

# Challenging common silences on xenophobia

What has happened to the lives of foreign nationals in the new SA? **Thabang Mohale** highlights the plight of foreign migrants and the impact of anti-foreigner sentiments on worker solidarity. He argues that unions and workers need to take up the challenge of fighting xenophobia.

Very much like during the grand old days of apartheid, foreign nationals continue to enter South Africa from all parts of the world – whether from northern or southern countries. This is not dissimilar from the apartheid era when the government permitted mainly white foreigners to enter the country as refugees, workers or immigrants primarily to attain citizenship. Contrary to the practice of other countries, one's skin colour was sufficient to warrant a foreign national access to all opportunities the South African citizen enjoyed. Today the difference is that it is black migrants, poor and rich, documented and undocumented who are pouring across the countries' borders trying to attain those same rights.

Various motives abide for the continuous entrance of migrants into the country today, even though they face great difficulties and

are not welcomed by some. Some come either by choice and opportunities to work, study etc. Within this group there could be wealthy people even former heads of state. But there are those who come into the country as a last resort – mainly because of the unbearable conditions in their own countries such as civil wars or continuous harassment and torture by the authorities.

With the scourge of xenophobia that has engulfed SA since the demise of apartheid, all these groups often have to deal with negative experiences in host communities, school or at work. Based on their dissimilar economic positions migrants' responses vary and often it is those from working class backgrounds who are at the receiving end of xenophobia, and government's unwillingness to attend to their plight.

## DIVIDE AND RULE

Despite having reformed the immigration law to ultimately permit all migrants to enter the country irrespective of their racial and religious grouping, the SA government still has not dealt with challenging xenophobia. As a result, foreign nationals, particularly refugees find it difficult to search for employment or retain their jobs. Such is the case even as they are lawfully inside the country. The implications are therefore the retention of a large pool of unemployed migrants, who can easily serve as cheap labour in times of strikes and other industrial activities.

Migrants are thus condemned to extreme levels of discrimination as well as exploitation in the workplace. Employers discriminate against migrants by paying low wages or even refusing to pay at all. Experiences of Zimbabwean migrants who worked for a month only to be locked up in the police cells when they demanded their money is only one of the many examples of the predicament migrant workers face.

In many ways, most of the problems mentioned here seem manageable. This leads one to question the role of the media and government. If the media were less dismissive of migrants' plight, would it prevent the promotion of xenophobic tendencies? What of government, would the situation change if it were willing to actively intervene in diffusing the mounting anti-foreigner attitudes? If anything the situation is unlikely to change unless workers themselves take up this challenge and ensure positive relations between migrants and South African citizens. The significance of this in the workplace is twofold:

- The majority workers are from the working class backgrounds therefore; anti-foreigner sentiments serve to hurt them more than the wealthy. This could create divisions in the workplace and affect workers' ability to win demands.
- Improved relations could serve to broaden employment opportunities for all workers in various other countries in which they would otherwise not be employed. Although this might seem ambitious, the current national boundaries are of no value to workers, and only serve to empower bosses who often move factories across borders in search of low wages and profits without even asking the workers.

## DISSOLVING SILENCE

The silence of all South Africans to the plight of foreigners serves only to strengthen negative perceptions about foreign nationals as a group of job-snatchers not worth being in the country. In the long run this will undermine worker solidarity. In this silence, worker gains made during the apartheid struggles will be dissolved not by law but our unwillingness to challenge xenophobia.

*Mohale is a researcher at Khanya College.*

## COSATU ON IMMIGRATION

From its inception the immigration law reform process has been riddled with controversy, with the Department of Home Affairs having played an obstructive role by disregarding civil society inputs and frustrating the National Economic Development and Labour Council (Nedlac) processes on the Immigration Bill and draft regulations.

Since March 2003 the Immigration Act and its interim regulations have regulated immigration. The final regulations made by the previous Minister were set aside as a result of the State President's court application, which was lodged owing to Cabinet's identification of serious concerns of a constitutional and diplomatic nature.

The State President in his May State of the Nation Address committed Government to finalising immigration regulations within three months. However, owing to constitutional and technical drafting problems with the Immigration Act, it was decided that there was a need to first amend the Act before making the regulations.

The change of Ministry after the 2004 general elections have brought about a marked and welcome change in approach to engaging with civil society and at Nedlac. Despite the severe time constraints, the Immigration Amendment Bill was tabled at the Nedlac Labour Market Chamber for consideration. Cosatu and the National Union of Mineworkers (Num) formed part of the Labour delegation at Nedlac and thereafter jointly made a submission to the parliamentary process on the Bill. The Bill was passed in September and is now awaiting signature of the State President.

Important gains for workers include:

- Removal of automatic lapsing of work permits upon termination of employment contracts. This provision created substantial hardship for migrant

workers, who were thus prevented from remaining in the country to enforce labour rights such as challenging an unfair dismissal or taking up rights to transfer of employment contracts to new employers when businesses are transferred as a going concern;

- Provision for recognition of collective agreements that require relatives to be substituted in the place of migrant workers who have been retrenched or die as a result of occupational-related injuries or diseases. Such collective agreements have long been a feature in the mining industry and are therefore recognised by the Department of Minerals and Energy. This amendment will operate as a special exception to the general rule for employers to show why it has not been possible to hire a South African worker. Cosatu and Num are of the view that this exception is necessary on account of the high risks attached to work in the mining industry and the associated devastating socio-economic impact on dependents and family members of a migrant worker.
- Removal of the role of Chartered Accountants (CA) in certifying employment conditions of migrant workers. We have long held the view that CAs do not have the requisite training to perform this function and in addition carry the added risk of likely bias to employers to whom they are contracted.
- Retention of the requirement to certify that a migrant worker is not employed at standards inferior to those applicable to South African workers, which must be done to the "satisfaction of the Director-General". While initial drafts of the Bill proposed to remove this requirement altogether, this requirement was retained in response to Cosatu/Num concerns. Key concerns here relate to ensuring enforcement of labour standards for

migrant workers to prevent the operation of a de facto dual labour market that would eventually lead to an overall erosion of labour standards.

- Other technical amendments include providing for public consultation on draft regulations and adequate administrative and review procedures for foreigners who are adversely affected by departmental decisions such as the refusal of a permit.

While the above amendments constitute modest gains for workers, we believe that it reflects a positive shift in respect of future engagements on immigration reform, which Cosatu will be pursuing intensely. In the short-term this will entail engaging with the draft immigration regulations that are likely to be finalised in the current year.

In the longer-term we have prioritised engagement with the immigration policy review process, which is likely to lead to the eventual repeal of the Immigration Act. For this purpose the August CEC resolved to convene a national workshop to develop Cosatu's response to immigration policy and its implications for regional integration of labour, trade and industrial policy with the emphasis being on the participation of key unions affected in the mining, agricultural, private security and service industries.

Our emphasis on immigration continues to be informed by our obligations to our membership, which comprises both South African and foreign workers. Further we have to be cognisant of our responsibilities as members of the SADC region and African Continent to address broad transformative and developmental objectives. As noted in the May CEC, 'South Africa cannot afford immigration laws that discriminate against Africans whilst being liberal to the rest of the world, in particular Europe.'

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