493.

¹⁰⁶ National Minimum Wage Act 9 of 2018.

¹⁰⁷ Section 213 of the LRA.

¹⁰⁸ *Uber South Africa Technology Services (Pty) Ltd v NUPSAW and SATAWU obo Tsepo Morekure* unreported case WECT12537-16 (7 July 2017).

concluded that the CCMA commissioner had conflated the roles of Uber SA and the foreign mother company, Uber BV. The drivers had not contracted with Uber SA – the applicant in this matter – and could, therefore, not succeed in their case.¹⁰⁹

After this decision, the Supreme Court of the United Kingdom, in *Uber BV v Aslam*, held that Uber drivers are not self-employed or independent contractors, as they enjoy the status of “workers”.¹¹⁰ It can be argued that it would have been appropriate for the South African Labour Court to adopt a broader approach.¹¹¹ It could have explored ways of clarifying the legal complexities associated with triangular relationships created by online platforms and placed less emphasis on the existence of a contract of employment than it did in this case.¹¹² The future world of work can unlock opportunities, improve the quality of working life, and bridge the gap between citizens when it comes to socio-economic inequalities.¹¹³ The Director-General of the ILO established the Global Commission on the Future of Work (Global Commission).¹¹⁴ The Global Commission’s report calls for a human-centred approach to the future of work. The idea is to place people and their work “at the Centre of economic and social policy and business practice”.¹¹⁵

This approach is forward-looking and aims at developing humans to cope in a digital world and strengthening social dialogue to improve employees’ quality of working life.¹¹⁶ The report contains three pillars: the promotion of investment in people’s capabilities; investment in the institutions of work; and investment in decent and sustainable work.¹¹⁷ As will be shown below, the struggle to regulate new forms of work and achieve social justice and workplace democracy lies at the heart of the ILO’s goals. However, it should be noted that workers in precarious employment, who are often unable to work safely from home, experience a poorer work-life balance, are exposed to a greater risk of household virus spread, and suffer family conflicts. In addition, workers might be a factor in deterring the control of or generating new Covid-19 outbreaks. Because workers in precarious employment often lack access to paid sick leave, they tend to be forced to work while sick to avoid losing income or employment.

7 THE ILO AND PRECARIOUS OR NON-STANDARD WORK IN SOUTH AFRICA

Over the past century, the ILO has played a key role in developing labour standards and Conventions. Precarious work, which covers workers outside of the traditional employment relationship, has been recognised by the ILO. Changes in traditional perceptions of work have received the attention of the ILO and, since 1990, have been

¹⁰⁹ *Uber South Africa Technology Services (Pty) Ltd v National Union of Public Service and Allied Workers* (2018) 39 ILJ 903 (LC).

¹¹⁰ *Uber BV v Aslam* [2021] UKSC 5.

¹¹¹ Mokofe & Van Eck (2021) at 1365.

¹¹² Mokofe & Van Eck (2021) at 1365.

¹¹³ ILO Global Commission on the Future of Work for a Brighter Future (2019) at 18.

¹¹⁴ Global Commission on the Future of Work (2019) at 18.

¹¹⁵ Global Commission on the Future of Work (2019) at 18.

¹¹⁶ Global Commission on the Future of Work (2019) at 18.

¹¹⁷ Global Commission on the Future of Work (2019) at 18.

addressed at its annual conferences. The ILO has acknowledged the upsurge in precarious work and the need to protect affected workers by employing the following:

(a) Conventions and Recommendations on particular categories of non-standard workers, such as part-time workers and homeworkers; (b) support for micro-enterprises in the informal economy; (c) programmes like Strategies and Tools against Social Exclusion and Poverty (STEP) to promote the extension of social protection to informal workers; (d) support for mutual health insurance schemes; and (e) the continuance of work at its social security department commissioning research and investigating the extension of social-security protection to non-standard workers.¹¹⁸

South Africa was one of the founding members of the ILO when it was established in 1919. Since the ILO's creation, international labour standards have played an important role in South Africa's labour law.¹¹⁹ Although South Africa has not adopted the convention and recommendation about employment agencies,¹²⁰ it is a current member of the ILO, and international labour standards have a direct influence on its formulation of its labour policies. The consideration of international labour standards is crucial due to a constitutional obligation to consider international law when interpreting the Bill of Rights.¹²¹ The South African Bill of Rights provides for labour rights.¹²² The relevance and importance of international standards are reinforced in the LRA. This makes it compulsory, when applying the LRA, to interpret the Act's provisions in compliance with the public international law obligations of the Republic.¹²³ The South African Constitution¹²⁴ is the supreme law of the land¹²⁵ and accords "customary international law" noteworthy status.

In particular, section 232 states that "when interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law". Shortly after the adoption of the 1996 Constitution, Dugard notes, this "constitutionalization" of the common-law rule on customary international law

¹¹⁸ ILO "Non-standard forms of employment" Report for discussion at the Meeting of Experts on Non-Standard Forms of Employment, Geneva (2015) at 32–36.

¹¹⁹ In 1988 COSATU lodged a complaint against the apartheid government with the ILO. The government refused to accept the jurisdiction of the ILO, until 1991, when it allowed an ILO fact-finding mission on freedom of association to come to South Africa. The ILO mission drew up a number of recommendations on how South Africa could improve its labour laws to be consistent with international standards. See also Van Niekerk A et al. *Law@work* Cape Town: LexisNexis (2015) at 20 where it is stated that an ILO Special Committee on Apartheid produced annual reports to the ILO Conference on the labour-related aspects of apartheid. These reports highlighted the effects of government policy on black workers.

¹²⁰ Private Employment Agencies Recommendation 188 of 1997.

¹²¹ Section 39(1)(b) of the Constitution, 1996.

¹²² Section 23 of the Constitution provides that everyone has the right to fair labour practices.

¹²³ Section 3 of the LRA. Private Employment Agencies Recommendations 188 of 1997.

¹²⁴ The Constitution of South Africa, 1996.

¹²⁵ Section 2 of the Constitution, 1996.

gave the rule additional weight and ensures that customary international law is no longer subject to subordinate legislation.¹²⁶

Furthermore, section 233 provides that when interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any interpretation which is not consistent with international law. Section 39 of the Constitution, which deals with the interpretation of the Bill of Rights, further distinguishes “international law” and “foreign law”. It directs that international law “must” be considered and that foreign law “may” be considered.¹²⁷ The Constitution does not define either international law or foreign law. Megret states that international law is most often understood as law which is fundamentally different from domestic law.¹²⁸ He states that “international law’s mode of emergence was traditionally highly peculiar and had more to do with the diffuse and bottom-up crystallization of norms over time”.¹²⁹ Put differently, international law is applicable between states and is the result of norms which have developed over time and been accorded the status of law. Foreign law, it is submitted, is the domestic law of other countries. The question has come before the courts as to whether international law refers only to international standards to which South Africa has assented and ratified or to instruments as well that are not binding on the Republic. In a seminal Constitutional Court decision, *S v Makwanyane and Another*,¹³⁰ it was held that both binding and non-binding international instruments are to be used in interpretation.¹³¹

In terms of international law’s meaning, ILO conventions and recommendations constitute international law.¹³² The LRA also confirms the importance of international standards. One of the primary objects of the LRA is to give effect to the obligations the Republic has incurred as a member state of the ILO.¹³³ Moreover, section 3 provides that any person applying the LRA must interpret the provisions of the Act in compliance with the public international law obligations of the Republic. As will be seen, the international labour standards have also gone a long way in influencing the drafting and wording of national legislation, such as the LRA itself and amendments thereto. The Cape High Court has stated that “(t)he International Labour Organization has through a large number of Conventions and Recommendations, such as the International Labour Organization Convention, 158 of 1982, played a formative role in the development of South African labour law”.¹³⁴

¹²⁶ Dugard CJR *International law: A South African perspective* Cape Town: Juta (2019) at 79.

¹²⁷ Section 39(1)(b) and (c).

¹²⁸ Megret F “The laws of war and the structure of masculine power” (2018) 19(1) *Melbourne Journal of International Law* 200.

¹²⁹ Megret (2012) at 70. This is as opposed to a centralised legal framework, as is the case typically with domestic law.

¹³⁰ *S v Makwanyane and Another* 1995 (3) SA 391.

¹³¹ *Makwanyane* (1995) at para 35.

¹³² *Murray v Minister of Defence* (2006) 11 BCLR 1357 (C).

¹³³ Section 1(b) of the LRA.

¹³⁴ *Murray v Minister of Defence* (2006) 11 BCLR 1357 (C) para 23.

Before the enactment of the Constitution and the LRA, an ILO fact-finding team – the Fact-Finding and Conciliation Commission on Freedom of Association concerning the Republic of South Africa – visited South Africa in 1992 and drafted a report in which it made recommendations on the reform of South African labour law: importantly, this ILO report was used in the drafting of the current LRA.¹³⁵ The LRA was drafted by the Cheadle Task Team through negotiations at the National Economic Development and Labour Council (NEDLAC)¹³⁶ where the ILO findings were considered. This shows the influence of international standards, and those of the ILO in particular, on national labour law. After the end of apartheid and South Africa's readmission as a member of the ILO, the ILO compiled a book on the findings of an independent review of labour market trends and policy developments at the request of the Minister of Labour.¹³⁷ The findings included recommendations. The ILO's review has been the catalyst in Benjamin's developing the term "regulated flexibility" for South Africa,¹³⁸ which forms the core of South Africa's current labour market policy. Therefore, the nexus between South Africa's labour legislation and the ILO's standards and policies is strong, both historically and today.

8 ILO NORMS DEALING WITH SPECIFIC CATEGORIES OF PRECARIOUS EMPLOYMENT

The ILO Termination of Employment Convention¹³⁹ and Recommendation¹⁴⁰ control and offers guidance on the use of fixed-term or temporary employment contracts. The Convention regulates the termination of employment at the discretion of the employer and allows for certain exclusions from all or some of its provisions, which may relate to workers engaged under a contract of employment for a specified period or a specified task, or to workers engaged on a casual basis for a short period. It is important to note that South Africa has ratified both the Convention and the Recommendation above. The Preamble to the Private Employment Agencies Convention 181 of 1997 notes the role that private employment agencies may play in an operational labour market and the need to protect employees who operate under their auspices. The Convention applies, in principle, to all private employment agencies, all categories of employees (except for seafarers), and all branches of economic activity.¹⁴¹ Ratifying states are obliged to take measures to guarantee that workers hired by private employment agencies are not

¹³⁵ See Van Niekerk et al. (2015) at 20.

¹³⁶ NEDLAC is the National Economic Development and Labour Council in South Africa.

¹³⁷ Standing G, Sender J & Weeks J "Restructuring the Labour Market: The South African Challenge – An ILO Country Review" (1996) available at https://labordoc.ilo.org/discovery/fulldisplay/alma993161583402676/41ILO_INST:41ILO_V2 (accessed 14 October 2022).

¹³⁸ Cheadle H "Regulated flexibility: Revisiting the LRA and the BCEA" (2006) *ILJ* 663. Cheadle mentions that the "concept of regulated flexibility was developed by Paul Benjamin" based on the *ILO Country Review's* conception of flexibility.

¹³⁹ ILO Termination of Employment Convention 158 of 1982.

¹⁴⁰ ILO Recommendation 166 of 1982.

¹⁴¹ Mokofe W "The International Labour Organisation in pursuit of decent work in South Africa: An appraisal" (2020) 41(3) *Obiter* 573.

deprived of the right to freedom of association and the right to collective bargaining and that the agencies do not discriminate against workers.

The Private Employment Agencies Recommendation¹⁴² acts as an add-on to Convention 181 by providing, among other things, that workers employed by private employment agencies and made available to employer enterprises should, where applicable, have a written contract of employment stipulating their terms and conditions of employment, with information on such terms and conditions provided, at the very least, before the actual commencement of their assignments.¹⁴³ The Employment Relationship Recommendation¹⁴⁴ provides that member states should formulate and apply, in consultation with the most representative employers' and workers' organisations, a national policy for revising at suitable periods and, if required, clarifying and adjusting the scope of relevant laws and regulations to ensure active protection for workers in an employment relationship. This policy should include procedures to give direction on establishing the presence of an employment relationship and on the difference between employed and self-employed workers; to contest hidden employment relationships that conceal the true legal standing of workers; to guarantee standards relevant to all forms of contractual arrangement, including those involving various parties, so that employed workers are protected; and to guarantee that such standards state who is accountable for offering such protection.¹⁴⁵

The Part-Time Work Convention¹⁴⁶ promotes access to productive, freely chosen, part-time employment that honours the needs of both employers and employees and guarantees protection for part-time employees as regards access to employment, working conditions, and social security. The Convention attempts to ensure the equal treatment of part-time workers and equivalent full-time workers in several ways. First, part-time workers are to be accorded the same protection as equivalent full-time employees as regards the right to organise, the right to bargain collectively, the right to act as employee representatives, access to occupational safety and health, and non-discrimination in employment.¹⁴⁷ Secondly, procedures must be followed to ensure that part-time workers do not, simply because they work part-time, receive a basic wage¹⁴⁸ that, calculated proportionately, is less than that of equivalent full-time employees. Thirdly, legislative social security schemes based on work-related engagements should be modified to afford part-time workers working conditions equivalent to full-time workers. Fourth, part-time workers must also benefit from equivalent conditions

¹⁴² Private Employment Agencies Recommendation 188 of 1997.

¹⁴³ Article 1.1(b) of the Private Employment Agencies Recommendation 188 of 1997.

¹⁴⁴ Employment Relationship Recommendation 198 of 2006.

¹⁴⁵ Article 1-8 of the Employment Relationship Recommendation 198 of 2006.

¹⁴⁶ Part-Time Work Convention 175 of 1994.

¹⁴⁷ Mokofe (2020) at 573.

¹⁴⁸ Pursuant to Recommendation 182 of 1994, part-time workers should benefit on an equitable basis from financial compensation additional to basic wages which are received by comparable full-time workers. See Ebrahim S "A critical analysis of the new equal pay provisions relating to atypical employees in Sections 198A–198D of the LRA: Important lessons from the United Kingdom" (2017) 20 *PER/PELJ*.

concerning maternity provisions, termination of employment, paid annual leave, paid public holidays, and sick leave.¹⁴⁹

Convention 175¹⁵⁰ also requires the implementation of measures to expedite access to productive and freely chosen part-time work which meets the requirements¹⁵¹ of both employers and employees, provided that the essential protection mentioned above is guaranteed. The Part-Time Work Recommendation¹⁵² encourages employers to consult with the representatives of the workers concerned on the institution or extension of part-time work on a comprehensive scale and subject to associated rules and procedures, and to offer information to part-time workers regarding their specific conditions of employment.¹⁵³ South Africa has ratified the above conventions, and precarious workers in South Africa have started enjoying some measure of protection. This is evident in the LRAA.

The LRAA responds to, among other things, the increased informalisation of labour and seeks to ensure that vulnerable categories of employees receive adequate protection. Some of the most important amendments introduced relate to non-standard employees, which include temporary employment service or labour broker employees, fixed-term, and part-time employees. These groups of employees now enjoy far greater protection than previously, with concomitant restrictions placed on employers to utilise such employment structures. These new protections are restricted in some respects: for example, they apply only to persons earning below a statutory income threshold (currently R205,433.30 per annum),¹⁵⁴ and, in the case of fixed-term employees, some smaller and start-up employers may be exempt.¹⁵⁵ The amendments relating specifically to TES and fixed-term contract employees are intended primarily to restrict the use of these employees to circumstances which truly need short-term contracts of three months or less. Also, in situations where an employee is replaced by another temporarily absent employee.

In addition, section 198A of the LRA introduces further protections for TES employees who earn below the statutory income threshold. This section does not ban labour-brokering but rather aims to regulate the industry more closely. This section aims to ensure that temporary services are truly temporary and that lower-paid workers are protected from exploitation by labour brokers and their clients. Since the introduction of section 198A, there has been uncertainty as to the correct interpretation of section 198A(3)(b) – the so-called “deeming provision”. The Constitutional Court has ruled on the correct interpretation in *Assign Services (Pty) Limited v National Union of*

¹⁴⁹ Mokofe (2020) at 573. Exclusions may be introduced for part-time workers whose hours of work or earnings do not meet certain thresholds.

¹⁵⁰ Part-Time Convention 175 of 1994.

¹⁵¹ Mokofe (2020) at 573.

¹⁵² Part-Time Work Recommendation 182 of 1994.

¹⁵³ Part-Time Work Recommendation 182 of 1994.

¹⁵⁴ Section 198A of the LRA.

¹⁵⁵ Section 198A of the LRA.

Metalworkers of South Africa and Others.¹⁵⁶ Section 198B regulates the use of fixed-term contracts, and the underlying principle in section 198B is the concept of justifiability. Employers must be able to justify fixing the duration of an employment contract for more than three months. Failure to abide by the limitations results in the employees becoming permanent employees (fixed-term employees) or being deemed to be employees of the client (TES employees).

The LRAA also streamlines the procedure to be followed when reviewing CCMA arbitration awards. It also discourages litigants from instituting review applications as a tactical ploy to frustrate or delay compliance with arbitration awards. The amended section 145(5) of the LRA provides that a person who institutes a review application must arrange for the matter to be heard by the Labour Court within six months of commencing proceedings. However, the Court has been given the power to condone a failure to comply with this provision on good cause shown. In terms of section 145(6), judges are required to hand down judgment in review applications “as soon as reasonably possible”. This provision reiterates the need for the speedy resolution of review applications. For review applications to be finalised speedily, litigants must adhere to the timelines provided for the filing of pleadings. Collective labour law was also materially affected by the amendments introduced by the LRAA.

These amendments are aimed at promoting the inclusion of non-standard employees in the collective bargaining framework and expanding the application of organisational rights. This effectively expands the employee pool in a workplace to procure organisational rights. Thus, the amendments aim to create a more inclusive collective bargaining arena in the workplace. It was hoped that this would reduce the need felt by smaller unions to use industrial action as the only route to secure organisational rights previously reserved for more representative unions.

9 CONCLUSIONS

This article has examined the precarious nature of work in the South African economy before the Covid-19 pandemic (the “old normal”), considered the impact of the pandemic on precarious workers, and provided an overview of measures taken by the ILO and how these provisions can be used to address precarity in South Africa. The immediate impact of the crisis on employment and hours worked was ten times more severe than that during the first months of the 2008 global financial crisis. Once again, precarious workers bore the brunt of the shock, with low-skilled workers and those in vulnerable employment having been particularly exposed. It is clear from this article that the Covid-19 pandemic aggravated poverty, unemployment, and inequality in South Africa. Furthermore, the disruptive nature of the new forms of work that are emerging in the Fourth Industrial Revolution has not improved the situation. However, it is worth noting that the virus has by no means been completely defeated despite the availability of vaccines to all South Africans today. The risk of new outbreaks remains imminent. Although the impact of the pandemic is still felt in the country, the economic and social life is returning to normal while keeping the pandemic in check without unduly strict

¹⁵⁶ *Assign Services (Pty) Limited v National Union of Metalworkers of South Africa and Others* (CCT194/17) 2018 ZACC 22.

measures of containment. This is evident in the latest official unemployment rate declining further to 32.9% in the third quarter of 2022, from 33.9% in the second.¹⁵⁷

Now is the time for us closely to evaluate this “new normal” and start with the task of building a future for work that will be safer and more effective in cushioning the fall-out of future crises on jobs and earnings. Many challenges highlighted in the ILO’s Centenary Declaration for the Future of Work are very important in a post-Covid-19 world. “Building back better” requires policy coherence, especially between economic, employment, and social policies, and a holistic approach by governments. It also requires an approach that takes all stakeholders on board and leads to the identification and execution of state-specific policy packages. In this regard, social dialogue and collective bargaining can play a crucial role. Building back better also demands that assistance reaches those most in need and that improving the circumstances of the most disadvantaged and vulnerable categories in the labour market is accorded the highest priority to avoid a further escalation in already unacceptable levels of inequality. Ultimately, the government must step in and fill the gaps to protect precarious workers and persons involved in new forms of work. Furthermore, the Covid-19 pandemic has increased national debate on the possibility of a universal basic income grant,¹⁵⁸ and the government is considering various proposals in this regard. An income support grant that reaches poor and unemployed workers can be an effective and admirable part of South Africa’s fiscal constitution.

There is an urgent need for equitable and inclusive policy responses to guarantee article 25.1 of the Universal Declaration of Human Rights, which provides:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.¹⁵⁹

In addition, just as everyone has the same universal rights, having universal social protections would prepare us to face the next pandemic with greater unity. What we truly need is a new social contract in which the work of all workers is acknowledged and protected with appropriate employment contracts, employment security, and social protection in a new economy in the wake of the Covid-19 crisis.

¹⁵⁷ The Quarterly Labour Force Survey (“QLFS”) Q3:2022.

¹⁵⁸ Smit S “The BIG debate: Would new social grants compromise economic growth?” (2022) at <https://mg.co.za/business/2022-02-08-the-big-debate-economic-growth-vs-social-grants/> (accessed 13 October 2022).

¹⁵⁹ See article 25.1 of the Universal Declaration of Human Rights, 1948.

BIBLIOGRAPHY

Books

- Basson AC, Christianson MA, Dekker A, Garbers C, Le Roux PAK et al. *Essential labour law* 5th ed Cape Town: Labour Law Publications (2009)
- Dugard CJR *International law: A South African perspective* Cape Town: Juta (2019)
- Edgell S *The sociology of work continuity and change in paid and unpaid work* USA: Sage (2012)
- Grogan J *Workplace law* 11th ed Cape Town: Juta (2014)
- Hacker J *The great risk shift: The assault on American jobs, families, health care and retirement and how you can fight back* 2nd ed New York: Oxford University Press (2006)
- Osterman P *Securing prosperity: The American labour market: How it has changed and what to do about it.* New Jersey: Princeton University Press (2000)
- Standing G, Sender J & Weeks J *Restructuring the labour market: The South African challenge – An ILO country review* Geneva: International Labour Office (1996)
- Van Niekerk A, Smith N, Christianson MA, McGregor M & van Eck BPS *Law@work* Cape Town: LexisNexis (2019)
- Weil D *The fissured workplace: Why work became so bad for so many and what can be done to improve it?* Cambridge, MA: Harvard University Press (2014)

Chapters in books

- Benjamin P “Beyond the boundaries: Prospects for expanding labour market regulation in South Africa” in Davidov G & Langille B (eds) *Boundaries and frontiers of labour law* Oxford: Hart (2007)
- Fenwick C, Kalula E, Landau I “Labour Law: A Southern African perspective” in T Tekle (ed) *Labour law and worker protection in developing countries* Oxford: Hart (2010)
- Houseman SN “The benefits implications of recent trends in flexible staffing arrangements” in Mitchell OS et al. (eds) *Benefits for the workplace of the future* USA: University of Pennsylvania Press (2001)
- Kahne H “Part-time work: A hope and a peril” in Warme B et al. (eds) *Working part-time: Risks and opportunities* New York: Praeger (1992)
- Theron J “Employment is not what it used to be” in E Webster & K von Holdt (eds) *Beyond the apartheid workplace: Studies in transition* Scottsville: University of KwaZulu Natal Press (2005)
- Weiss M “Challenges for labour law and industrial relations” in D Kim & M Rönmar (eds) *Global labour and employment relations: Experiences and challenges* Seoul: Parkyoung Publishing & Company (2020)

Journal articles

- Brassey M "The nature of employment" (1990) *ILJ* 889-936
- Cheadle H "Regulated flexibility: Revisiting the LRA and the BCEA" (2006) *ILJ* 663-704
- Clay JM & Parker MO "Alcohol use and misuse during the COVID-19 pandemic: A potential public health crisis?" (2020) 5(5) *Lancet Public Health* 3243-57
- Du Toit D "Platform work and social justice" (2019) 40 *Industrial Law Journal* 1-11
- Du Toit D, Fredman S & Graham M "Towards legal regulation of platform work: Theory and practice" (2020) 41 *ILJ* 1493-1523
- Ebrahim S "A critical analysis of the new equal pay provisions relating to atypical employees in Sections 198A-198D of the LRA: Important lessons from the United Kingdom" (2017) 20 *PER/PELJ* 1-30
- Fourie ES "Non-standard workers: The South African context, international law, and regulation by the European Union" (2008) 11(4) *Potchefstroom Electronic Law Journal* 152-184
- Gericke SB "A new look at the old problem of a reasonable expectation: The reasonableness of repeated renewals of fixed-term contracts of employment" (2011) 14 *PER/PELJ* 136-234
- Kalleberg AL "Non-standard employment relations: Part-time, temporary and contract work" (2000) 26 *Annual Review of Sociology* 341-365
- Kanbur R "Conceptualising informality regulation and enforcement" (2009) 52 *Indian Journal of Labour Economics* 33-42
- Krahn H "Non-standard work arrangements" (2004) 5 *Perspectives on Labour and Income* 35-45
- Matilla-Santander N et al "COVID-19 and precarious employment" (2021) 51(2) *International Journal of Health Services* at 1 available at <https://pubmed.ncbi.nlm.nih.gov/33430684/> (accessed 12 October 2022)
- Mokofe W & Van Eck S "COVID-19 at the workplace: What lessons are to be gained from early case law" (2022) 55 *De Jure* 155-172
- Megret F "The laws of war and the structure of masculine power" (2018) 19(1) *Melbourne Journal of International Law* 200-226
- Mills SW "The situation of the elusive independent contractor and other forms of atypical employment in South Africa: Balancing equity and flexibility" (2004) 25 *Industrial Law Journal* 1203-1235
- Mokofe W "The changing world of work and further marginalisation of workers in South Africa: An evaluation of the relevance of trade unions and collective bargaining"(2021) 54(2) *Comparative and International Law Journal of Southern Africa* 1-39
- Mokofe W & Van Eck S "Reflections on marginalised workers and the role of trade unions in the changing world of work" (2021) 42 *Industrial Law Journal* 1365-1389

Mokofe W “The International Labour Organisation in pursuit of decent work in South Africa: An appraisal” (2020) 41(3) *Obiter* 573-592

Mills SW “The situation of the elusive independent contractor and other forms of atypical employment in South Africa: Balancing equity and flexibility” (2004) 25 *Industrial Law Journal* 1203-1235

Mukumbang FC, Ambe AN & Adebisi BO “Unspoken inequality: How COVID-19 has exacerbated existing vulnerabilities of asylum seekers, refugees, and undocumented migrants in South Africa” (2020) 19(1) *International Journal of Equity Health* 1-7

Olivier MP “Enhancing access to South African social security benefits by SADC citizens: The need to improve bilateral arrangements within a multilateral framework (part II)” (2011) 1(1) *SADC Law Journal* 129-163

Olivier MP & Mpedi LG “Coordination and integration of social security in the SADC region: Developing the social dimension of economic co-operation and integration” (2003) 28(3) *Journal for Juridical Science* 10-39

Polivka AE & Nardone TJ “On the definition of contingent work” (1998) 112 *Monthly Labour Review* 9-16

Polivka AE “Contingent and alternative work arrangements defined” (1996) 119 *Monthly Labour Review* 3-9

Theron J “Employment is not what it used to be” (2003) 24 *Industrial Law Journal* 1247-1282

Thompson C “The changing nature of employment” (2003) 24 *Industrial Law Journal* 1793-1815

Treu T “Labour flexibility in Europe” (1990) 131 *International Labour Review* 497-512

Vosko L “Legitimising the triangular employment relationship: Emerging international labour standards from a comparative perspective” (1997) 19 *Comparative Labor Law and Policy Journal* 43-78

Legislation

Basic Conditions of Employment Act 75 of 1997

Employment Equity Act 55 of 1998

Labour Relations Act 66 of 1995, as amended

National Minimum Wage Act 9 of 2018

International Labour Organization conventions & recommendations

ILO Part-Time Work Convention 175 of 1994

ILO Private Employment Agencies Convention 181 of 1997

ILO Private Employment Agencies Recommendation 188 of 1997

ILO Resolution concerning Decent Work and the Informal Economy

ILO Recommendation 166 of 1982

ILO Termination of Employment Convention 158 of 1982

ILO Global Commission on the Future of Work: Work for a Brighter Future (2019) 18

ILO COVID-19 and the Impact on Agriculture and Food Security ILO Sectoral Brief, 17 April 2020 (ILO Geneva 2020)

ILO Jobs for Peace and Resilience: A Response to COVID-19 in Fragile Contexts (draft) (ILO Geneva 2020)

ILO "Jobs for peace and resilience: A response to COVID-19 in fragile contexts" (draft) Geneva: ILO (2020)

ILO Non-standard Forms of Employment Report for discussion at the Meeting of Experts on Non-Standard Forms of Employment, Geneva 16–19 February 2015)

Case law

Assign Services (Pty) Limited v National Union of Metalworkers of South Africa & others (CCT194/17) 21018 ZACC 22, 2018 9 BLLR 837 (CC)

Bezuidenhout v Ibhayi Engineering Contractors (CC) 2005 26 ILJ 2477 (BCA)

Bottger v Ben Nomoyi Film & Co Video CC 1997 2 LLD 102 (CCMA)

Mandla v LAD Broker (Pty) Ltd 2002 9 BLLR 1047 (LC)

National Union of Metalworkers of SA & others v SA Five Engineering (Pty) Ltd & others 2007 28 ILJ 1290 (LC)

National Labour Relations Board v Hearst Publications 1944 322 US

Uber BV v Aslam 2021 UKSC 5

Uber South Africa Technology Services (Pty) Ltd v National Union of Public Service and Allied Workers 2018 39 ILJ 903 (LC)

Uber South Africa Technology Services (Pty) Ltd v NUPSAW and SATAWU obo Tsepo Morekure unreported case WECT12537-16 7 July 2017

Reports

Bhorat H, Oosthuizen M & Stanwix B (2020) "Social assistance amidst the Covid-19 epidemic in South Africa: An impact assessment". Development Policy Research Unit Working Paper 202006. DPRU, University of Cape Town

Fudge J, Tucker E & Vosko L *The legal concept of employment: Marginalising workers* Report for the Law Commission of Canada (2002)

Houseman SN "The benefits implications of recent trends in flexible staff arrangements" (2001) Working Paper No. 02-87 Upjohn Institute Working Paper No. 02-87 Upjohn Institute for Employment Research: Kalamazoo

Mitchell CM & Murray JC "Changing workplaces review: Special advisors" *Interim Report* Ministry of Labour, Canada (2016)

Theron J, Godfrey S & Visser M “Keywords for a 21st century workplace” Cape Town: UCT Institute of Development and Labour Law (2011)

World Health Organisation and the International Bank for Reconstruction and Development/World Bank “Tracking universal health coverage: Global monitoring report” Geneva: WHO and World Bank (2017)

Internet sources

Arndt C, Davies R, Gabriel S, et al. “ Impact of Covid-19 on the South African economy” in *Southern Africa Towards Inclusive Economic Development* (2020) available at <https://sa-tied.wider.unu.edu/sites/default/files/pdf/SA-TIED-WP-111.pdf> (accessed 21 May 2022)

Bhorat H “[Social assistance amidst the Covid-19 epidemic in South Africa](https://www.dpru.uct.ac.za/sites/default/files/image_tool/images/36/Publications/Working_Papers/DPRU%20WP202006.pdf)” (2020) available at https://www.dpru.uct.ac.za/sites/default/files/image_tool/images/36/Publications/Working_Papers/DPRU%20WP202006.pdf (accessed 30 November 2022)

Erasmus D “Attempted July insurrection left two million jobless and wiped R50bn from the economy” (2022) available at <https://www.dailymaverick.co.za/article/2022-04-01-cyril-ramaphosa-atmpted-july-insurrection-left-2-million-jobless-and-wiped-r50bn-from-the-economy/> (accessed 12 May 2022)

Galal S “Selected African countries with the largest number of international tourist arrivals in 2019” (2022) available at <https://www.statista.com/statistics/261740/countries-in-africa-ranked-by-internationaltourist-arrivals/> (accessed 14 May 2022)

Gronbach L, Seekings J & Megannon V “Social protection in the COVID-19 pandemic: Lessons from South Africa” (2022) available at <https://www.cgdev.org/publication/social-protection-covid-19-pandemic-lessons-south-africa> (accessed 22 May 2022)

Henry JM “The wave of privatisation in the 1980s and 1990s: Was it inevitable?” (2006) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1293910 (accessed 15 October 2022)

ILO Monitor “COVID-19 and the world of work” 3rd ed (2020) available at https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/briefingnote/wcms_743146.pdf (accessed 10 February 2022)

ILO “The impact of the COVID-19 on the informal economy in Africa and the related policy responses” (2020) available at <https://socialprotection.org/discover/publications/impact-covid-19-informal-economy-africa-and-related-policy-responses> (accessed 30 November 2022)

ILO “COVID-19: Social protection systems failing vulnerable groups” (2020) available at https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_739678/lang--en/index.htm (accessed 25 May 2022)

ILO-OECD “The impact of the COVID-19 pandemic on jobs and incomes in G20 economies” (2020) 6 available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_756331.pdf (accessed 13 October 2022)

Loprespub “Understanding precarious work in Canada” (2020) available at <https://hillnotes.ca/2020/12/01/understanding-precarious-work-in-canada/> (accessed 12 October 2022)

Skinner C, Barrett J, Alfers L & Rogan M “Informal work in South Africa and COVID-19” (2021) *Wiego Policy Brief* available at

https://www.wiego.org/sites/default/files/publications/file/WIEGO_PolicyBrief_N22%20UN%20South%20Africa%20COVID%20for%20web.pdf (accessed 30 November 2022)

Smit S “The BIG debate: Would new social grants compromise economic growth?” (2022) available at <https://mg.co.za/business/2022-02-08-the-big-debate-economic-growth-vs-social-grants/> (accessed 13 October 2022)

Stoltz E “South Africa remains most unequal country, World Bank Report finds” (2022) available at <https://mg.co.za/news/2022-03-10-south-africa-remains-most-unequal-country-world-bank-report-finds/> (accessed 14 October 2022)

Wheelock DC “Comparing the COVID-19 induced recession with the Great Depression” (2020) available at <https://research.stlouisfed.org/publications/economic-synopses/2020/08/12/comparing-the-covid-19-recession-with-the-great-depression> (accessed 12 October 2022)

World Bank “Building back better from COVID-19 with a special focus on jobs” (2021) available at <http://documents.worldbank.org/curated/en/161431626102808095/Building-Back-Better-from-COVID-19-with-a-Special-Focus-on-Jobs> (accessed 14 May 2022)

World Bank “The poverty podcast: Gender and Covid-19” (2022) available at <https://www.worldbank.org/en/news/podcast/2022/06/21/gender-and-covid-19> (accessed 12 October 2022)