

Working migrants and South African workers

Do they benefit each other?

Do migrants replace South African workers? And do migrants undermine labour standards?

Tara Polzer and **Loren Landau** look at these issues and argue that migrants often create jobs, and if foreign nationals are legalised it will have the effect of improving labour standards.

South Africa is struggling to deal with an unemployment crisis while maintaining high labour standards and living wages. As a result South African workers often see migration from other African countries as a threat to their jobs, labour standards, and labour prices. These perceptions are strong, widespread, and are also reflected in protectionist statements from political leaders.

Over the last decade, national politicians have used the protection of South African jobs as an argument against the regional free movement of people. As long as we see migrants as a threat to our economic and physical security, we are only a step away from the murder, arson and rape of foreign residents that we witnessed in May this year.

But is it really true that African migrants are bad news for South African workers or for those seeking work? Is it really a zero-sum game, where one more working non-South African automatically means one less working South African? Is the answer to South Africa's unemployment crisis to remove all non-citizens from the country, or to make it impossible for them to enter, or to make it impossible for them to work legally?

The answer to these questions is clearly no. The exclusion and marginalisation of African migrants from labour and other basic rights is in fact counterproductive for the interests of South Africans, including workers and the unemployed.

HISTORY AND BORDERS

We need to start by looking at some common assumptions about migration to South Africa.

First, labour migration to South Africa is nothing new. South Africa has long been the centre of a regional labour economy. Hundreds of thousands of men from neighbouring countries were recruited to work on the mines and farms in a labour system which exploited labour throughout the region alongside black South African workers.

The South African labour movement has long recognised this as part of its belief that improving labour conditions anywhere requires solidarity between workers beyond the borders of individual countries. This is not simply a moral or ideological argument about historical responsibility or solidarity. It is a pragmatic recognition that the region's and continent's economies are linked, and any vulnerability in a part of that linked

system affects the rest of the system.

Second, however much we might want to, we cannot stop migration. South Africa's borders cannot be closed. Even in the heyday of apartheid, when the Mozambican border fence was charged with lethal voltage, hundreds of thousands of refugees braved the fence and the army to flee the civil war in Mozambique.

Currently, the border with Zimbabwe is guarded and policies are in place to make legal entry into South Africa very difficult. Nonetheless, the economic opportunities between South Africa and its neighbours are so great that people are willing to risk arrest, deportation, robbery and rape to cross the border. Even a rich and technologically advanced country like the United States cannot effectively control its border with Mexico, in spite of spending billions of dollars on it. Indeed, the immediate response to their new wall was for people to stay longer in the US because it was harder to cross.

So the question is not whether African migrants should be allowed into South Africa, but rather under what circumstances they are in the country. Is it better, from the

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Mozambican hawkker on a Johannesburg street



Migrant roadside mechanics in Yeoville, Johannesburg

perspective of the South African worker, for migrants to be undocumented and vulnerable, or legal and with access to the law and representative institutions such as unions?

NON-CITIZENS AND LABOUR LAW

South Africa has a strong legal framework for protecting basic human rights and workers' rights, and this framework includes those who are non-citizens.

The Constitution states that 'everyone', without discrimination according to nationality or legal status, has the right to fair labour practices. The Basic Conditions of Employment Act, as well as other labour standards and labour legislation, apply to anyone who is employed in the country.

This was reaffirmed in February 2008 when the CCMA confirmed that undocumented migrants also have labour rights and that the CCMA would hear cases of labour abuse against them without prejudicing them on the basis of their immigration status. This resonates with a long tradition in unions and labour politics of seeing people primarily according to their position as workers and not according to their nationality or

legal status.

South Africa's migration law is not as consistent as its labour law. While remarkably progressive in offering refugees and asylum seekers the right to work, its policies concerning labour migration leave many gaps and encourage conditions that promote labour exploitation.

Apart from the corporate permit, which makes workers completely dependent on a specific employer, there are no provisions for economic migrants who do not have high formal qualifications. This means for the majority of people who wish to work in South Africa, there is no legal avenue for them to do so. Highly skilled people can apply for an individual work permit, but this is designed to protect and privilege South African workers, as is common in most countries. Moreover, employers have to prove to the Department of Labour that no South African can be found for the position before they can hire a non-South African.

In addition to these challenges for migrants wanting to work, the existing legal options are fraught with implementation difficulties.

People coming to South Africa to seek asylum from war and

persecution in their countries face extreme delays in accessing documentation, leaving them undocumented and vulnerable to labour exploitation.

Skilled immigrants, including those with scarce and desperately needed medical, teaching or engineering skills, struggle to have their qualifications recognised by the South African Qualifications Agency (SAQA) and to go through the long work permit process. Even those with the right to work report being turned away by employers who do not recognise their papers or their professional qualifications.

In practice, therefore, many foreign citizens with or without the right to work, but with the skills and a willingness to do so, accept positions where they are paid below the minimum wage or work in inhumane conditions. Others find or create work in the informal sector.

DO MIGRANTS REPLACE SOUTH AFRICANS?

Given this background, is it right to say that migrants are 'taking South African jobs' or replacing South African workers? This is a tricky issue and cannot be understood unless considered alongside the country's

skills and policy gaps that promote the exploitation of foreign workers. Clearly there are instances when 'cheap' foreign labour are chosen over better protected South Africans. Still, the barriers to accessing formal employment mean that few migrants access the kind of well-paid and secure jobs that South Africans want.

In the case of professionally skilled migrants, and given South Africa's skills shortage, one engineer can create jobs for many construction workers. Such jobs would not be available if the technical skills were not available. It is therefore in the interest of job creation to enable migrants with skills, which are currently untapped because of the inefficiency of the South African immigration system, to work in their areas of expertise.

In the case of unskilled work, migrants are often employed in low-paid, low-status, manual sectors in which South Africans do not wish to work. This includes farm labour, manual construction work, and domestic work. Even with the improvements in labour conditions brought about by Sectoral Determinations and minimum wages in those sectors, there are labour shortages. Casualisation and the avoidance of labour standards in these industries are a serious concern, but these trends cannot be blamed entirely on the presence of migrants.

The informal sector is an important entry point or survival support for those who are not formally skilled or have been long-term unemployed. It is also often the only employment option for many migrants who cannot access employment in the formal sector.

Many African migrants come from countries where the informal economy is the largest source of income and so they have entrepreneurial skills and experience

which are lacking among many South Africans. While this is often resented by poor South Africans, who see foreign-owned spaza shops and small businesses as 'taking away' economic opportunities for locals, research by the Wits Forced Migration Studies Programme and others show that foreigners are significantly more likely than South Africans to create jobs and hire South Africans.

We must also recognise that by improving the lives and living standards for people from across the region, South African can expand its markets for goods and services. Given low levels of industrialisation elsewhere in the region, money earned by a Malawian or Mozambican will probably buy a South African-made mattress or refrigerator. The wealthier our neighbours become, the more jobs they will generate for South Africans.

So in answering the question about 'taking jobs', we need to be very clear on which kinds of jobs we are talking about, and to include the jobs which migrants are creating.

DO MIGRANTS UNDERMINE LABOUR STANDARDS?

Because vulnerable migrants work for lower wages and operate outside the collective bargaining system, unions and workers are concerned if unregulated migration is undermining labour standards.

There is also a strong connection between the sectors where migrants often work, in agriculture and construction for example, and increased casualisation and disregard for minimum labour standards. This negatively affects all employees, citizen and non-citizen, in these sectors. Yet it is clear that migrants do not choose to work for lower wages and worse conditions – they have no choice given their legal vulnerability.

The problem, therefore, is not the

migrants themselves, but their exploitability because they do not have recourse to the law or union representation. The AFL-CIO, one of the largest unions in the United States, for example, concluded that the best way to protect labour standards overall was to call for an amnesty for undocumented workers and to guarantee whistle-blower protection for undocumented workers who complain about labour law violations.

IMPLICATIONS FOR POLICY

In spite of the perception that migration is a major drain on South African resources, government and unions generally treat migration as a 'special issue' for the Department of Home Affairs. In fact, migration affects all elements of our society, especially the work place and the broader economy. Unions have an important role to play in advocating for changing migration policy, and for incorporating migrants into their labour standards monitoring and collective bargaining regimes.

In order to address South Africa's unemployment crisis and its skills crisis, while protecting and building on labour rights and standards, it is necessary to open up and legalise, not close down and criminalise migration. This includes enabling migrants to enter the country legally and introducing more flexible work permits, including for technically or informally unskilled workers or work seekers. Most importantly, it means ensuring that all workers, no matter their legal status, have real access to the law in cases of labour abuse. **LE**

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