

# 'Selective Amnesia' and trade union exclusionary strategies in contemporary South Africa

In this article, I examine union responses and attitudes towards vulnerable migrant and precarious workers in post-apartheid South Africa. Furthermore, the paper provides an analysis of contemporary politics of union exclusionary organising strategies and attitude towards migrant workers within the historical context of the regulated and contract migrant labour system and the unregulated post-migrant labour regime. Historically, South Africa's industrial relations was developed on a bedrock of apartheid labour practices of exclusion in which African workers (both from homelands and other countries in the region) were regarded as migrants and thus, excluded from joining unions. Migrants played a very fundamental role in introducing trade unionism in the country particularly the British miners (see Nel and van Rooney (1993)) while the first trade union for Black workers was led by a Malawian, Clement Kadalie. Yet, it seems there is somewhat erasure of this history of trade unionism in the country or could this be as a result of selective amnesia? This is because the contemporary trade union movement is somehow detached from this reality as unions are still very ambivalent to organise and embrace migrants into their rank and file (Munakamwe, 2018). I argue here that union responses to migrant labour today are a manifestation of amnesia in which the fundamental role played by migrants in the democratisation of South Africa has been forgotten. Moreover, migrants equally fought alongside their local counterparts to ensure Black workers could organise and form trade unions, a fundamental right that they were deprived on racial grounds.

What we witness today is not a racial but nationalist-class struggle in which local and migrant workers are in constant conflict jostling for jobs with xenophobic violence as the ultimate outcome. Essentially, unions lack a clear position and policies in place to respond to specific issues related to migrant workers such as xenophobia. Unlike during apartheid, today we witness fragmented solidarity among the working class and this to some extent shapes union responses. Unions are caught up within the contradictions and at times conflicting views of how to respond to migrant labour and this is further compounded by workplace restructuring, labour market flexibility and deregulation. On the one hand is the desire to preserve jobs for natives and to enforce immigration laws that are crafted by proponents of neoliberalism while on the other hand, the aim is to seek legitimacy by responding to the dictates and

principles of international solidarity (see Fine, 2014). Labour flexibility has escalated and employers rely on labour brokers and out-sourcing while recruitment of migrants to the mines has dwindled over the years. Yet, this is the time in which union protection is required more than before to advance the rights of all workers. Restrictive migration laws are in constant conflict with labour laws and thus, preclude full enjoyment of labour rights.

## State-crafted migration laws and policies in relation to union responses

Organised labour has existed for a long time in South Africa, stretching back to the industrialisation period (Parsley and Everatt, 2009: 4) although Black workers were denied the right to organise. Despite political challenges, Black workers were militant and defied some of these restrictive and oppressive laws against unionisation. The first Black union linked to the hospitality sector, the Industrial and Commercial Union (ICU) which later became the Industrial and Commercial Workers' Union (ICU) was established in 1919 under the leadership of a Malawian national, Clement Kadalie (Allan, 1992). In 1930, the first black union for mine workers was formed under the leadership of T.W. Thibedi who was also the secretary<sup>1</sup>. According to Nel and Rooyen, (1993: 49), during the apartheid era, industrial relations with trade unions involved, "worker representation from outside the enterprise, through trade unions and committee/ works council representation (that is, worker representation within the enterprise)". Despite the recognition of unions by workers of Black origin, White unions dominated the body of the collective bargaining. Only in 1979, based on findings from the Wieham Commission is when Black workers except cross-border migrants were allowed to form their own unions. Subsequently, on 5 December 1982, the National Union of Mineworkers (NUM) was established under the leadership of Cyril Ramaphosa as the first General Secretary while James Motlatsi, a migrant from Lesotho, became the first President of the union.

Traditionally, unions' primary focus has been to address bread and butter issues within a Marxist Universalist approach that views workers as a homogenous class. A Universalist organising strategy refers to an approach adopted by trade unions to organising workers based on class while neglecting the politics of difference. The approach fails to acknowledge how class intersects with other

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social markers such as gender, race, nationality, ethnicity, skills, income and many others. In this way, while the goal is to equally represent workers' common interests, the unintended goal would be that immigrants remain under-represented as certain underlying factors related to immigration laws inhibit the latter from securing employment in the first place. What unions fail to understand is that by ignoring migrant workers 'special' needs, the unintended result would ultimately erode collective bargaining gains as employers continue to hire undocumented migrants for exploitation purposes and as a means to maximise profits (see Alho, 2015).

Trade unions' constitutions, policies and organising strategies are 'blind' to the dictates of global forces that have resulted in labour fluidity across borders. Currently, many union policies across the globe fail to appreciate the politics of difference and as such, tend to overlook vulnerabilities and 'special' needs associated with migrant workers (see Penninx and Roosblad's, 2000). Both unions and employers find a common ground premised on nationalist interests (Alho, 2015). In support of this claim, Marino, Penninx and Roosblad, (2015) assert that union attitudes are rooted in national migration laws and policies; workplace restructuring and atypical forms of work including the power of the union in national decision-making. Unions are still ambivalent about including and organising migrant workers, drawing more on state crafted laws and policies that emphasise 'legality' in relation to documentation and permission to work in the country. By emphasising the 'Green book' as the form of identity on the recruitment form, unions fail to acknowledge their major weakness in terms of addressing the issue of documentation for migrant workers. This is sometimes compounded by the language of communication which in a subtle way tends to exclude immigrants.

Much as what was witnessed during apartheid, the democratic government has ineptly failed to develop a clear policy on migrant labour and thus, draws on the statutory Immigration Act of 2002, which is hostile towards migrant workers. Some bilateral agreements are still in place and much like they were initially crafted to achieve under apartheid limit workers from the option of becoming either permanent residents or full citizens of the country. Workers are translated into circular migrants as they straddle between their countries of origin and South Africa in their efforts to avoid breaching provisions of the Immigration Act. This presents fundamental challenges to unions' organising efforts. Circular migrants are those who episodically come and work in South Africa temporarily and go back to their countries of origin. While some work under very hard and exploitative situation, it is very often difficult to reach out and organise them into trade unions as they do not foresee themselves working permanently in South Africa and so, unions find a 'scapegoat' and thus, leverage on this weakness to justify their ambivalent position in relation to

organising migrant workers. On a different but related note, South Africa has not yet ratified ILO Convention 143; the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. This Convention is universally designed to serve all workers and to some extent serves to bridge the gaps between national migration and labour laws of member state.

### Union organising models and strategies

Two dominant organising models exist and at this juncture, it is important to explain the two in relation to the context of South Africa. Most importantly, I reflect on Flanders (1970) cited in Webster and Ludwig (2017: 165) in which he refers to the 'two faces of unionism: the idea of the union as a 'sword of justice' or as a 'defender of vested interest'. In other words, Webster and Ludwig (2017, 165) depict the inclusionary and exclusionary tendencies manifested by unions in their organising strategy as stated below:

*At the centre of trade union strategy is a tension between the extents to which trade unions focus on immediate interests of their members against a broader commitment to the interests of working people (2017: 165)*

Essentially, social justice implies a universal approach and unions seem to be fixated here. Yet in the context of migrant workers, the starting point for the pursuit of justice begins with fair migration laws, an area that unions tend to neglect while they focus more on universal class interests such as wages and working conditions which privilege locals against their migrant counterparts. In a way, unions subtly exclude non-citizens as well as those in non-standard employment and this conflicts with the noble principle to represent the class interests of all workers.

In the current epoch, the Black worker is subtly discriminated or excluded based on formality-informality binaries, nationality and employment contracts (see Munakamwe and Jinnah, 2016). In general, unions have neglected workers and are ambivalent on their position to organise those who fall outside of standard employment including migrants and as a result, vulnerable workers' rights are gradually diminishing along the decent work continuum. Nonetheless, unions' responses are not homogenous as some have begun to organise in vulnerable sectors such as domestic, agriculture, hospitality and this somehow presents some sense of optimism.

Due to the nature of its membership and founding principles, the National Union of Mineworkers (NUM) since its inception has at all times embraced migrants. The NUM was co-founded by local migrants from former homelands and cross-border migrants (see Munakamwe, 2018; Allen, 1992). In light of this, the NUM pushed for regularisation of those working in the mining sector. At the ushering in of democracy, the Mandela government in collaboration with the NUM was the

first to attempt to humanise an inhumane and unjust labour system by offering amnesty to miners who had worked in South Africa for many years but still could not qualify for permanent residence. The first offer was made from November 1995 to March 1996 for miners who had worked for ten years and the second was made in June 1996 and later extended to the end of November 1996 for those who had worked for at least five years (see De Vletter, 1998). However, recruitment of migrant miners has declined in the post-migrant labour regime due to various factors such as restrictive migration policies and labour deregulation (see Seidman, 1995).

Today, the hospitality sector has become a key magnet to attract migrants to South Africa. The largest union organising in the commercial, retail and hospitality sectors, the South African Commercial, Catering and Allied Workers Union (SACCAWU) has begun to organise migrant workers through partnerships with migrant rights organisations thus complementing efforts in a political environment whereby migrant workers fear unions (see Wilderman, et al, 2016). This union resolved to organise workers who fall predominantly within vulnerable categories such as casuals in the hospitality, retail sectors including immigrants as membership continues to dwindle. Domestic workers unions such as the South African Domestic Service and Allied Workers Union (SADSAWU) and United Domestic Workers of South Africa (UDWOSA) have also initiated programmes to educate migrants on their rights. Similarly, affiliates of the Public Service International (PSI) in South Africa are considering organising migrants and have put in place a distinct strategy including development of a tool that supports migrants. In some unions, migrant labour issues are embedded in international solidarity policies and programmes.

### Union Responses to migrant workers in South Africa

South Africa's labour movement is one of the largest worldwide with 204 officially registered trade unions, according to a report by ETDP-SETA of 2019, and 24 trade union federations. COSATU has an approximate membership of over one million, followed by FEDUSA with approximately 400 000 members then NACTU (no exact figures) and CONSAWU (no exact figures provided). The South African Federation of Trade Union (SAFTU) was formed in 2017 and boasts of a membership of over 700,000. Aside these, are independent unions, which do not belong to any of the respective national federations and organise independently. In terms of the national outlook, 74 percent of workers fall outside of unions (Barrett, 2014). In support of this, Hamilton (2017: 5), notes that 'the level of unionisation has declined from 46% at its height in the 1990s to 26%... 74% of workers are not unionised' (2017: 5). However, in its founding congress resolutions, SAFTU puts the figure of those falling outside of unions as 76% (SAFTU, 2017).

Furthermore, the federation declared its commitment to 'protect migrant workers and ensure that we organise them to form part of our unions' (ibid: 5). The federation intends to implement these resolutions through a social movement unionism approach (see Von Holdt, 2002) that entails collaboration with other progressive civil society organisations.

Lessons could be drawn from successful stories of organising immigrant workers in Italy and France. In Italy, the largest federation, Italian General Confederation of Labour (CGIL) in collaboration with CISL, and UIL including independent unions; SI, COBAS or ADL COBAS, successfully mobilised immigrant workers in the warehouse sector to participate in a strike in 2013. According to Zerbino (2013)<sup>2</sup>, the unions managed to enforce the implementation of the national contract. By unifying all workers and incorporating immigrant workers into the nationwide strike which took place on the 22nd of March, 2013, unions managed to curb the use of scab labour during strikes. On a different but related note, the CGT<sup>3</sup> and CFDT<sup>4</sup> in France collaborating with the Sans-papiers movement were successful in organising irregular workers. According to Freedman (2008), "the sans-papiers movement has been one of the major features of the contemporary political debate over immigration in France, highlighting the specific situation of those residing "illegally" in France, and organising to resist the attempts of successive governments to expel "illegal" residents from their territory" (2008:1). The movement mobilised support through mainstream media thus demonstrating the power of the media in activism (see Dahlgren, 2007) in transforming poor workers lives in the wake of globalisation and toxic neoliberal policies.

### Conclusion

Labour migration is a very complex issue and if well harnessed, could contribute significantly to the growth of unions whose membership is waning due to the adverse effects of neoliberal policies and workplace restructuring. Migrant workers as the paper shows, played a very fundamental role in the democratisation of South Africa (see Schierup and Jorgensen, 2016) and the erasure of such memory has somehow resulted in undermining of migrant labour and xenophobia. In contemporary South Africa, migrant workers are viewed as 'economic threats' hence we witness xenophobic attacks including the low levels of political will by trade unions to organise them. Following, Fine (2014), I noted in this article that trade unions prefer the Universalist approach to organising migrant workers that neglects the particularistic view which advances the notion that migrant workers have specific and unique needs. This Universalist approach ought to be challenged as it disenfranchises migrant workers from fully enjoying their labour rights. Furthermore, as the paper shows, there is need for union strategies that seek to integrate migrants by putting in place policies, including

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Universalist approaches view workers as a homogenous class, neglecting the politics of difference ...

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disasters. This includes access to health care, labour rights, and social protection for migrants, refugees and internally displaced persons.

- ✓ To advocate for the right to organise for all refugee and migrant workers, regardless of status. Most of the migrant and refugee workers are hired by the informal sector, and therefore do not benefit from the right to organise and could not benefit from the right to social dialogue, which is a crucial in the creation and strengthening of an inclusive and sustainable social protection system.

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strategy renewal and an enabling environment that take into account the 'special' needs of migrants. In addition, unions need to look beyond 'bread and butter' issues and expand their scope to address non-workplace social challenges such as xenophobia. While unions like NUM have made efforts to influence migration laws as in the case of the 1996 citizenship amnesty, however, unions need to consider migrants' specific demands at the collective bargaining table and also influence development of contemporary migration policies and legislations.

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**Notes**

- 1 UN DESA, 2020
- 2 ESCWA and UN Women. (2020). The Impact of COVID-19 on Gender Equality in the Arab Region. Policy Brief No 4. [https://www.unescwa.org/sites/www.unescwa.org/files/impact\\_of\\_covid\\_on\\_gender\\_equality\\_-\\_policy\\_brief.pdf](https://www.unescwa.org/sites/www.unescwa.org/files/impact_of_covid_on_gender_equality_-_policy_brief.pdf)
- 3 <https://www.socialwatch.org/node/18480>
- 4 <https://theforum.eref.org.eg/2020/07/11/poverty-arab-countries-likely-impact-covid-19/>
- 5 <https://www.unescwa.org/publications/impact-covid-19-money-metric-poverty-arab-countries>

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**Notes**

- 1 Source: NUM archives and see also Allan, 1992
- 2 Marco Zerbino "Immigrant Workers Strike Hits Warehouse Sector in Italy" April 08, 2013. Marco Zerbino is a freelance journalist based in Rome
- 3 English translation: General Confederation of Labour
- 4 English translation: The French Democratic Confederation of Labour