Chapter 17
"No, We Are Not Fighting Against Foreign Workers and We'll Never Fight Against Foreign Workers": Trade Unions and Migrant Rights

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In South Africa, the post-apartheid period can be seen as one in which foreigners have been demonised and blamed for various social ills, ranging from crime to persistent high unemployment rates. Too often, these negative perceptions, expressed in various discriminatory ways, erupt into extreme xenophobic violence (Misago et al., 2015). These perceptions permeate all levels of society and are arguably fed and emboldened by pronouncements of political leaders and others in positions of power (Landau & Freemantle, 2010; Scott, 2013). These practices and discourses persist despite the rhetoric of adherence to and valorisation of human rights as expressed and articulated both in international human rights instruments and in our own lauded constitution.

One institutional formation that enjoys widespread influence is trade unions. They purport to represent workers of all types, and claim legitimacy on the basis of their collective bargaining power, which relies on the discourse of global worker solidarity. Migrants, however, occupy a nebulous space, defined in many ways by precariousness, a precarity moreover that is at the same time common to many among the working class, who are faced with various forms of late-capitalism induced insecurity, but that is also exacerbated by the additional degree of insecurity afforded by the migrant status.

As a result, my overall research question is whether the way trade union leaderships and shop-stewards engage with and define the existence of denizens shapes consciousness and dispositions towards "others", and either facilitates or obstructs them from carrying out their rights based obligations. Further, the very survival of unions itself depends, as will be shown, on their ability to negotiate these obligations.

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17.1   Human Rights Discourse

Human rights are rights that are "held by individuals simply because they are part of the human species", and they are universal in content and "shared equally by everyone regardless of sex, race, nationality, and economic background" (Ishay, 2008:3). For Sen (2010:357) human rights are "strong ethical pronouncements as to what should be done" that serve as grounds for legislation that will give human rights claims legal force. Human rights are often seen as divided between first and second generation rights, with the former covering political and civil rights and the latter covering social and economic rights.[1] This apparent division is reflected in the two human rights instruments, the International Covenant on Civil and Political Rights (ICCPR) (UN, 1966b) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (UN, 1966a), that were adopted in 1966 to make the rights declared in the Universal Declaration of Human Rights (UDHR) legal and binding (Mattila, 2000:59). These three documents taken together form the International Bill of Rights.

Historically, there has been a division between these two groups of rights that was tied to cold war ideological conflicts, with the capitalist West prioritising civil and political rights and the communist East favouring social and economic rights, with each criticising the other for their shortcomings in realising the largely ignored set of rights. More recently, this divide continues although the geography has shifted, with the geopolitical North valorising first generation rights and the South favouring second generation economic and social rights. (Chong, 2010; Ishay, 2008; George, 2003).

Among human rights practitioners, activists and academics working in the field, there is also a supposed functionalist divide in that second generation rights are seen either as not being justiciable[2] (related to the institutionalisation critique[3]), or that the naming and shaming methodology used by human rights organisations such as Human Rights Watch to draw attention to clear violations of first generation rights does not lend itself to achieving positive second generation rights irrespective of the validity and legitimacy of these rights claims (Chong, 2010; Sen, 2010; Roth, 2004; Taran, 2000). Focusing on social and economic rights is also discouraged on philosophical grounds, on the basis that "human rights ought to be exclusively negative protections of individual liberty, and that economic and social rights threaten to dilute the effectiveness of civil and political rights because they are inherently collective, positive, or programmatic rather than appropriately legal" (Chong, 2010:12).

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[1] Third generation rights are those related to group rights or rights to self-determination (Ishay, 2008).

[2] This is demonstrably not the case in South Africa (see for example Klaaren, 2005).

[3] This "relates to the belief that real rights must involve an exact correspondence with precisely formulated correlate duties" (Sen, 2010: 382). This correspondence is only seen to exist when a right is institutionalised.

I see this divide as a socially constructed one, and for me, human rights in the tradition of the UDHR are intrinsically linked, and the effective attainment of one necessitates the realisation of the others. After all, "People cannot participate in a political process or truly exercise free speech if they are dying of hunger or a preventable disease" (Chong, 2010:7). This is also in keeping with the insistence by international bodies such as the UN and the ILO that human rights must be seen as universal, indivisible and inalienable (Taran, 2000).

Human rights instruments nevertheless do not explicitly include protection of undocumented migrants, but arguments for their inclusion are made on both a normative and a pragmatic basis (Berg, 2007). The great increase and growth in visibility of migrants as a group, globally and in South Africa (ILO, 2018; Moyo et al., 2018; Joynt & Webster, 2011; Landau et al., 2010; Castles & Miller, 2009; Muzondidya, 2008), has led to attempts to redefine what it means to be a citizen and what is covered under citizen rights (with the corollary being what is denied to those identified as non-citizens) (Ishay, 2008). As Taran (2000:10) notes, "In many countries, legal application of human rights norms to non-citizens is inadequate or seriously deficient, particularly as regards undocumented migrants, those without authorization to enter or remain in the country". The new denizens, as Standing (2011) refers to migrants, are often prevented from accessing rights de facto due to social practices, even when they are accorded de jure rights[4] through legislation. As a result, the overwhelming majority of migrants are faced with limited options and have little voice, and have to make a living among and as part of the precariat.

17.2 Migrants and Precarity

The concept of precarity here is especially useful. The precariat, for Standing (2011:10), is made up of people who lack what he identifies as the seven forms of labour related security: labour market security, employment security, job security, work security, skill reproduction security, income security and representation security. Migrants are often, irrespective of their qualifications or status in their countries of origin, included among the ranks of the precariat in the receiving country, subject to this array of insecurities that is often exacerbated by their migrant status. They do not have citizenship and become what Standing (2011) terms denizens, people who are perceived or constructed as lacking entitlement to some or all rights. They are workers who frequently do not have the right to work, never mind the rights and protections of those recognised as workers. All global migrants, in this sense, are denizens, perhaps enjoying some rights but not others. It must be noted that many of the sources of insecurity experienced by migrants in precarious employment arrangements are also experienced by domestic migrants and locals.

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[4] As refugees and asylum seekers are accorded under the 1998 Refugees Act in South Africa.

However, my research contends that there is an additional layer of precariousness that the migrant status adds.

Many employers express a preference for employing migrant workers, who are professed to be better, more conscientious (in effect, more pliable) workers than locals (Tame, 2018; Mosala, 2008; Rogerson, 1999). This apparent preference for more easily exploited migrants is thought to displace local labour from accessing available job opportunities. This in turn provides employers with leverage in seeking concessions from local labour. As a result, employment of migrants is not only thought to displace local labour but also to contribute to the reduction of wages and labour standards for all workers. These arrangements are recognised as having very serious consequences: "To the extent that an increasingly large and important sector of the working class is managed outside normative protections, outside social dialogue and outside labour market institutions, it contributes to accelerated deregulation of labour markets as well as to deterioration of labour-employer-state relations overall" (Taran, 2000:19).

However, some research studies have disputed both the apparent displacement effect of employing migrant workers, especially at the lower skills levels, and the negative effect this employment purportedly has on wages and working conditions. Facchini et al. (2011), using regression analysis on census and community survey data from 1996, 2001, and 2007,[5] found that while migration had no significant effect on wages, it did serve to displace local labour, but only at higher skills levels. At the lower skills end of the labour market, only self-employed locals were significantly affected. Araia et al. (2010), in their pilot study on the construction sector, also found that wages and working conditions were more significantly correlated to informal and other non-standard employment arrangements, finding no significant difference in wages and working conditions of migrants as opposed to locals. While Rogerson (1999) reported similar findings, he pointed to the hidden savings of employing migrants as opposed to locals that contributed to employer preferences in hiring practices.

National surveys have shown that xenophobic attitudes are not confined to any one socio-economic, racial, demographic or political grouping, although the main targets are Africans from other countries, and that these attitudes are largely influenced by stereotypes (Gordon, 2018; Crush, 2008). Further, studies have demonstrated that xenophobic attitudes are not confined to the general public but are also held by employees of the state, and that this affects the way they treat and interact with migrants (Crush & Tawodzera, 2013:678). The South African Human Rights Commission (SAHRC) found in 1999 that the South African Police Service (SAPS) had abused their powers with regard to foreigners (Valji, 2003). Under the Immigration Act it is "assumed that, like all other departments that are affected by the Immigration Act, the police will carry out their duties with the 'highest applicable standards of human rights protection'" (Republic of South Africa, 2002:

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[5] It must be noted that these are problematic sources of data as undocumented migrants in particular are likely to try and avoid being identified and therefore counted by census takers.

Preamble). But as a 2004 study by the Centre for the Study of Violence and Reconciliation found, police say: "[I]t is difficult to police foreigners because we do not understand their language or culture. As a result we sometimes do not believe what they say because most police officials believe that foreigners are lying [in order] to remain in the country […] Most police officials do not understand that foreigners are human too with human rights (white male captain)" (Newham et al., 2005 cited in Adjai & Lazaridis, 2014:249).

17.3 Trade Unions and Migrants

Trade unions, as the recognised representatives of workers, have a major role to play in recognising and mitigating the dangers inherent in dividing workers into citizens and denizens, or foreigners and locals. Trade unions themselves, though, are in decline, with union density falling as a result largely of increasing use of non-standard employment arrangements by employers in an attempt to increase flexibility and bypass labour regulations. Trade unions find it extremely difficult to access and organise these atypical workers, many of whom are migrants (both domestic and cross-border) (Hyland, 2012; Araia et al., 2010; Chinguno, 2009; Webster, 2008; Webster & von Holdt, 2005).

Trade unions have found it difficult to change their established practices in order to meet the challenges raised by this increasing flexibility in the workplace. Trade unions are discussed as being in crisis, being seen as relics of a moribund age of industrialisation, and having little or no effective role to play in the new network society (Castells, 2000). Others point to the role trade unions play in further segregating the labour market, creating a labour aristocracy – an elite workforce of workers whose rights and entitlements are protected, excluding others who do not exemplify the traditional unionised worker (Hyland, 2012; Chinguno, 2009). A further difficulty faced by trade unions when it comes to organising migrants under these circumstances is pointed out by Denis McShane (2004:viii, cited in Hyland, 2012:6): "While the rhetoric of internationalism has always been part of the trade union narrative, the actual trade union form has remained profoundly national. They are embedded in specific national contexts and thus primarily represent the interests of their existing national membership."

This is further complicated by union assertions that they only organise workers with proper documentation (Chinguno, 2009:92). As Trimikliniotis et al. (2008:1332) point out, immigration in the post-apartheid period has been understood by trade unions primarily as a way for employers to undermine labour standards. This is reflective of what Paziuk (2017:20), citing Fine, says is the "extraordinary ambivalence" of South African trade unions with regard to migrants. As a result, trade unions are able to construct themselves as pro-immigrant[6] (in keeping with the

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[6] See COSATU's (2008) press statement, for example.

principle of global worker solidarity) while being anti-immigration, and pressing for sanctions to be imposed, not on undocumented migrants, but on the employers who hire them.

The result of the aforementioned changes in employment relationships is that the labour market becomes increasingly segmented into a core of workers employed on a permanent basis with relatively good labour standards, working conditions and benefits, and a non-core of workers employed in casualised and externalised arrangements with little protection, poor working conditions, and little or no access to benefits. At the very margins are the peripheral workers – those who are unemployed and those engaged in informal sector economic activities. It is increasingly difficult under these circumstances for workers and unions to find common cause and for unions to identify and work towards the common interests of workers, on which the principle of collective organisation is based (Joynt & Webster, 2011; Bamu & Godfrey, 2009; Chinguno, 2009; Webster & von Holdt, 2005; Goldman, 2003). My contention is that, within this framework, migrants, particularly undocumented migrants, add an additional dimension that is always located in the periphery even while crossing over into the non-core to access jobs, due to their more vulnerable migrant status, and this position in the labour market renders their claims to rights and the role of trade unions in supporting these claims more difficult but equally necessary. This is in keeping with Trimikliniotis et al.'s (2008:1336–1337) assertion that "Trade unions, social movements and human rights organisations can be at the forefront of regularising and organising undocumented and irregular migrant workers," and Taran's (2003:16) conclusion that "Solidarity with migrant workers is fundamental; exclusion and disassociation from foreign workers simply facilitates situations in which migrants are exploited to the detriment of upholding decent work conditions." However, while noting that these changes brought about by globalisation have demanded that trade unions adopt new strategies, tactics and organisational modalities, this still has to be mediated through "Flanders' two faces of trade unionism" serving either as "a sword of justice" or vested interests (Hyland, 2012:7). While these two roles are likely to be in conflict,[7] they may sometimes be complementary.

The construction sector is notable as one in which a large number of migrants are employed[8] as a result of generally low barriers to entry and increasing demand for and adoption of flexible employment relationships. According to trade union officials organising in the sector, migrants constitute more than 70% of the workforce (Chinguno, 2009:45). The sector is divided into three sub-sectors: civil

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[7] For Hyland (2012:8), this emerges in three areas: the complexities of the relationship between internal and external forces; the tension between roles as "social partner" vs. as an organisation campaigning for broader societal changes; and negotiating the relationship with other social movements.

[8] Other notable sectors are agriculture, security, domestic work, and informal street trading. However, English's, 2002 study on the construction labour force in the Western Cape posited that since Cape Town is relatively far from the country's land borders, it has far fewer migrants than Gauteng, Mpumalanga or Limpopo, and this is a position shared by others (see Mosala, 2008, for example). Nevertheless, my contention is that the migrant population in Cape Town has grown and is no longer insignificant (if it ever was), and allows for valuable research and insight.

engineering,[9] materials manufacturing and supply,[10] and building.[11] This study focused on the building sub-sector which is where most non-standard employment activity occurs, and which is reportedly the most labour-intensive (Goldman, 2003). Union membership is low in the sector generally for people who are employed through the casualised and externalised practices that predominate, but unionisation is thought to be especially low for migrants. The low union density, in fact, reportedly led to the collapse of four bargaining councils, including those operating in Gauteng and KwaZulu-Natal, with only six statutory councils operating in the sector[12] (Araia et al., 2010; Bamu & Godfrey, 2009; Chinguno, 2009; Goldman, 2003; English, 2002; Rogerson, 1999). The Cape of Good Hope Building Industry Bargaining Council (CBIBC) appears to be in good standing, with two employers'

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[9] The civil engineering sub-sector includes work in connection with: "aerodrome runaways or aprons; aqueducts; bins or bunkers; bridges; cable ducts; cassions; raft or other maritime structures; canals, cooling water or other towers; dams, docks, harbours, quays or wharves; earthworks, encasements; housings or support for plant, machinery or equipment; factory or works chimneys; filter beds; land or sea defence works; mine head gear, pipelines piers, railways, reservoirs, river works, roads or streets; sewerage works, sewers, shafts or tunnels, silos; sports fields or grounds, swimming baths; viaducts or water treatment plants ..." (Department of Labour: Sectorial Determination 2 Civil Engineering Sector, Government Gazette No 26049 February 2004, in Chinguno, 2009:50).

[10] For the sector as a whole.

[11] The building sub-sector is defined in the BIBC (Building Industry Bargaining Council) Collective Agreement [Department of Labour, *Bargaining Council for the Building Industry (Cape of Good Hope): Extension of Collective Agreement to Non Parties,* Government Gazette No 33874, 17 December 2010: 4–5] as: "the industry in which employers and their employees are associated for the purpose of erecting, completing, renovating, repairing, maintaining or altering buildings or structures and/or making articles for use in the erection, completion or alteration of buildings or structures, whether the work is performed, the material is prepared or the necessary articles are made on the sites of the buildings or structures or elsewhere: Provided that such manufacturing activities shall be limited to the specific manufacturing activities that are mentioned in the following trades or subdivisions thereof, and shall further be limited to the carrying out of such activities by an employer who is associated with his employees for the purpose of erecting, completing, renovating, repairing, maintaining or altering buildings or structures for use by him in the conducting of building work, and includes all work executed or carried out by persons therein who are engaged in the following trades or subdivisions thereof, including excavations and the preparation of sites for buildings as well as the demolition of buildings, unless such demolitions were not carried out for the purpose of preparing the sites for building operations but does not include clerical employees and administrative staff, nor the wiring of or installation in buildings of lighting, heating or other permanent electrical fixtures and the installation, maintenance or repair of lifts in the buildings".

[12] The four remaining bargaining councils that have collective agreements in place include the Kimberley Building Industry Bargaining Council, the Bloemfontein Building Industry Bargaining Council, the Boland Building Bargaining Council, and the Cape of Good Hope Building Industry Bargaining Council (Bamu & Godfrey, 2009; Chinguno, 2009).

associations[13] and four unions[14] party to the collective agreement currently in place, which extends to parties operating in the sector who were not party to the agreement.[15] The presence of four unions, each with different traditions and underlying principles, provides an interesting contrast for this study.

> The dominant trend in the industry, which has led to increased labour insecurity, is the casualisation and informalisation of recruitment practices and employment relations. Stratified sub-contracting practices have delinked responsibility for providing legally-minimum and adequate labour conditions from the major construction companies and transferred it to bodies such as brokers or subcontractors who may not accept that legal responsibility, or indeed may not have a legally registered identity through which they can be held accountable. These systems also make it more difficult for labour unions to organise workers (Araia et al., 2010:35).

The challenges presented by the predominance of practices of externalisation and casualisation in the structure of the industry[16] described in the quote above have also been pointed out recently by Bamu and Godfrey (2009) and Chinguno (2009). All indicate that these arrangements appear to affect all workers indiscriminately and that vulnerability and insecurity are more clearly positively linked to employment in non-standard or informal arrangements than to migrant status (whether documented or undocumented).

This research uses official union publications as well as interviews with trade union officials in the construction sector in Cape Town to assess trade unions' responsiveness to migrant rights claims. Migrants are generally located on the periphery due to their more vulnerable status, and this position in the labour market renders their claims to rights and the role of trade unions in supporting these claims more difficult but equally necessary.

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[13] Boland Meesterbouers en Verwante Bedrywe Vereniging; Master Builders and Allied Trades' Association, Cape Peninsula.

[14] Building, Construction and Allied Workers' Union (BCAWU); Building, Wood and Allied Workers' Union of South Africa (BWAWUSA); Building Workers' Union (BWU); National Union of Mineworkers (NUM).

[15] Although, even in Cape Town, unions struggle to meet the representation thresholds, and in fact, some workers reportedly view the unions and the bargaining council as competing entities since they offer similar benefits. Furthermore, unions argue that the CBIBC is dominated by white conservatives who support the council and sponsor 'yellow trade unions' (Chinguno, 2009:55–62).

[16] People in the construction sector are employed under the following arrangements: permanently; on limited duration contracts; through labour brokers; and through multiple layers of subcontracting arrangements (including labour-only subcontractors), with the subcontractors themselves engaging in some combination of the three previous arrangements (Bamu & Godfrey, 2009; Chinguno, 2009).

17.4   Findings

Trade unions in the construction sector in Cape Town deal with a number of challenges, primarily the predominance of temporary employment services, limited duration contracts and subcontracting relationships that have become the norm. As one union official pointed out, the big firms such as Murray and Roberts and WBHO are really just project managers with thousands of subcontractors doing all the work. Another worrying trend is the constantly shifting membership, with trade unions in the sector poaching each other's members, so the base membership does not grow, it just moves around.

All claim no discrimination against foreign workers and that a large part of their work is educating them on their rights and encouraging them to join trade unions. However, on probing further, it emerges that the actions taken tend to be most progressive and inclusive at federation level and quite limited or non-existent lower down. On the one hand, there is the COSATU official who stated:

> Now the way that we've, the Western Cape for instance, where we've tried to address the concerns of foreign nationals specifically, whether they're Zimbabweans, whether they are Nigerians, wherever will find them, is to try to and get involved in areas where there are concerns. So this building for instance, we have Nigerians, so we have, together with others, hosted education sessions in order to inform people about their rights, the fact that they can join the union, the fact that they can get UIF. It's a different process, but you have access to it and whatever rights are where workers are concerned. And also influencing them about joining the union, I mean in fact many people just join the union. So if you enter the workplace and there is a union, they join, so it hasn't been an issue, but yes, I mean there are concerns about, about having people feel more comfortable and be active in the union, which is a different thing that needs to be addressed with regards to language and other…other barriers that, or perceived barriers that may be there, that needs to be addressed; so that people are more free and feel free that they can…that they can participate in the union and so forth.

The official acknowledged that translating this down the structures can sometimes be more difficult:

> So it is our duty, it is our obligation to make sure that that is the message and that is how, even our members, let alone leaders, are going to be treating people, treating people as people, because we not going to ask where, what, whether you have a document or not, and that's how we are going to have to take the message down. Now it has been slow and it's …in fact it is frustrating because from a federation side, we try and do our best, we try and get unions to be focused on certain areas, but of course all unions, and there is some autonomy so of course all unions have their own focus and they have their own pace at which they do things, and they have their own priorities that they would want to focus on. So it's a…it's a process that we've embarked on, that we will continue to do and…and hopefully we'd see a lot more…earlier success than what we have recently.

This inclusive approach was echoed by an independent union official who claimed (noting that the same claim was made by another union official from a different union),

> We are the first who brought in the situation of bringing in, arranging migrant workers in the bargaining council, where other trade unions said no no no, they taking our work from our people away, and we said no we have to include them; they already here you can't wish them away.

However this same respondent later stated:

There are companies who are very few in minority who, where you get…when we identify a company and see that we are losing the battle at this company, the foreign workers are the majority. This is where as I've indicated we used the arm of the bargaining council, but we first try…try within our own house to try to win them over; when we fail we use all the other avenues because we want workers to be united. They've got one common enemy and that's […] the capitalist and they are the socialists.

At first, the language is of inclusivity, but later it becomes framed in more martial and divisive terms, where majority-migrant workplaces are a battle to be fought which requires the deployment of institutional weapons in order to claim victory.

Or, an official from another trade union said:

Ya, they started *infiltrating* our sector and…okay myself being as one of the… in fact the biggest trade union in the sector, we have actually made provision for these persons to also be recognised and also to receive the same conditions of employment as our… as our par-don, our own people, you know our citizens and… if it comes to social benefits… they must also receive it. So whatever apply to our people applies to them also (My emphasis).

This came along with racist overtones:

Ya, in fact initially they were a bit, there was…*ya*, they were very…sceptical, but …then they realised you know the value of a trade union and also you mustn't forget that where they come from that there's also trade unions, but unfortunately the trade unions over in the black countries and the black states haven't got the same powers that we have, you know, and they… a lot of them are not recognised by the government itself.

Resentment or tensions between South African workers and migrants were also noted and it seemed little effective action was taken in order to address this:

Look, I think it's only natural that people will feel threatened as long as they, the numbers you know, the foreign numbers don't outnumber local guys and…something interesting you know…you find even our local guys sort of tend to victimise those people […] you find that they would… our people take the back seat and make them work, chase them on, you know, and threaten them if they don't, we will *klap* [slap in Afrikaans] you and we'll make sure you don't work here no more. But that…it happens…it happens…and then you find companies that, where the majority of persons are foreigners.

In addition, the perceived labour market effect that employment of migrants depresses working conditions and pay was also reinforced in some of the responses:

Their rights should be protected, their social needs should be protected equally, but we are unable to protect their interests for one reason. One – when they not joining the trade union, two – when they take…when they allow to be taken advantage of, in a sense that know-ing…let me use, for example, in the building sector, we know what the rates are to be paid in the building sector, then say for example a bricklayer, you get very good quality bricklay-ers from Zimbabwe, they don't necessarily have that kind of documents, that they've got to be raised through the SETA[17] systems. Now employers take advantage of them and say that they should not go through the legal system to be registered, in that way they going to get

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[17] Sector Education and Training Authorities are mandated by the government through the Department of Higher Education and Training to identify and meet the skills development needs of the South African economy.

some kind of an income and then their income [is] going to be lesser than what is… they are being used where their social benefits should not be paid, and they take it, whatever comes to them, say where they, instead of getting R55 per hour, they'll settle for R30 per hour; obviously we are going to fight against that.

Now there is a tendency that trade unions fight against foreign workers. No, we are not fighting against foreign workers and we'll never fight against foreign workers, but what we like is all workers to be treated equal and them to be going through the legal system, to be protected, to be registered and to be paid equally to the brothers in South Africa; in that way there will be no situation of Pete versus Jan and Hadebe or whatever or Nkomo from Zimbabwe

The purported treatment of undocumented migrants is contradictory as well. A bargaining council representative pointed to the predominance of unregistered[18] and undocumented migrants in certain sub-sectors such as marble and granite (especially monumental art), and that there was a blurring of occupational categories, with undocumented farm workers also often being found working on construction sites. Many migrants in the sector operate either as labour-only subcontractors, or as unskilled general workers who are often "recruited" at the side of the road.

One BIBC informant claims no discrimination on the basis of documentation, claiming that they register all workers they find and would provide a temporary registration number if a worker lacks an ID or passport, but this was then contradicted by the operations manager, who said, "If he's legally in the country, he's legally entitled to be in the labour market. If he's not legally in the country, in other words, he hasn't got a passport, he hasn't got a permit or work application or something like that, then we can't register him," and stated further, in response to questioning about what happens if an undocumented migrant is found on a site inspection, that the employer:

[…] must either send him to get the correct documentation or he must get rid of him in terms of employment. We can't have [him] employed if he's not registered, if he is illegal. But if he hasn't got documents, whether he is a foreigner or South African, one of the things to register an employee is, we need his ID book because we manage only benefits […] So if a guy haven't got documents, whether South African or non-South African, he needs to go get that documentation.

This perspective was reinforced by union officials with, for example, one official stating that migrants must be here legally, but that they are prepared to provide assistance in order to ensure that this is the case: "Of course there is the…there's this one qualification, you know you must…you must be here legally, they must have a working permit or if you are an asylum seeker, yes, you know. In fact we even give assistance there also. So *ya*… we try to do our bit by assisting."

The role that capitalist employers play in creating or encouraging these divisions was also noted:

[…] it's very easy for employers to divide people and create a division and make sure that division is in fact exacerbated because we've heard employers or our workers, our members

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[18] At that time, 38,000 registered with the BIBC and receiving benefits.

would come and tell us that employers are saying nah, those people are not… you can't represent those people, you can't speak on their behalf, they are not part of you and… and there are workers down there who would want to represent them, would want to make sure that they can enjoy the same benefits that they do. Now that's happening and so that division is being created deliberately, and part of how we need be going about things is to empower our people to say, well, how do we tackle the employer to make sure that… that those workers who work next to us, who are just being paid by somebody else, are in fact brought back into the fold.

17.5   Conclusion

Trade unions in South Africa are dedicated to serving the interests of workers collectively, and part of the rhetoric they deploy as a result is the notion of international worker solidarity.

This rhetoric arguably serves, in itself, to disadvantage workers with specific vulnerabilities or determinants of precarity such as migrants, whose particular challenges are subsumed within universalist paradigms that view workers as a homogenous entity defined wholly and exclusively in terms of their relation to capital. This framing lends itself to positioning migrant workers, who are often seen as more easily exploitable by employers because of their precarious status as migrants, as enemies who are betraying their fellow workers by "accepting" poorer pay and conditions. Therefore, despite the clarion calls for workers of the world to unite, the reality is that on the shopfloor, nationalist sentiment often overwhelms the more egalitarian, inclusive principles that are expressed at the top. Migrants therefore often feel excluded and turn to other organisational formations and interventions in order to claim their rights and make progress in their workplaces.

The inability of trade unions to effectively service the needs of these workers, furthermore, is reflective of the unease with which they deal with so called atypical workers more generally. As these types of flexible employment arrangements increasingly become the norm, together with workforces that reflect changing societal demographics, including large numbers of people who happen to be born outside the country's borders, trade unions must adapt. This is a challenge that trade unions must address if they are to remain the vanguard organisations representing workers and their interests.

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