

Global Issues

Migration and Migrant Workers in the Post-Apartheid Era

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Few issues have proven more vexing for labor organizations than international labor migration. Unions that seek to preserve labor standards and improve the economic life of their members are often torn between advocating for limiting the supply of foreign labor, in order to protect existing wage standards, and supporting more liberal labor migration policies that recognize the economic and political forces that set people in motion. While their policy positions may appear at first blush to be contradictory, a consistent logic underlies them; their attempt to stand in the breach, to defend the interests of those already in the country as well as those who are still coming. A review of the migration policy positions adopted by the Congress of South African Trade Unions (COSATU),¹ the largest South African labor federation, over time gives the impression of an organization struggling to do just that: defend the labor market positions of South African workers and at the same time secure the rights of labor migrants who have been part of the labor force for many years.

Migration of people and communities has been a major part of South African history and that of the region. Colonial boundaries did not neatly overlay ethnic and cultural communities that stretch across multiple states, and introduced elements of exploitation, exclusion, and migration control. During the apartheid years, the South African resistance movement, of which COSATU and its predecessor unions were such an important part, derived strength from support of other Southern African nations, the neighboring states which were instrumental to the isolation of the regime. Some of COSATU's largest unions, particularly the mineworkers, counted migrant workers among their leadership as well as membership.

'COSATU has called for regional integration that links South Africa's problems to Africa's problems in devising solutions to the underdevelopment of the continent, promotes the free movement of people, is linked to the need to fight national chauvinism and xenophobia and facilitates the enhancement of working class and trade union unity throughout the region.'² The African National Congress (ANC) government, other states in the region and COSATU all strongly assert the importance of regional collaboration and integration for economic development through the expansion of trade, income and bargaining power. Despite shared convictions in support of regionalism however, it has been difficult to translate this desire into an effectively functioning institutional reality,³ and modernization of South Africa's immigration regime has been one of the casualties.

At the end of apartheid, regionalism gave way to the growth of a robust national citizenship among South African blacks (who had been denied not only the right to vote under apartheid, but even the right to call themselves South African).⁴ Over the past few decades, negative associations from the apartheid past, increased migration, and stubborn unemployment rates among the lower-skilled black majority have underpinned migration policy debates.⁵ Xenophobic attacks began in

1996 and became increasingly common in cities across the country.⁶

Although South Africa had a long history of migrant workers in mining and agriculture, dating back to the mid 19th century, with the opening of the country after years of sealed borders and restricted migration, workers from a host of southern African nations, attracted by employment opportunities, have entered, some (estimates vary as to how many) illegally. Employers across a range of industries including hospitality, construction and private security have increasingly turned to immigrant workers to take advantage of a low wage workforce.⁷

Yet the experience of migration in the post-apartheid period has been very different than in the past.⁸ For one thing, significant numbers of cross-border migrants have been coming directly and staying for longer than did employer- contracted temporary workers. In addition, workers are migrating to South Africa because its economy is much stronger than elsewhere in the region and migrant workers have moved beyond agriculture and mining into diverse sectors as employers seek to hire fewer permanent workers. Given the policy mismatch between employer demand for migrant labor and immigration regulations that limit the number of unskilled workers who can come legally, as well as the rise in refugees fleeing violence in their home countries, there are many more irregular migrants.

Migration Policy in Pre and Post-Apartheid South Africa

The history of labor migration in South Africa and the southern Africa region cannot be neatly understood as foreign laborers crossing officially demarcated borders. Labor migration predates the colonial period both into and within what is now South Africa. By the 1840s, settler colonists began actively recruiting farm labor from all parts of the region, a process that accelerated during the latter half of the nineteenth century with the discovery of diamonds and gold. While initially migrant farm workers were only allowed to come for set periods of time and strictly confined to designated living quarters, over time a parallel, more informal and unregulated system emerged as the regime signed localized agreements to allow commercial farmers to recruit temporary and cross-border migrants and in later periods sometimes offered illegal labor migrants the option of working on commercial farms rather than being deported.⁹

With the opening of the Kimberley diamond fields in 1870, farm workers who were already accustomed to labor migration made up the majority of short-term contract workers. Changes in mining methods resulted in demand for a more stable and skilled migrant labor force but migrant workers were still kept in closed, isolated compounds and prevented from settling in white urban areas. When gold was discovered in Witwatersrand in 1886, requiring much larger numbers of migrant workers, the short-term contract model was expanded.

Mining companies reduced competitive bidding for labor through the operation of a centralized recruitment agency, the Witwatersrand Native Labour Association (WNLA), operated by the Chamber of Mines. This agency recruited extensively in neighboring countries, where workers had fewer opportunities and were willing to work for lower wages than South African laborers. The government supported the mine companies' insistence on the necessity of migrant labor as did neighboring governments, signing bilateral agreements that entrenched the contract labor system for decades. Between 1920 and 1990, migrant workers came to work in the mines from every country in the region, especially Mozambique, Botswana, Lesotho and Swaziland.¹⁰ The numbers dropped

sharply in the mid 1970s when in response to rising unemployment, the government gave preference to South African mineworkers, but gradually increased again after that.

According to Wentzel and Tlabela, 'This pattern of large-scale utilization of cheap labour and the control of labour by means of pass laws and the compounds, was the beginning of a system that dominated migrant labour in South Africa for more than a century.'¹¹

The short-term contract model also negated workers ability to enter the economic or social mainstream in South Africa. 'A lifetime of work in South Africa,' Crush and Tshitereke write, 'never qualified a single miner for permanent residence.'¹² Migrant miners were housed in enormous single-sex barracks and worked under oppressive conditions, returning home at the end of their contracts until they received the next one. This system has been widely viewed as a cornerstone of apartheid – providing a template for the regime's strict enforcement of internal migration and its eventual 'homelands' policy via the Bantu Authorities Act and the Group Areas Act, which assigned specific residential locations to racial and ethnic groups – in effect making black South Africans 'foreigners' within their own country.

The Bantustans fit within longstanding policies on internal labor migration, begun well before the Nationalist Party came to power in 1948. Sponsored by the British colonial government in 1913, the Land Act set aside 13% of all of South Africa's land area as native reserves for 75% of the population classified as African.¹³ Post-1948, the apartheid regime designated these as 'homelands' for black South Africans, and planned to eventually spin them off as independent countries. 'Blacks could work in white-designated areas, but they could never hope for citizenship in the larger South Africa,' Seidman writes.¹⁴ The pass system and the Urban Areas Act meant that black laborers, whether foreign or indigenous, lived in constant threat of being caught after hours without authorization in white areas. Rural Africans were treated as temporary sojourners by the apartheid regime, who would be given permission to work in the factories, farms and mines of white South Africa but were expected to return to their 'homelands' at the end of their working lives. According to Seidman, 'This circulatory migrant labor system was apartheid's cornerstone.'¹⁵ In its 'denationalization' of the indigenous population, Segatti points out, it also blurred the line between the treatment of black South Africans and black foreigners.¹⁶ Laws and regulations passed over the course of the 20th century linked immigration policy with citizenship and management of indigenous populations. Further, workplace relations were defined by race with whites occupying skilled and managerial positions while blacks were in unskilled and semi-skilled jobs and subject to 'an aggressive culture of racial insults and racial assault.'¹⁷

This workplace racism in turn was reflected in migration policy through the development of a 'two gate system', whereby only whites, primarily from Western Europe, could emigrate legally to South Africa through the front gate, while blacks were confined to the back gate where undesirable migrants could be prevented from entering at all and low wage migrant laborers allowed in on temporary contracts only.¹⁸ However, alongside this was an informal system through which labor migrants from neighboring countries crossed South Africa's porous borders to work in agriculture, manufacturing and domestic service. In fact, until the 1960s, there were no official border posts between South Africa and Botswana, Lesotho and Swaziland. According to Crush and McDonald, the regime varied in its treatment of irregular migrants, at times ignoring them and at times 'dragooning them to work in labor-starved sectors' but by the 1980's, it had adopted a more consistently hard line, engaging in arrest and deportation.¹⁹

While under the apartheid regime, temporary labor migration was largely confined to mining and agriculture, many sectors now employ temporary migrant workers. Even so, South African employers complain that immigration laws limit their ability to hire them legally – contributing to the marked uptick in irregular migrants. Estimates vary widely as to how many irregular migrants there are; figures range from 9 million to about half a million.²⁰ Despite high unemployment among South Africans, researchers have found that most irregular migrants, with few opportunities to obtain work permits, have still managed to find work in construction and services, and that domestic employers show a distinct preference for them.²¹ Although migration policy requires strict penalties on employers, they are seldom prosecuted.

Undocumented migration has been further complicated by the flow of refugees from surrounding countries, notably those from Mozambique during the civil war against apartheid-backed rebels. While a 1993 agreement with the UN High Commissioner for Refugees enabled Mozambicans to get refugee status, most of those who sought refuge in the country could not do this and continued to live and work without status. Many thousands were deported as illegal immigrants. Zimbabwe, over the past twenty years of political and economic crisis has transformed from an immigrant-receiving to a migrant-sending country.²² Zimbabweans have one of the world's lowest life expectancy rates (34 for females and 37 for males), an 80% unemployment rate and critical shortages of fuel and medical supplies.²³

The situation did not change much under the new government. According to Crush, between 1994 and 2004, approximately 150,000 asylum applications were made, but only 26,900 were successful.²⁴ The process has become so backlogged that decisions are being made on the basis of country of origin with those from Somalia and the Democratic Republic of Congo (DRC) more often succeeding than those from Zimbabwe and other African countries.²⁵

In order to provide some opportunities to attain permanent resident status, however, three amnesties were extended between 1996 and 2000. The first, strongly advocated by the National Union of Mineworkers (NUM), was for contract mineworkers from South African Development Community (SADC) countries who had been working in South Africa for at least ten years and who had voted in the 1994 election.²⁶ Interestingly, only about 40% of the estimated 130,000 eligible miners applied. The second, strongly opposed by the (Department of Home Affairs) DHA, was for undocumented citizens of SADC states who had lived in the country for over five years, having entered clandestinely during apartheid.²⁷ The third was for Mozambican refugees who had entered before 1992 and were still living there.

In 2002, amidst concern that a skills shortage was inhibiting economic growth, the government adopted Immigration Act No. 13, intended to make it easier for skilled migrants to come as well as to crack down on irregular migration. Over the strenuous objections of COSATU, the Act treated most labor migrants, skilled and unskilled, as temporary residents. More work permits were issued and there was a marked increase in temporary migration from Africa and Asia.²⁸ Before the Act, many farmers brought in irregular migrants from Zimbabwe, Mozambique and Lesotho, and after its passage they have employed at least some migrants from these countries legally through the corporate permit system.²⁹ Nevertheless, irregular migration, enabled by growing informalization of employment in general, has continued to rise.

The Act also criminalized the employment of undocumented migrants. Before 2008 courts took this to mean that they were not entitled to protection under the Labor Relations Act and other

labor statutes. While thereafter the government took a more inclusive position with regard to their rights, which was hailed as a step forward,³⁰ this has had limited impact.

Crush finds that over the past decade there has been a dramatic increase in the numbers of irregular migrants applying for refugee status. Between 2000 and 2010 there was a growing influx of Zimbabwean migrants, which the government initially sought to deal with through mass arrests and deportations: in 2005 over 100,000 were deported and in 2008, over 200,000. In 2009 a more humane approach was taken which included a moratorium on deportations until January 2011, a free 90-day visa for new entrants and a 12-month 'special dispensation permit' with the right to work for those already in the country.³¹ A formal amnesty was finally extended to Zimbabwean nationals in 2010 that allowed them to apply for work, study or business permits as long as they had Zimbabwean passports and proof of employment, of operating a business or of registration with an educational institution. Permits would be valid for up to four years (one short of the five needed to apply for permanent residency). By the end of 2010, just under 276,000 applications had been received and the moratorium was extended to August 2011 to allow time to process them.

In 2005, SADC put forward a much more limited approach to migration than that proposed several years earlier. The Draft Protocol on the Facilitation of Movement of Persons in SADC focused on facilitating SADC citizens' ability to enter other SADC countries visa-free for periods of up to three months but did not envision major shifts in terms of regional migration policy. Not yet approved by the required two thirds of member states, the Protocol essentially accepts the primacy of states' domestic legislation and of bilateral and multi-lateral agreements already in force. Thus despite protests from NGOs and human rights groups,³² the temporary work schemes in effect during apartheid have endured along with a strikingly restrictionist 'South Africans first' migration philosophy that has made lawful entry to work more difficult and largely preserved the contract migrant labor system.³³

Scholars have long reflected upon the dialectical dynamic of citizenship: defining the boundaries of membership in a nation state also necessitates defining the borders of exclusion.³⁴ Despite the push for a more inclusive South African nationalism post-1994, many African laborers and refugees remain outside the circle of membership, despite their long relationship to the country. In 1995, the South African Citizenship Act set forth three paths to citizenship: birth in South African territory, birth through South African parentage and citizenship through naturalization after at least five years of permanent residence (two years if married to a citizen). Given that permanent residency became the main way for migrants to access citizenship, and the extremely limited options for most to remain legally, many are simply unable to meet the requirements for attaining permanent residence. Citizenship at present is out of the reach of many, particularly low skilled workers.³⁵

Migration policy in South Africa has long been interwoven with policies of racial segregation and exclusion. Examining immigration policy after 1910, 1948, 1963 and 1994, Peberdy writes: the 'first impulse of new governments has consistently been to articulate a new vision of national identity and simultaneously, to redefine the racial and cultural boundaries of belonging and exclusion' – a process accompanied by a highly restrictionist immigration discourse and policy.³⁶ These must be viewed within the context of the ANC's 'effort to construct a new inclusive national identity based on citizenship and national territorial integrity.'³⁷ Similarly, Polzer argues that South Africa's immigration policy has in part been shaped by the state's construction of a discourse of nation-building that is based on ideas of human rights, but also on socio-economic rights for citizens.³⁸

COSATU has long asserted the importance of regional collaboration and integration for economic development through the expansion of trade, income and bargaining power. Despite shared convictions to regionalism however, it has been difficult to translate this in practice and the modernization of South Africa's immigration regime has so far been one of the casualties.³⁹ As the largest membership organization in the country and a close ally of the ANC, COSATU's approach to migration did not develop in a vacuum – it was informed by what it understood to be the attitudes of its own members and leaders and influenced by government policy. Additionally, COSATU's stance on migration policy and migrant worker organizing has been influenced by declining union fortunes in the face of growing casualization and informalization of work in post-apartheid South Africa. Given the central role played by labor unions and by COSATU in the national liberation struggle, as well as in the establishment of strong labor market policies and institutions in the early years of the new regime, it would seem that things might have turned out differently.⁴⁰

Given the global nature of the anti-apartheid struggle, the important role of the neighboring states and the internationalist orientation of the labor movement in South Africa historically, it is reasonable to expect that COSATU would have taken a more activist approach to migration policy, that it would be more open to engaging in migrant worker organizing – and less skittish about explicitly focusing on migrants. Its tardiness in doing so can be attributed to four factors: 1) the relationship between the labor movement and the state, 2) globalization and changes in the structure of employment, 3) increasing immigration rates, and 4) shared understandings and organizational norms.

Dynamics of statelabor union relationships: Although the ANC continues to project a pro-union disposition and COSATU continues to be an important partner, the reality is that the state's embrace of free market policies and firm behaviors have made the labor movement insecure and COSATU leaders are now in a stage of actively debating its close alliance with the ANC. As a member of the governing alliance, even while it disagreed with many features of the ANC's labor migration policies, COSATU did not actively mobilize its membership base against them and after final passage of the Immigration Act in 2004 became less engaged in the policy debate. This could change in the next few years if COSATU charts a more independent course from the ANC. In December of 2013, COSATU's largest affiliate, the National Union of Metalworkers of South Africa (NUMSA) adopted a resolution at its annual congress to end its financial support for the ANC, not campaign for it in 2014 and urge COSATU to break off its alliance with both the ANC and the South African Communist Party.⁴¹

Changes in the structure of employment, globalization and high levels of unemployment: South African unions are now confronted with the internationalization of financial and product markets and changing structures of employment including the flexibilization of labor and very high unemployment. Changes in the structure of employment have led to union insecurity while at the same time, individual workers are faced with the fear of losing their jobs as well as the reality of having to financially support unemployed family members.

Increased migration flows: In other research, Fine and Tichenor have argued that decreased migration to the United States between the 1920s and the 1960s contributed to unions feeling less threatened and therefore adopting more solidaristic positions on immigration policy.⁴² In South Africa after the end of apartheid, by contrast, while the numbers are disputed, there was an increase in irregular labor migration from southern Africa as well as a dramatic uptick in the number of

refugees from war-torn states like Zimbabwe, accompanied by a shrinking labor market, especially in those sectors lending themselves to migrant employment such as mining and agriculture.

Shared understandings and organizational norms: COSATU and its members in turn do not consider immigration policy in a vacuum. They are part of the collective consciousness of the new South Africa, which focuses on a powerful construction of national citizenship.⁴³ Rather than a state predicated on racial or ethnic criteria as was the old South Africa, the new South Africa enshrined in the constitution and popular discourse represents a set of shared understandings based upon human rights, democracy, inclusion, protection from discrimination and, importantly, equal resource allocation and service delivery and distribution of socioeconomic rights and entitlements to citizens, many of whom were long denied them.

Finally, within the ANC, COSATU and FAWU (Food and Allied Workers Union) there is an organizational norm of universalism that rejects particularist identities of ethnicity or migration status in favor of a broad worker identity. This impulse has its origins in the misuse to which ethnicity was put by the apartheid regime which, 'explicitly sought to link ethnic identities for Africans to specific "homelands" in an attempt to legitimate "separate development".' Under the deliberate divide and rule strategies of apartheid, all migrant workers were organized separately according to tribal and national identity. The assertion of a national South African identity for blacks is a rejection of this legacy.⁴⁴ Just as the apartheid regime tried to reinforce tribalism among South Africa's blacks, the anti-apartheid movement 'often rejected ethnic labels as irrelevant.'

COSATU won the battle to embed social democratic labor market institutions in the economic governance of the country but lost the battle within the ANC government to pursue corresponding fiscal and monetary policies. It is now struggling to defend unions during a period in which the traditional employment relationship is breaking down all around it and rates of unionization are plummeting. While strictly controlled migration was part of the apartheid regime, reliance upon low wage migrant labor is now a feature of most advanced industrial economies, and South Africa is no exception. Effective strategies for a revival of union fortunes in South Africa as in the United States and Europe are unclear but all have shifted in the past few years to targeting lower wage workforces in the service sector that were for many years not viewed as central. The presence of migrant workers in so many of these low wage sectors suggests that, to succeed, unions will have to include them in their organizing campaigns. In the United States, Latino and Caribbean workers have been central to union campaigns in the janitorial, construction, food service and healthcare sectors.

Although COSATU policy now explicitly makes the connection between resisting xenophobia and organizing migrant workers, there is enduring resistance to articulating an explicitly 'migrant worker' strategy. Rather, the organization prefers to subsume migrant workers under the rubric of 'vulnerable workers.' This paper has argued that this is because first, migration policy was closely associated with apartheid. Second, foreign migrant workers are casualties of the post-apartheid citizenship and nation-building exercise. Third, because a labor movement confronting high unemployment and increasing insecurity among its own members is under pressure to embrace an restrictionist, 'our people first' position. Finally, because including migrant workers within the category of vulnerable workers seems more in keeping with COSATU's 'we are all the working class' orientation. The question in part is, does it matter whether migrant workers are organized as, say farm workers first and only secondarily as migrants or is there something about their identities as migrants and the specific issues they face that is important to the organizing process and in particular

to migrant worker self-organization? Once again, the experience in the United States, admittedly quite different than South Africa, suggests that it does.

Immigrant workers have specific passions and identifications that are central to their experiences in their countries of origin. In the United Farm Workers, the iconography of Chicano culture was central to the movement. Likewise, in the Justice for Janitors campaign, '*Si Se Puede*' and the explicit references to Latin American culture were critical markers for workers to feel part of the union. When these are forced to the side, important means of connecting and building movement are sacrificed. In addition, when unions do not acknowledge the 'migrant' within the vulnerable worker, they neglect issues that may be as important as wages and working conditions. In South Africa, for Zimbabwean, Mozambican and other workers today, these issues include legalization first and foremost but also the ability to bring one's family and to enroll one's children in school, not to have wages held for ransom when one goes home to their country of origin as well as accommodation of religious and cultural practices at the workplace. Above any specific issue however, is recognition itself. Ambivalence does not beget trust.

It is reasonable that COSATU might oppose temporary worker programs⁴⁵ and the hiring of undocumented workers, even that it would support employer sanctions. These positions migrants might ignore or even accept as concessions to *realpolitik*, but ambivalence toward the workers themselves is easily detectable and toxic for relationship building. While apartheid policies sought to 'freeze, institutionalize and deepen the divisions between workers of different ethnic backgrounds,'⁴⁶ the freedom movement was about building unity between all workers, in part by underplaying difference. It could be that in the current moment, organizing demands embracing differences at least with respect to migrant workers, rather than denying they exist. 'Vulnerable worker' is neither an identity nor a rallying cry, it is a category.

NOTES

1. Masondo, 2012.
2. Ibid., p. 25.
3. Gibb, 1998.
4. Seidman, 1999, p. 421.
5. Mattes et al., 2000.
6. Peberdy and Crush, 1998.
7. Webster, E. (2013a).
8. Interviews with Edward Webster, October 23 and 25, 2013.
9. Crush, 2008a.
10. Trimikliniotis et al., 2008, p. 1325.
11. Wentzel and Tlabela, 2006, p. 73.
12. Crush and Tshitereke, 2001, p. 50.

13. Seidman, p. 422.
14. Ibid.
15. Ibid.
16. Segatti, 2011b.
17. Von Holdt, 2002, p. 287.
18. Segatti, 2011b.
19. Crush and McDonald, 2001a.
20. Crush, 1999a.
21. Crush, 2011, p. 16.
22. Crush et al., 2012, p. 4.
23. Mosala, 2008, p. 3.
24. Crush, 2011, p. 16.
25. While the largest number of refugee claimants is from Zimbabwe, the government maintains that Zimbabwe is not a 'refugee-generating' country; *ibid.*, p. 18.
26. The amnesty did not help retrenched or injured miners who had already been sent home, however. See Crush and McDonald, 2001a, pp. 5-8.
27. Crush and Williams (eds.), 1999.
28. *Ibid.*, p. 15.
29. Crush, 2011, p. 27.
30. *Discovery Health Limited v. Commission for Conciliation, Mediation and Arbitration* (2008) (JR 2877/06) ZALC 24; (2008) 7 BLLR 633 (LC); (2008) 29 ILJ 1480 (LC) (28 March 2008).
31. Crush, 2011, p. 19.
32. Crush and McDonald, 2001b, p. 6.
33. Segatti, 2011b, pp. 36-42.
34. See Bosniak (2008); Walzer (1983); Soysal (1995); Somers, 2008.
35. Peberdy, 2001, pp. 15 & 57.
36. Peberdy, 1999, quoted in Crush and McDonald, 2001a.
37. Peberdy, 2001, p. 16.
38. Polzer, 2005, p. 89.
39. Gibb, 1998.
40. Webster and Buhlungu, 2004.

41. Matuma Letsoala, *Mail & Guardian*, 'Gatvol NUMSA cuts ties with ANC', December 20, 2013.
42. Fine and Tichenor, 2009.
43. Peberdy, 2001, p. 28.
44. Seidman, p. 425.
45. Trimikliniotis, et al., 2008, disagree, saying that prioritizing citizens' employment, particularly in a country with such high rates of poverty and unemployment is a reasonable position for a national union to take.
46. Von Holdt, 2002, p. 289.

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