

# THE TRANSFORMATION OF WORK: Challenges and Strategies



## Restriction and Solidarity in the New South Africa:

COSATU'S COMPLEX RESPONSE TO  
MIGRATION AND MIGRANT WORKERS  
IN THE POST-APARTHEID ERA



**Restriction *and* Solidarity in the New South Africa: COSATU's Complex Response to Migration and Migrant Workers in the Post-Apartheid Era**

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# **Restriction *and* Solidarity in the New South Africa: COSATU's Complex Response to 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 therefore, a consistent logic underlies them; that is, 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 COSATU,<sup>1</sup> 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."<sup>2</sup> The 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<sup>3</sup> 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).<sup>4</sup> Over the past few decades, negative associations from the apartheid past, increased migration, and stubborn unemployment rates among the lower-skilled

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<sup>1</sup> Masondo, 2012.

<sup>2</sup> *Ibid.*, p. 25.

<sup>3</sup> Gibb, 1998.

<sup>4</sup> Seidman, 1999, p.421.

black majority have underpinned migration policy debates.<sup>5</sup> Xenophobic attacks began in 1996 and became increasingly common in cities across the country.<sup>6</sup>

Although South Africa had a long history of migrant workers in mining and agriculture, dating back to the mid 19<sup>th</sup> 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 (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.<sup>7</sup>

Yet the experience of migration in the post-apartheid period has been very different than in the past.<sup>8</sup> 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.

In agriculture, the growth of migrant workers is tied into a labor casualization strategy, as farmers hire fewer permanent workers and instead hire seasonal and temporary workers--an increasing number of whom are migrant workers. South African farm workers resent this. But in trying to expand, farm worker unions have to find ways to organize all the workers on the farms, defending existing workers' jobs by opposing the casualization of labor while organizing migrant farmworkers in increasing numbers.

Owing to its strong links to South Africa's racialized labor market policies, immigration has proven especially vexing for the post-apartheid state. "For the black nationalistic discourse," Trimikliniotis et al., argue, "immigration was constructed as a form of labor control and an instrument of racial oppression."<sup>9</sup> The contract labor system, which controlled the conditions under which migrant workers lived and worked, together with the control of labor migration by blacks into white urban areas formed the basis for the notorious "homelands" policy, seen as the cornerstone of the apartheid regime. As described in greater detail below, migration and the system of migration management that evolved from colonial times are closely associated for many South Africans with racial oppression and the apartheid state.

This paper seeks to unpack South African labor's complicated engagement with migrant workers through an examination of the migration policy debate, labor's response to the xenophobic attacks of 2008 and two recent organizing efforts in the agricultural sector—one in the Mpumalanga Lowveld and the other in the Western Cape. It sheds light on the ways that both labor migration, which dramatically increased after the fall of apartheid, as well as hostility and intolerance towards

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<sup>5</sup> Mattes et al., 2000.

<sup>6</sup> Peberdy and Crush, 1998.

<sup>7</sup> Webster, E. (2013a).

<sup>8</sup> Interviews with Edward Webster, October 23 and 25, 2013.

<sup>9</sup> Trimikliniotis et al., 2008.

immigrants, are intertwined with the state's embrace of neoliberal economic policy and with growing labor precariousness.

The paper argues that four factors have shaped COSATU's response to migration policy and migrant workers: 1) the relationship between the labor movement and the state; 2) globalization and changes in the structure of employment; 3) increasing rates of immigration; and 4) as participants in the new South African citizenship regime, a shared understanding about the entitlements of citizens versus outsiders. Part I provides a historical overview of migrant labor and migration policy before and after apartheid, Part II gives a brief picture of South Africa's labor market institutions and industrial relations and shines a spotlight on the weakness of the corporatist institutions that were viewed with great promise in the early years of the democratic transition. Part III traces COSATU's positions and activities with regards to immigration policy from 1994 to the present, while Part IV looks at its responses to the xenophobic attacks that occurred in 2008 and 2009. Finally, Part V looks specifically at two organizing efforts in the agricultural sector where many migrant workers are now employed.

## **Part I. 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.<sup>10</sup>

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.<sup>11</sup> The numbers dropped

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<sup>10</sup> Crush, 2008a.

<sup>11</sup> Trimikliniotis et al., 2008, p. 1325.

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 labor in South Africa for more than a century.”<sup>12</sup>

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.”<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> 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.”<sup>16</sup> 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.<sup>17</sup> 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.”<sup>18</sup>

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

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<sup>12</sup> Wentzel and Tlabela, 2006, p. 73.

<sup>13</sup> Crush and Tshitereke, 2001, p. 50.

<sup>14</sup> Seidman, p. 422.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Segatti, 2011b.

<sup>18</sup> Von Holdt, 2002, p. 287.

temporary contracts only.<sup>19</sup> 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.<sup>20</sup>

The legal underpinnings of this system included the 1937 Aliens Control Act (ACA), which explicitly introduced race as a condition of entry. Initially adopted to restrict entry of Jewish refugees fleeing Nazism in Eastern Europe, section 4(3) (b) of the ACA stated that all applicants should be 'likely to become readily assimilated' with the European inhabitants and should not represent a threat to "European culture." This was followed by the 1950 Population Registration Act (on racial classification); the 1962 Commonwealth Relations Act (which ended uncontrolled trans-border movements in Southern Africa); and the 1955 Departure from the Union Regulation Act (which required authorization to depart from South African territory).<sup>21</sup>

In 1991, Parliament passed a new ACA, consolidating the above laws and perpetuating the emphasis on immigrant policing and coercion. Nicknamed "apartheid's last act," the 1991 ACA remained in force for years; from 1994 to 2002, over a million people were deported with no due process.<sup>22</sup> Undocumented immigrants had no rights with their time in detention and conditions of deportation left entirely in the hands of immigration officers, police or the army. Further, section 55 explicitly denied immigrants the right to turn to courts to appeal their cases or protest their treatment.

At the same time, however, as the numbers of undocumented immigrants in agriculture and mining increased, the Department of Home Affairs (DHA), used a specific section of the 1991 ACA to issue special post-hoc registration and temporary residence and work permits, largely in Mpumalanga and Limpopo, although many farmers did not register their workers.

In 1994, in response to growing irregular labor migration from the southern African region as well as a significant uptick in migration from strife-torn Zimbabwe, the new government maintained the previous regime's policy, taking a sharply anti-immigrant tone. Mangosuthu Buthelezi, leader of the Inkatha Freedom Party (IFP) and the first head of the DHA, referred to all immigrants as "illegal aliens," threatening resource and service delivery to citizens and as "criminals," linked to drug-trafficking, money-laundering and prostitution." He called South Africans who employed "illegal aliens" "unpatriotic" and urged citizens to help enforce the Aliens Control Act and aid the police in "the detection, prosecution and removal of illegal aliens from the country." In a 1997 Memorandum Buthelezi urged the Cabinet to declare 'illegal immigration' the most important threat facing South Africa and proposed draconian measures to address it.<sup>23</sup> A poll conducted that same year showed that the public held similar positions: opposition to immigration had actually *worsened*

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<sup>19</sup> Segatti, 2011b.

<sup>20</sup> Crush and McDonald, 2001a.

<sup>21</sup> Ibid.

<sup>22</sup> Southern African Migration Project, 2008, p. 18.

<sup>23</sup> Ibid.

since 1994 and South Africans were “more hostile to immigration than citizens of any other country for which comparable data was available.”<sup>24</sup>

In the post-apartheid years, controlling undocumented immigration through aggressive identification, arrest, detention and repatriation became the focus of migration policy targeted mainly at migrants from neighboring countries. The government adopted a protectionist approach to employment in general and favored skills-based admission for permanent migration.<sup>25</sup> As a result, between 1990 and 2000, the number of immigrants per year dropped from 14,500 to just over 3,000 and the number of African immigrants fell by half. The number of temporary work permits issued to skilled workers, which had increased in the early 1990s, also decreased sharply, from 53,000 in 1996 to 16,000 in 2000.<sup>26</sup>

Some have argued that migration policy was an early casualty of the ANC’s political imperative to pacify the IFP, while others maintain that the ANC essentially shared these views. The fact that even President Mandela referred publicly to the “threats posed by illegal immigrants, gun running and drug smuggling” shows that these were mainstream views in the government.<sup>27</sup>

Crush and McDonald characterize the post-apartheid government’s attitude toward immigration as “benign indifference” and see “little evidence that the ANC saw any role for immigration in its social and economic transformational plans.”<sup>28</sup> At any rate, internal divisions left it unable to agree on a coherent set of policies beyond those of enforcement. While the DHA for example asserted that migration was an economic threat to South African workers the Department of Labor (DOL) argued, in its 1997 Draft Green Paper on International Migration, that as long as there continued to be uneven development in the region, there would be high migration to South Africa and that the country’s focus on “arrest, detention and removals” was a relic of the apartheid era. It also recommended that the problem of irregular migration be addressed through increased opportunities for legal labor market participation. Just two years later, the tone and rhetoric of the White Paper on International Migration was completely different: focusing much more on illegal migration and migrants as an economic threat to native workers and advocating for further restriction and enforcement, while not putting forward a broader analysis or policy framework.

Regardless of the ultimate source of the restrictionist policy, in the first year of the new regime, deportation of undocumented migrants increased by 75%; 84% were Mozambicans, many formerly refugees. Between 1990 and 2011, over 3 million migrants were deported, the vast majority from Zimbabwe and Mozambique and other SADC countries.<sup>29</sup>

The system of regional migration built under colonialism encouraged the export of surplus labor to work in South Africa’s mining, agricultural and manufacturing sectors in exchange for remittances, thereby creating enduring interdependencies.<sup>30</sup> The resulting regional economy, Mandela wrote in 1993, entrenched South Africa’s domination “and incorporated other countries in subsidiary and

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<sup>24</sup> Ibid, p. 19.

<sup>25</sup> Segatti 2011b, p. 55.

<sup>26</sup> Crush, 2011.

<sup>27</sup> Ibid., p. 17.

<sup>28</sup> Crush and McDonald, 2001a, p. 5.

<sup>29</sup> Crush, 2011, p. 16.

<sup>30</sup> Segatti, 2011a.

dependent roles,” including labor reserves, markets for South African commodities, and providers of raw materials.<sup>31</sup> For this reason, he wrote, efforts to restructure regional economic development had to be “carefully calibrated to avoid exacerbating inequalities.”<sup>32</sup> In 1995, the South African Development Community (SADC), a regional consortium of countries pledged to economic and social integration, proposed the adoption of a free movement protocol that included a right to reside and work in other member states.<sup>33</sup> But concerned that severe economic disparities among member countries would lead to massive migration, South Africa, Botswana and Namibia, all immigrant-receiving nations, opposed it. South Africa put forward a migration protocol that, while supporting a regional approach, ultimately asserted the sovereignty of national interests over regional ones.

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 migrant workers 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.<sup>34</sup> 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.<sup>35</sup> 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.<sup>36</sup> 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.<sup>37</sup>

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.<sup>38</sup> 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

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<sup>31</sup> Mandela, 1993, p. 90.

<sup>32</sup> *Ibid*, p. 92.

<sup>33</sup> Originally the South African Development Coordinating Conference ( SADCC), set up by the Front Line States to reduce their economic dependence on apartheid South Africa and isolate it politically, SADC was established in 1992, and seeks “the progressive elimination of obstacles to the free movement of capital and labour, goods and services, and of the people of the Region generally, among Member States,” SADC, 1992, p. 6, quoted in Nshimbi and Fioramonti, 2013, pp. 53-5.

<sup>34</sup> Crush, 1999a .

<sup>35</sup> Crush, 2011, p. 16.

<sup>36</sup> Crush et al., 2012, p. 4.

<sup>37</sup> Mosala, 2008, p. 3.

<sup>38</sup> Crush, 2011, p. 16.

succeeding than those from Zimbabwe and other southern African countries.<sup>39</sup>

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 SADC countries who had been working in South Africa for at least ten years and who had voted in the 1994 election.<sup>40</sup>

Interestingly, only about 40% of the estimated 130,000 eligible miners applied. The second, strongly opposed by the DHA, was for undocumented citizens of SADC states who had lived in the country for over five years, having entered clandestinely during apartheid.<sup>41</sup> 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.<sup>42</sup> 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.<sup>43</sup> 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,<sup>44</sup> 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.<sup>45</sup> 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.

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<sup>39</sup> While the largest number of refugee claimants is from Zimbabwe, the government maintains that Zimbabwe is not a “refugee-generating” country; *ibid.*, p. 18.

<sup>40</sup> The amnesty did not help retrenched or injured miners who had already been sent home, however. See Crush and McDonald, 2001a, pp. 5-8.

<sup>41</sup> Crush and Williams (eds.), 1999.

<sup>42</sup> *Ibid.*, p. 15.

<sup>43</sup> Crush, 2011, p. 27.

<sup>44</sup> *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).

<sup>45</sup> Crush, 2011, p. 19.

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,<sup>46</sup> 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.<sup>47</sup>

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.<sup>48</sup> 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.<sup>49</sup>

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.<sup>50</sup> 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."<sup>51</sup> 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.<sup>52</sup>

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.<sup>53</sup> 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

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<sup>46</sup> Crush and McDonald, 2001b, p. 6.

<sup>47</sup> Segatti, 2011b, pp. 36-42.

<sup>48</sup> See Bosniak (2008); Walzer (1983); Soysal (1995); Somers, 2008.

<sup>49</sup> Peberdy, 2001, pp. 15 & 57.

<sup>50</sup> Peberdy, 1999, quoted in Crush and McDonald, 2001a.

<sup>51</sup> Peberdy, 2001, p. 16.

<sup>52</sup> Polzer, 2005, p. 89.

<sup>53</sup> Gibb, 1998.

attitudes of its own members and leaders and influenced by government policy. Additionally, as we will see in the following section, 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.<sup>54</sup>

## **II. Corporatist Institutions but Neoliberal Policies: Labor Market Policy Post-Apartheid<sup>55</sup>**

In 1994, COSATU, the ANC and the South African Communist Party (SACP) jointly adopted the Reconstruction and Development Programme (RDP) pledged to growth and redevelopment through reconstruction and redistribution and a living wage for all, with government playing a strong role. The alliance sought to cast labor market policy in a social democratic/ corporatist mold in which organized interests would play a central role in economic decision-making. The operating principle was that government and key business, labor and civil society associations would engage in an orderly process of deliberation and consensus building to develop strategies for equitable economic development and rights-based, cooperative industrial relations. The regime created a collection of institutions to carry out this vision.

The National Economic Development and Labor Council (NEDLAC) was the first of the three institutions established in 1994 to operationalize a democratic corporatist framework. Like European social dialogue tripartite institutions, NEDLAC was set up to be the vehicle through which government, labor, business and civil society<sup>56</sup> would forge consensus on economic and social policies including proposed labor market legislation.

The Labor Relations Act of 1995 (LRA), the second pillar of the new democratic corporatist regime, embraced a centralized, although voluntary, collective bargaining structure that guaranteed the right to organize, strike, picket and engage in sympathy strikes and in which bargaining would be carried out through a set of sectorally-based Bargaining Councils. It also extended the right to bargain to farm, domestic and public service workers. Once a threshold of representation was reached, the LRA gave the Bargaining Councils the ability to have their agreements extended to all employers and employees within their jurisdiction, where this threshold was not reached, it provided a mechanism whereby a representative trade union or employer organization could unilaterally establish "statutory councils" although their scope of bargaining was more circumscribed. It also sought to create a mechanism for the speedy resolution of industrial disputes by setting up the Commission for Conciliation, Mediation and Arbitration (CCMA) with offices throughout the country.

Recognizing that there were sectors in which unions were quite scarce due to the vulnerability of the workforce, Parliament also enacted the Basic Conditions of Employment Act of 1997, which allowed for the passage of "sectoral determinations" that are akin to minimum wages by industry. Sectoral determinations were not new, there was a similar system of wage-setting under apartheid.

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<sup>54</sup> Webster and Buhlungu, 2004.

<sup>55</sup> The perspective taken in this section relies extensively on: Webster, 2013a; Godfrey et al., 2007; interviews with Jane Barrett and Ighaan Schroeder, October 2013.

<sup>56</sup> NEDLAC expanded this model to include certain community institutions given the "high level of exclusion and marginalization of groups such as the long-term unemployed-who include women, the youth and the informally employed..." although they did not have a strong presence within NEDLAC. See Khunou, 2012, p. 174.

Two final pieces of legislation in 1998 rounded out the new labor market approach: the Employment Equity Act that banned employment discrimination and the Skills Development Act that focused on skills development of the South African workforce.

However, the turn toward democratic corporatism proved to be no match for the global turn toward neoliberalism. While labor and some in government were promoting an orderly, integrated system of industrial pacts, centralized bargaining, workplace-level cooperation and minimum standards, the ANC leadership was shifting position. President Mandela and the ANC, under strong pressure from donor governments (as well as those in the region), spurned efforts by some within COSATU and other civil society organizations who were advocating nationalizing key industries and embraced a free market strategy, taking a neoliberal approach to economic development that prioritized limiting government spending, fighting inflation and lowering the deficit.<sup>57</sup> The next president, Thabo Mbeki adopted a structural adjustment plan called the Growth Employment and Redistribution strategy (GEAR) in 1996, with little prior discussion with COSATU.<sup>58</sup> Discussion of GEAR was central to much of the debate in the 6<sup>th</sup> Congress of COSATU in 1997. Opposition to it, according to Jane Barrett, formed the basis of several campaigns that emanated from the Congress including opposition to high interest rates and tariff reduction, transformation of the public sector, the austerity budget and privatization.<sup>59</sup> Meanwhile, employers were opting out of traditional employment relationships in droves--increasingly embracing labor market flexibility and deregulation. Between 1995 and 2001, full-time employment declined by 20%. In 2003-2004 with an economically active population of 20.3 million, an estimated 8.4 million were registered unemployed, 6.6 million were in the formal economy with regulatory protections and secure employment, 3.1 million were "semi formal" workers in precarious forms of work including outsourced, temporary, part-time and domestic workers and 2.2 were in completely informal economic activities. Between 2004 and 2005, of the 658,000 jobs created, 516,000 were in the informal sector.<sup>60</sup>

While capacity problems at COSATU may have limited its ability to participate effectively in NEDLAC, NEDLAC itself, owing to the shift away from a coordinated market economy approach, has not had a clearly defined policy-making role. While it has succeeded in passing some socially favorable legislation, its policies have had limited impact on poverty, inequality and unemployment because of the restrictions on public expenditures.<sup>61</sup> Strikingly, neoliberal ideas were cultivated alongside corporatist labor market institutions in post-apartheid South Africa and superseded them very early on in the life of the new regime. Increasingly, employers expanded forms of employment that fell outside the scope of the bargaining and regulatory systems that had been put in place.

NEDLAC has survived in a weakened form, underfunded and often bypassed by Parliament. Bargaining councils cover a decreasing number of workers as the casualized and peripheral workforce has expanded. The state also remains internally divided: while the Department of Labor

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<sup>57</sup> The key goals were 6% growth in 2000, under 10% inflation, employment growth above the increase in the economically active population, a current account deficit of 2-3%, a ratio of gross domestic savings to GDP of 21.5%, improvements in income distribution, relaxation of exchange controls and reduction of the budget deficit to below 4% of GDP; Sorkin, December 13, 2013, pp. B1-2. For more on this period, see Hein, 2011.

<sup>58</sup> Buhlungu and Ellis, 2012, p. 260.

<sup>59</sup> Note to author from Jane Barrett, February 4, 2014.

<sup>60</sup> Rykief, 2012.

<sup>61</sup> Khunou, 2012, p. 176.

seeks to expand the number of bargaining councils, the Department of the Treasury argues for “greater workplace flexibility,” code words for relaxed labor and employment regulation.<sup>62</sup> Leibbrandt, et al. document a huge increase in casual or part-time employment following the Labor Relations, Employment Equity and Skills Development Acts—going from 15% in 1993 to 30% by 2008. In interviews, they found that employers often cited “strict labor legislation and an inflexible labor market as a business constraint and turn to hiring part-time or casual labor to avoid the ‘hassle factor’ of permanent employment.”<sup>63</sup>

South Africa has experienced a significant expansion of outsourcing, subcontracting, agency employment and labor brokering as well as casualization of labor through fixed term contracts and seasonalization in both the public and private sectors. Thirty-one percent of the workforce is in informal employment and 24% is temporary or seasonal. Few workers have social security (including health insurance, pension benefits or workers’ compensation); a quarter of the workforce is working more than forty-eight hours per week and there is little protection from dismissal. The labor movement in South Africa, as in the US and Europe, has so far not been able to effectively respond to these trends.

Union membership declined from 45% of total employment in 1997 to 23% in 2010 and fell particularly sharply in the private sector. A recent study by Jane Barrett of COSATU found that the vast majority (80%) of union members are permanent employees in firms with 50 or more workers with only 1% in companies with less than ten, that only 8% of COSATU’s membership is non-permanent and 3.5% is employed by a third party. While part of the problem may reflect the fact that the current definition of the workplace in the LRA has made union organizing of subcontracted workers very difficult, some argue that COSATU’s tendency to focus on those with full-time formal employment may hinder it from organizing the new informal workforce.<sup>64</sup>

In addition, COSATU’s struggles regarding migrant worker organizing are also part of a larger problem: the rise of arm’s length employment relationships in many industrialized nations and the embrace of macro-economic policy that is hostile to unions and strong labor standards. In general, unions have not devised effective strategies for organizing informal workers. Additionally, like unions in the US and Europe, COSATU unions have been mostly focused on trying to make the conditions that have given rise to the informal economy go away—so far with little success. The fact that South Africa’s embrace of a market-oriented approach was also extended to migration policy has added to the difficulty of organizing migrant workers.

### **III. COSATU’s Role in the Migration Policy Debate**

When the new regime began developing a migration policy to replace the Aliens Control Act, COSATU advanced an amalgam of solidaristic and restrictionist policy positions. A 1994 survey of national member unions’ attitudes toward migration surfaced a key dilemma with which COSATU would have to contend as the government began drafting legislation. On the one hand, members expressed concern about the difficult working conditions and low wages experienced by undocumented immigrants, while on the other, they were worried about the role of migrant workers in lowering labor standards and undermining (through their growing numbers) government efforts

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<sup>62</sup> Webster, 2013b, p. 222.

<sup>63</sup> Leibbrandt et al., 2009.

<sup>64</sup> Buhlungu and Tshoaedi, 2012, p. 22.

to deliver social services and housing to the poor, asserting that South African citizens should be given first preference for jobs and services.<sup>65</sup>

At its 1995 International Policy Conference, COSATU called for a “rational and coherent labor migration policy,” and articulated a set of policy themes that would endure over the next several years. These included: 1) an approach to reconstruction and redevelopment in the entire southern African region that would also address movement of people and border control questions; 2) a distinction between refugees and migrant workers who had been residing in the country for several years and those who had only recently entered; and 3) the extension to foreign workers all the rights and protections of local workers that would be accomplished through stronger labor standards enforcement and effective penalties for exploiting undocumented workers. It also spoke out strongly against xenophobia, saying that to give in to it would be “signing our death warrant as a trade union movement.”<sup>66</sup>

Viewed through the lens of a movement attempting to stand in the breach—to defend the rights of both South African and migrant workers—on the shaky ground of neoliberal labor market policy, these positions cohere into a unified whole. It is also important to note that as a federation, COSATU’s positions must be based on a consensus or near-consensus of affiliated unions and reflect their specific positions.

In May 1997, the Task Team on International Migration and the DHA issued the Green Paper on International Migration, intended to initiate dialogue and promote discussion. The following September, COSATU responded, again promoting a policy to advance “towards *social justice in the entire Southern African labor market*.”<sup>67</sup> “The interests of South African workers are inextricably linked to the interests of our brother and sister workers in the surrounding region,” it stated, arguing that the historical evolution of employment patterns in the region was toward an integrated Southern African labor market. The policy imperative therefore was to ensure that economic integration, rather than a race to the bottom, would contain worker friendly and worker promoting regulations.<sup>68</sup> It outlined several principles for migration policy, including:

- it *must not compromise the interests of workers in Southern Africa*: migrant workers must have the right to join unions as well as to transfer wages and benefits to their home countries and insurance, pensions and provident fund payments must be guaranteed even after workers return; Southern African states must agree to effective enforcement of labor standards throughout the region;
- it should be *part of a broader regional economic development plan*, to attempt to address the legacy of poverty, insecurity and skewed development;
- it must not allow employment of foreign workers to erode labor standards and working conditions for South African workers and avoid the emergence of a two-tier labor market of legal South African and “illegal” foreign worker;
- it must include Fair and Proper Control of Entry of migrant workers and humane treatment and promotion of status formalization;

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<sup>65</sup> Hlatshwayo, 2012, p. 234.

<sup>66</sup> COSATU International Policy Conference, 1995.

<sup>67</sup> COSATU, 1997a.

<sup>68</sup> *Ibid.*, p. 3.

- it must include numerical quotas on the number of migrant workers allowed access to the South African labor market as well as strict penalties on employers of undocumented workers;
- its immigration policies targeted at skilled workers must not jeopardize developing the skills of the South African workforce.

COSATU also categorically rejected temporary worker programs for migrants, arguing that subjecting workers to periodic renewal of their employment contracts would contradict the commitment to grant foreign workers all the rights and protections of local workers, entrench a two-tier labor market and further the fragmentation and casualization of the labor market as employers opted to hire temporary workers. It agreed with the Green Paper's call for tough employer sanctions on those found to have hired undocumented migrants but opposed the use of the GEAR policy, with its embrace of free markets as the framework for economic development, rather than the coordinated market economy approach of the Regional Development Plan (RDP) which called for minimum standards with respect to the right to organize across the region, so as to ensure a process of "leveling up rights and conditions of workers, rather than leveling them down to the lowest possible standard."<sup>69</sup> That same year (1997), COSATU's September Commission<sup>70</sup> put forward similar themes, arguing for the need to protect external migrant workers while also calling upon the government to "facilitate voluntary repatriation" and "control the entry of migrant workers into host countries."<sup>71</sup>

The government then issued the White Paper on International Migration. Released in advance of a legislative draft in March 1999, its tone differed notably from the Green Paper in that it bought in to the controversial notion that South Africa had been flooded with undocumented immigrants since 1994 and advanced a preference for market-based approaches, including possible privatization of detention services as well as shifting the issuance of visas from the Immigration Service to business under the corporate permit system.

In comments submitted in February 2000, COSATU again objected to the use of GEAR instead of the RDP as the policy framework and called for the entire white paper to be formally submitted to NEDLAC. It accused the DHA of a xenophobic "preoccupation with illegal migration which results in a failure to provide a coherent immigration policy," and "engenders paranoia, which will then make it difficult to have a rational and humane approach to illegal migration."<sup>72</sup> It also criticized the lack of an integrated regional development strategy as well as the proposal for a separate regulatory framework for the employment of migrant workers rather than integrating them within existing ones, in violation of the principle of equal treatment.<sup>73</sup> While it agreed with some proposals, including one to ensure labor laws are enforced fully among both citizens and foreigners, it was most concerned with the change in tone regarding illegal migration as well as a growing market-oriented approach. "In our view, the market must be considered as a social construct and legislation is necessary to shape behavior in the market in line with developmental objectives," it stated, adding: "We question the perceived macroeconomic benefits from unscrupulous exploitation of illegal foreigners who are invariably paid starvation wages."

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<sup>69</sup> Ibid.

<sup>70</sup> Established to conduct research into the future of unions in South Africa; see COSATU 1997b.

<sup>71</sup> Hlatshwayo, 2011, p. 175.

<sup>72</sup> Gordon, 2011, p. 8.

<sup>73</sup> COSATU, 2000b, p.4.

After a seven-year legislative and policy-making process, a new immigration law was enacted in 2002 and amended in 2004 at Mbeki's request. Final regulations, which focused largely on illegal migration, were promulgated in late 2005. In the end, despite the time and effort expended during the drafting period, neither the trade union movement nor migration activists believed they had much impact.<sup>74</sup> COSATU objected both to the process and much of the substance surrounding the bill. "On the whole," the organization wrote to DHA in June of 2003, "the enactment of an Immigration Act has taken place through a process that has undermined the principle of public participation, the role of NEDLAC as a tripartite institution and even Parliament itself..."<sup>75</sup> To COSATU's chagrin, the legislation established a dual system of limited permanent high skilled immigration and temporary low skilled migration primarily through corporate permits. It also centralized power within the DHA. Thereafter COSATU became less engaged in labor migration policy issues and scaled back its work on other migrant-related issues -- until 2008, when violent xenophobic attacks necessitated a reengagement.<sup>76</sup>

#### IV. COSATU Responds to Xenophobia

In May 2008, xenophobic riots broke out in Alexandra Township north of Johannesburg, spread to separate settlements across the province of Gauteng and then ignited across the country. Sixty-two people were killed, 670 were wounded and over 150,000 were displaced or forced to leave the country, most of them foreign nationals and members of ethnic minorities. It took a month to quell the initial violence.<sup>77</sup> But the threat of violence has remained high and killings and arson have continued, albeit on a smaller scale.<sup>78</sup> Polling two years earlier by the South African Migration Project (SAMP) found South African citizens to be the "least open to outsiders and want the greatest restrictions on immigration": close to 85% of those surveyed felt that South Africa was letting in "too many" migrants and there was strong support for deportation of all migrants, even those who had not broken any rules; 67% thought migrants consumed local resources like housing and the same percentage thought they engaged in criminal activity.<sup>79</sup> A global longitudinal survey of people's values and beliefs concluded that the level of hostility and resistance to migrants and refugees was higher in South African than any other country.<sup>80</sup>

COSATU's Central Executive Committee condemned the attacks and called for affiliates to urgently convene meetings at all levels "to argue that the working class must not turn its guns against itself."<sup>81</sup> According to COSATU International Secretary Bogani Masuku, the attacks were symptoms of the impact of the global economic crisis. Foreigners became scapegoats as more and more workers lost their jobs and poverty increased.<sup>82</sup> Mike Louw, an organizer/educator from COSATU's Western Cape office, concurred: "There has been a flood of Zimbabweans and refugees from other strife-

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<sup>74</sup> Gordon, 2008, p. 9.

<sup>75</sup> COSATU, 2000b.

<sup>76</sup> Interview with Bongani Masuku, October 23, 2013.

<sup>77</sup> Segatti, 2011, p. 10.

<sup>78</sup> Crush et al., 2013, p.2.

<sup>79</sup> Southern African Migration Project, 2008, p.1.

<sup>80</sup> *World Values Survey*, 1977, p. 1.

<sup>81</sup> Hlatshwayo, 2011, p. 176.

<sup>82</sup> Interview with Bongani Masuku, October 30, 2013.

torn countries within Africa and that together with the economic situation has not improved and has created a real tension among working class people...’<sup>83</sup>

COSATU regional organizations responded with food, clothing and shelter for the displaced. In Germiston, an industrial town on the outskirts of Johannesburg, the South African Municipal Workers Union (SAMWU) helped in organizing shelter, opening the municipal buildings and arranging for food and counseling for the thousands of migrants who took refuge there.<sup>84</sup> In the Western Cape, Louw became involved in disaster management, helping to set up a system to safeguard people, provide housing in a safe area and see to police and security protection. He also worked with area farmers to try to integrate migrant workers more fully into local communities in order to avoid reproducing the conditions that would spark violence and antagonism again. It was perhaps no coincidence that the union that responded most effectively to the xenophobic violence was the one that had the longest history of organizing migrant workers and building unity between its South African and foreign members. The National Union of Mineworkers (NUM), with its large number of migrants from Southern Africa, had long insisted on having access not only to mine property but also to workers’ compounds where it recruited workers irrespective of national origin and created committees made up of members who would organize the newcomers. “The problem of organizing a multi-lingual workforce,” Kahmann writes, “was overcome either by union-minded people who spoke the same language as the recruiting target workers or simply by agitating them in the typical mine dialect consisting of a mixture of several regional languages.”<sup>85</sup> NUM also took up issues specific to its migrant members including the need to renew contracts annually as well as the practice of compulsory deferred pay that required Mozambican and Basotho workers to send most of their salaries home. It won a retirement fund accessible to all miners regardless of nationality, training programs for retrenched miners funded by the big employers, and as discussed above, citizenship or permanent resident rights for some workers.<sup>86</sup> As early as 1991 the union had called for the abolition of the migrant labor system to be replaced by a regional approach to economic development and in 1995 it negotiated a “miners amnesty” for immigrant workers who had worked in the country for more than 10 years. During the crisis in 2008, NUM convened membership meetings that brought together South African and migrant workers and was thought to have been successful in preventing xenophobic attacks in the mines because of the work it had done over many years to unify the workforce.

While COSATU for a variety of reasons did not engage in large-scale mobilization against the xenophobic attacks, officials assert that there was an upsurge in protests against the attacks in many affiliates, including the teachers, nurses, transport and healthcare unions.<sup>87</sup> What seemed beyond dispute from scholarly materials, surveys and interviews, is that the xenophobic attacks did not dissuade some COSATU unions from calling for employers to fire undocumented immigrants<sup>88</sup> and relatedly, did not trigger a major focus on organizing immigrant workers. But a shift was underway.

In 2009, the Tenth Congress of COSATU adopted a resolution arguing that the attacks had been caused by “the capitalist crisis” and that COSATU members and shop stewards had been killed. For

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<sup>83</sup> Interview with Mike Louw, October 30, 2013.

<sup>84</sup> Hlatshwayo, 2011, p. 177.

<sup>85</sup> Kahmann, 2002, p. 17.

<sup>86</sup> *Ibid.*, p. 18.

<sup>87</sup> Interview with Bongani Masuku, October 30, 2013.

<sup>88</sup> Hlatshwayo, 2012, p. 240.

the first time, it called for legalization of migrant workers, labor laws to cover all migrants and education of union members about xenophobia.<sup>89</sup> It also called for “stringent regulation, if not outright outlawing of the labor broker industry and practices.”<sup>90</sup> It also criticized state authorities and the judicial system for not addressing cases of xenophobia more quickly, for the small number of convictions that had taken place and for the fact that no one had been charged with murder, assault, or rape. Meanwhile, xenophobic attacks continued. In November 2009, residents of the town of De Doorns on the Western Cape destroyed Zimbabwean and Basotho migrants’ shacks, accusing them of working for lower wages and stealing jobs from local residents. Three thousand migrants were forced to flee informal settlements in the area and live in tents on the local sports field or the local community center. Strikingly, researchers at Wits University who looked into the episode found that Zimbabweans were not accepting lower wages, that there were labor shortages in the area and that South African labor brokers played a key role in inciting the violence against migrants in De Doorns.<sup>91</sup>

In 2010 in the wake of continuing attacks, COSATU hosted a UN High Commission for Refugees meeting to further examine the link between xenophobia and labor migration. Leaders resolved that labor migration policies needed to become more be transformed from an apartheid orientation to one that was humane and caring, fostering unity, cooperation and equality.<sup>92</sup> While the federation and many of its affiliates spoke out strongly against xenophobia, and called for legalization, they did not yet make an explicit link to organizing. As Hlatshwayo assessed the scene in 2011, “The challenge is that COSATU does not view migrants as social agents that can also be part of its wider organizing initiatives against the attacks on the working class and the poor.”<sup>93</sup> Another issue was the reluctance on the part of some unions to organize undocumented immigrants. In interviews with COSATU unions, Hlatshwayo found that many “leaders and organizers” believed that “organizing the so-called illegal migrants or ‘people without papers’ constitutes undermining the ‘rule of law.’”<sup>94</sup> Indeed, a 2012 survey of union head offices conducted by COSATU in preparation for its national congress found that while some international departments were campaigning around xenophobia, not many had specific organizing strategies for migrant workers.<sup>95</sup>

There were some exceptions, however. NUM, as described above, had been organizing external migrant workers for years as well as calling for abolition of the migrant labor system and advocating for permanent resident status for mineworkers who had worked in the country for over 10 years.<sup>96</sup> It also tried to organize migrant construction workers who were hired in preparation for the 2010 World Cup. In Gauteng Province SATAWU, the transportation workers union, won an agreement

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<sup>89</sup> Ibid.

<sup>90</sup> Schiphorst, 2010, p. 9.

<sup>91</sup> Hlatshwayo, 2012, p. 250.

<sup>92</sup> Interview with Bongani Masuku, October 30, 2013.

<sup>93</sup> Hlatshwayo, 2011, p. 182.

<sup>94</sup> Hlatshwayo, 2012, p. 240.

<sup>95</sup> Interview with Liesl Orr, October 23, 2013. In a follow-up communication on February 12, 2014, analyzing the findings of the results of the COSATU Workers’ Survey, 2012, Orr said that only two unions made explicit reference to migrant workers: The National Union of Mineworkers which said that “NUM has a policy to recruit and treat all workers equally, and the union has engaged companies and government on policies that treat foreign nationals equally at work and to remove policies that make it cumbersome for migrant workers to work” and the FAWU which said that “FAWU organises migrant workers on farms and in restaurants.”

<sup>96</sup> As in the US, permanent resident status allows people to remain citizens of their own countries while living in South Africa with full rights except for the right to vote. Hlatshwayo, 2012, p. 241.

with a freight company that explicitly states that: “All employees (South African and non-South African) must be treated equally, i.e. no fixed contracts for non-South Africans. SATAWU is representing all employers in the company, namely South Africans and non-South Africans,”<sup>97</sup> despite the fact that some of its own members felt that jobs should be reserved for South Africans. SACCAWU, the hospitality union also includes migrant hotel workers on the Western Cape, regardless of legal status.<sup>98</sup> There are signs that COSATU as an institution is becoming more engaged in migrant worker organizing.

The international policy resolution of the 11<sup>th</sup> National Congress of COSATU held in September 2012 reflected a clear shift, at least in its formal position. Like earlier resolutions, this one condemned xenophobia and called for mass education among union members and also took a strong position in favor of legalization, migrant worker rights and equal access to social protection. But in contrast to earlier resolutions, a clear link was also drawn between resisting xenophobia-- “working to ensure that blame for social ills is not directed at our working class brothers and sisters from other countries...” and organizing: “placing primacy on organizing migrant workers as a means to combatting the super-exploitation of these vulnerable sections of the working class” and “fighting for the development of policies that protect foreign nationals working in the country, and for their right to organize and be organized into unions....”<sup>99</sup>

The 11<sup>th</sup> Congress also resolved to embark on a national campaign to highlight the conditions of vulnerable workers, and to organize them into the ranks of unions and allied worker organizations in large numbers. According to Jane Barrett, Affiliate Support Coordinator, who is directing the Vulnerable Workers Task Team mandated to lead the campaign, although there is not an explicitly migrant worker organizing committee within the Task Team, “migrant workers, particularly the undocumented are a big category of vulnerable workers we are talking about...”<sup>100</sup>

From Barrett’s perspective, there are complex reasons for COSATU not focusing on migrant worker organizing sooner. One is that for many years, formal documented migrant labor was deeply entrenched but so controlled that it was just accepted as a given. Migrant workers were always part of the landscape and for that matter a part of the leadership. The first president of NUM was from Lesotho and the current president of COSATU is from Swaziland. “In a way,” says Barrett, “workers don’t even regard them as non-South Africans.” Barrett believes there is a disjuncture between the attitudes South African workers have toward migrants from Swaziland and Lesotho versus how they perceive Zimbabwean, Mozambican and other workers. What has shifted the landscape and forced unions to pay attention is that migrants now have a dominant presence in a number of sectors.<sup>101</sup> This has been borne out by research conducted by Edward Webster which found that low wage, vulnerable sectors such as commercial farming, hospitality and security are heavily populated by immigrants. For example, in Guateng Province, 35% of hospitality workers described themselves as non-South African.<sup>102</sup> Barrett and Webster both noted the ways that migration status and vulnerability are bound together in specific sectors. One interesting example is in the private security sector. While legislation requires that workers are not allowed to be security

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<sup>97</sup> Ibid.

<sup>98</sup> Ibid.

<sup>99</sup> International policy resolution, 11<sup>th</sup> National Congress of COSATU, September 2012, p. 27.

<sup>100</sup> Interview with Jane Barrett, October 24-25, 2013.

<sup>101</sup> Ibid.

<sup>102</sup> Webster, 2013a.

guards unless they are South African citizens, many are actually undocumented migrant workers. Another example is the attenuation of the employment relationship and the fact that many migrant workers are now working for labor brokers rather than directly for the companies that are employing union members.<sup>103</sup>

The second complicating factor is that issues surrounding internal migrants whose home and work lives were forcibly bifurcated by apartheid policies get conflated with those of external migrants. As discussed above, migrant labor has been at the core of South African capitalism and refers to black workers from rural areas who were utilized as a source of cheap labor. But South Africa has also always drawn on immigrant labor, cross-border migrants from Lesotho, Mozambique and Malawi. Recently, government has been grappling with the fact that many internal rural migrants became accustomed to working in one place while keeping their primary residences in their rural birthplaces. This has sparked an internal debate about how unions and employers should deal with these internal migrants, raising issues with regard to where to invest resources and services.

COSATU may have gotten the push it needed to finally focus on vulnerable worker issues after a wildcat strike at Lonmin's Marikana platinum mine in the North West Province in August 2012, in which 34 miners were shot and killed and 78 were injured by police.<sup>104</sup> The strike took place entirely outside the structures and processes of NUM. Some of those who struck were employed through subcontractors. "They are living a kind of subterranean existence in the workforce," COSATU's Barrett observed. "They are often simply not recognizable and not identifiable as subcontracted workers. They are integrated into the workforce but what goes with that is a certain invisibility in that they are not included in the collective bargaining process."<sup>105</sup>

Another subtext of the strike concerned internal migrant workers. A few months earlier, after collective bargaining had already been concluded, the rock drill operators at Impala Platinum, who do some of the hardest, dirtiest and most dangerous work at some of the lowest wages, organized for a wage increase outside of the NUM. Drill operators are labor migrants from Pondoland in the Eastern Cape, who, in keeping with entrenched practices of the migrant labor system, set up two households, one close by and another in their home region.<sup>106</sup> Over the years, because the work was graded near the bottom of the wage hierarchy, and the usual collective bargaining strategy was to consider the average interests of the whole and provide increases on a percentage basis, the gap between the lowest and highest paid workers had grown wide. Barrett and others think that when the rock-drill operators' demands were met, other workers who felt neglected, including the subcontracted labor force, began making demands outside of the normal process. The fact that NUM, which has historically maintained high density in its sector as well as workforce unity was unable to do either in the case of Lonmin, was a wake-up call about the need to address the rising number of vulnerable workers.<sup>107</sup>

The Vulnerable Workers Task Team has been meeting monthly with union representatives from various sectors including: contract cleaning, paper, printing and woodworking, catering, domestic

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<sup>103</sup> Interview with Mike Louw, October 30, 2013.

<sup>104</sup> Morris, 2013.

<sup>105</sup> Interview with Jane Barrett, October 24-25, 2013.

<sup>106</sup> *Ibid.*, p. 18.

<sup>107</sup> COSATU began talking about what to do about vulnerable workers in 1997 when the September Commission recommended it develop strategies for focusing on vulnerable sectors; Schiphorst, 2010.

work, transportation, construction, food, agriculture and nursing. COSATU has also opened it up to global and national vulnerable workers organizations including the South African Domestic Services and Allied Workers Union (SADSAWU) Street Net,<sup>108</sup> WIEGO and the South Africa Informal Traders Alliance as well as to researchers from the Chris Hani Institute, the National Labour and Economic Development Institute (NALEDI) and the Social Law Project. The Task Team has developed a COSATU-wide campaign aimed at shop stewards, drafting a pamphlet entitled “Join the drive to organize all Vulnerable Workers: A call to all shop stewards and organizers to Look, See, Listen and Act to support the needs of Vulnerable Workers.” This identifies vulnerable workers as follows:

Workers who are working in isolated situations (like domestic workers, farm workers and workers in very small companies) or are self-employed are extra vulnerable. In addition, big changes have taken place in the formal workplace. We...now...often have more than one employer in one workplace because of outsourcing, subcontracting and the use of labor brokers. And a large number of workers are no longer on permanent full-time contracts. Fixed term contracts and part-time employment is becoming more common in many sectors, especially in the services sectors. It is easier for the bosses to exploit all of these categories of vulnerable workers and keep their pay and conditions at unacceptably low levels.”

It puts forward startling figures about the South African workforce:

- 50% earn less than R3500 (less than US\$350) per month,
- 24% work more than 48 hours per week,
- 47% do not have maternity or paternity leave and 31% are self-employed.

It then contrasts these figures to the wages and employment situations of COSATU members to make the point that unions are not organizing vulnerable workers:

- More than half of COSATU members earn more than R5000. So COSATU is not organizing the majority of the poorest of workers.
- 80% of our members work in companies that employ over 50 workers, so COSATU is not organizing the majority of workers in small companies who are vulnerable to the will of the bosses.
- Only 9% of members are non-permanent workers and only 3.5% are employed via a third party such as a labor broker or subcontractor.”

Strikingly, the pamphlet acknowledges that these workers have been overlooked by the labor movement: “The vulnerability of these workers is made worse by the fact that we are either not recruiting them into our unions or when we do recruit them, we are not organizing and servicing them satisfactorily.” It also devotes one line to migrant workers: “Migrant workers from other countries are also very vulnerable as they often do not know their rights and are super-exploited.” So far the team has developed five demands:

- A national minimum wage

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<sup>108</sup> Twenty of StreetNet’s affiliates are in Africa and its affiliates in Zimbabwe and Namibia are cross-border trade organizations; Hlatshwayo, 2012, p. 243.

- Work security, including protection against dismissal, a fair licensing system and freedom from harassment of own-account workers by authorities, permanent jobs and work opportunities and where the employment relationship is via a third party (subcontracted or via a labor broker) the client must share responsibility for employment conditions and security
- Comprehensive social protection, including a Basic Income Grant for all adults; all workers, including the self-employed, having the right to claim loss of income insurance including paid maternity, parental and family leave, national health insurance for all, improved retirement benefits for all and access to quality public services
- Safe and healthy workplaces including the right to representation on health and safety issues for all workers including own-account workers and the implementation of all health and safety legislation including the right to protective clothing and a safe and healthy workplace
- Full organizational rights for all workers: the right to gather in every workplace, including shopping malls, farms, homes, airports, stations and other multiple employer work spaces and in the case of own account workers, public spaces and the statutory right to representation and collective bargaining.

There is no demand that explicitly addresses the status issues of migrant workers.

The message to shop stewards is both about identifying and responding to vulnerable workers' issues in their own workplaces (and assessing which union it makes sense for them to join) and talking to vulnerable workers outside of their workplaces to encourage them to join a union. For example: "When you buy anything from a shop or restaurant, talk to the workers and encourage them to join SACCAWU, if they have not done so already" and "If you have a car, when you pour petrol, speak to the petrol attendant and encourage him or her to join NUMSA." Stewards are also urged to engage their COSATU locals in discussions of how to organize vulnerable workers and also to include the domestic workers union and the street traders alliance in all local meetings.

The Task Team is implementing the campaign through provincial workshops and resources to help vulnerable workers understand their rights and how to access social programs including unemployment insurance and maternity leave, how to bring a dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA) how sectoral determinations and sectoral provident funds work, how to deal with sexual harassment and street trader issues. Importantly, migration issues were not directly mentioned.

The team is also exploring the establishment of Advice Offices and call centers for vulnerable workers around the country. While it is too early to evaluate strategy and results, it is clear that the Task Team represents a greater organizational commitment to organizing vulnerable workers. Success will depend upon how national unions and their regional counterparts respond and on the "hooks" they are able to find in terms of being able to effectively pressure employers not to interfere in organizing. One complication is that many of the unions have regional offices and staff who, under pressure to sign up as many members as possible, often target the sectors in which the union is already strong. The question is whether there will be adequate incentive for them to focus on vulnerable workers and whether the subscription fees these workers can pay will be enough for unions to make their recruitment a priority.

One union that is focusing on vulnerable workers in a sector with a large number of migrant

workers is the Food and Allied Workers Union (FAWU), which is targeting farmworkers in Mpumalanga Province and in the Western Cape. Following are two short case studies conducted in late October, 2013 of organizing efforts in the sector.

#### IV. Farm Worker Organizing in Mpumalanga and the Western Cape

Due to low levels of unionization, there is no centralized bargaining council in the agricultural sector.<sup>109</sup> Most farmers do not participate in employers' organizations and most farm workers are not members of unions. Additionally, the DOL is perceived to be largely absent in terms of monitoring conditions. To understand why farm work has been so difficult for conventional unions to organize, it is useful to consider the historical context.

Andries Du Toit, Director of the Institute of Poverty, Land and Agrarian Studies at the University of the Western Cape, writes: "Wherever they have settled, South Africa's white farmers ... are not merely employers, they are holders of power, power over every facet of workers' lives."<sup>110</sup> After 170 years of slavery, farmworkers lived an isolated existence.: "Landownership was imbricated in a racialized and authoritarian discourse of mastery which linked blackness and servility, and which reduced black people to the status of minor children," he adds, later noting: "The underpinnings of white mastery existed not only on farms. White power was embodied in the structures of local government and in economic and social institutions and banks, schools, estate agencies and other circuits of white civil society...."<sup>111</sup>

Long after the abolition of slavery, workers remained in an all-encompassing relationship of dependence that included debt peonage, payment of wages in kind and in the wine-growing region, even daily in-kind payment in alcohol—the notorious *tot* system that lasted until the 1960s. In the twentieth century, legislation such as the Native Land Act of 1913 and the Natives Urban Areas Act of 1923 largely cut off income-earning alternatives to the rural black population, assuring farmers a cheap and accessible labor pool.<sup>112</sup> Farmers continued to dominate the workforce through a series of "progressively harsher" Masters and Servants Acts that imbued them with powers over farm workers that "far exceeded those of any other type of employer over any other category of worker."<sup>113</sup> Although finally abolished in 1974, these Acts introduced an abiding bifurcation between the way the state defined the rights of farm workers and that of urban laborers.

Until the early 1990s farm workers lacked basic labor rights: a common law regime bound contracting parties to its terms,<sup>114</sup> and only the Workers' Compensation Act and the Machinery and Occupational Health and Safety Act applied at all on farms, but even these were honored more in the breach than in the observance.<sup>115</sup> Until 1993, commercial agriculture was excluded from coverage under the Basic Conditions of Employment Act, the Unemployment Insurance Act and the Labor Relations Act. Once farm workers became fully incorporated into these laws, they were supposed to receive annual leave, sick leave, maternity leave and family responsibility leave and their

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<sup>109</sup> ILO, 2011, p. 6.

<sup>110</sup> Du Toit, 1994, p.383.

<sup>111</sup> Du Toit, et al., 2008, p. 10.

<sup>112</sup> Johnston, 2007, p. 503.

<sup>113</sup> Du Toit and Ally, 2003, p.4.

<sup>114</sup> Theron, 2010, p. 6.

<sup>115</sup> Du Toit, 1994, p. 380.

employers were required to register them for unemployment insurance protection. The Extension of the Security of Tenure Act (ESTA) was intended to give farm workers living on farms more rights to remain; the law says that farmers cannot terminate the residence rights of a person who has lived on the land for at least ten years and has either reached the age of 60 or is the farmer's former or current employee and can no longer work due to ill health, injury or disability.<sup>116</sup>

Many farmers vowed to defy the new legal regime in agriculture, however, and they have largely succeeded. The sector is well known for the large number of workers who do not receive statutory or non-statutory benefits and 930,000 farm dwellers were actually evicted between 1994 and 2004. Nevertheless, between 3 and 4 million people continue to live on commercial farms<sup>117</sup> and while only 5% of South African workers are directly employed by the sector, it is estimated that 17% of South Africans depend directly or indirectly on agriculture for their employment income. Although the number of farms has declined by about one third and employment in the sector has declined by about 188,000 (close to 30%) between 1993 and 2013, there are still over 650,000 farmworkers and 40,000 commercial farms that produce most of the country's formal marketed output.<sup>118</sup>

In 1997, four years after the major regulatory reforms in agricultural employment relations were adopted, the South African fruit sector was deregulated, which greatly increased competition between growers and exporters. Government disbanded the single marketing channels through which producers had engaged in fruit export and began allowing private exporters to operate through a free market which opened up producers to direct global competition.<sup>119</sup> While the old system had nurtured producer-driven trade in which the state producers' organization negotiated with overseas importers and supermarkets on behalf of all producers, under the new system, there was a shift toward buyer-driven value chains. The consolidation of supermarket chains in Europe, the main export destination, has also meant that South Africa growers now confront more powerful supermarket buyers. Lead buyers "strive for quality, low cost and consistency,"<sup>120</sup> governing their global value chains through strict sourcing requirements and standards. While these global value chains create opportunities for producers to engage in process, product, functional and chain upgrading,<sup>121</sup> there is no guarantee that they will be accompanied by the upgrading of wages, working conditions and freedom of association. One thing that *is* certain is that increased competitiveness in the sector puts pressure on farmers to reduce costs.

One of the main strategies farmers have used to cut costs has been to shift away from permanent employment and to casualize the workforce, relying on labor from local towns and the surrounding region, some of whom they hire directly and others through labor contractors. Women on Farms, a prominent NGO on the Western Cape, has identified four main categories of farm workers:

- 1-Permanent workers who are employed on a continuous basis
- 2-Part-time workers who are employed on a continuous basis but not full-time
- 3-Temporary workers who are employed for a specific period of time usually on fixed term contracts

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<sup>116</sup> Human Rights Watch, 2011, p. 31.

<sup>117</sup> Ibid., p. 30.

<sup>118</sup> Ndungu, 2011.

<sup>119</sup> Barrientos and Visser, 2012.

<sup>120</sup> Ibid., p. 8.

<sup>121</sup> Process upgrading is doing the same thing better; product upgrading is producing new related products; functional upgrading is taking on new value chain functions and chain upgrading is moving to a different, more high-tech value chain; *ibid.*, p. 7.

#### 4-Casual workers who are offered employment on an intermittent basis

While in 1996, 90% of employees in agriculture were full-time, by 2007 this had declined to 54.2% with casual and seasonal workers increasing to 45.8%.<sup>122</sup> In a survey of farmers on the Western Cape, du Toit found that off-farm temporary labor had come to dominate the total labor supply and that on-farm “temporary” laborers were often the female partners of male workers with permanent status and often had long-term relationships with particular farms. Even when farmers utilize labor contractors, the actual employment relations can be murky with contracted workers living on the farm and being supervised by the farmer.<sup>123</sup> Wages and working conditions vary between permanent and seasonal workers, between on-farm and off-farm workers, between those employed directly by farmers and those employed by labor brokers and even among those employed by the same labor broker.<sup>124</sup>

On the Western Cape, there are over 120,000 agricultural workers, more than any other province. The workforce is made up of South African “coloured” workers (people of mixed origin), internal migrant workers from the Eastern Cape and external migrants from Lesotho, Mozambique and especially Zimbabwe. Some of the migrant workers come for specific seasons and then return home, others move between provinces following the harvest seasons of different crops. Some of the seasonal workers live on-farm but many live in the townships and informal settlements.<sup>125</sup>

There is a widespread perception that foreign workers have replaced domestic workers in the sector because their labor is cheaper, and because South African workers won’t do farm work. Additionally, there is the question of how long someone counts as a migrant worker if he or she has been living on the farm for five or ten years as is the case with many from Zimbabwe, Mozambique and Lesotho. Some migrant workers are hired legally through the contract labor system but there are also undocumented migrants in the workforce, despite the possibility of significant sanctions being imposed on those who are caught.<sup>126</sup> Undocumented migrants are often assumed to be less likely to organize and demand improvements, for fear of being terminated or arrested and deported.

Farmers have always hired large numbers of non-South Africans to work on the farms, especially after 1990. Crush has argued that foreign farm work is primarily a “borderline phenomenon” in which migrants who are well-versed in the various legal and illegal ways of crossing, move back and forth across extremely porous borders, usually staying for several months at a time.<sup>127</sup> Structures of employment and workforce composition vary in the three border areas: Mpumalanga, for example has a large number of Mozambican farm workers who settled in the area in the 1980s as well as, more recently, those crossing the border to work. “On any large farm on the average harvesting day” writes Crush, “one can find permanent farm workers (mainly South Africans) seasonal workers (mainly Mozambicans and internal South African migrants living in former homeland areas) and temporary workers (almost exclusively Mozambican migrants and many who are undocumented).”<sup>128</sup> Some of these migrants are legal temporary workers, some hold legal contracts acquired by farmers

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<sup>122</sup> Ibid., p. 12.

<sup>123</sup> Ibid., p. 17.

<sup>124</sup> Theron, 2010.

<sup>125</sup> Human Rights Watch, 2011, pp. 26-28.

<sup>126</sup> Since 1991, a farmer found guilty of employing “illegal workers” is liable for a fine of R20,000 or five years imprisonment for each worker, but owing to lack of capacity these penalties have rarely been assessed.

<sup>127</sup> Crush (ed.), 2000.

<sup>128</sup> Ibid., p. 5.

who first hired them illegally, and some carry farm IDs that are honored by local police. Crush also describes a “complex combination” of degrees of legality: legal and illegal Mozambican ex-refugees (some with South African IDs acquired through the amnesties and some without), “legal illegals” (migrants with fake documentation) and Mozambican undocumented migrants (some with IDs, many without). Researchers have found that some South Africans do work on farms in the border areas but tend to be in the higher paid, less difficult jobs.

Regulatory action to improve farm worker wages and conditions was taken in 2002 with the establishment of Sectoral Determination (SD) 8 which regulates basic conditions of employment and sets a minimum wage in the Farm Worker Sector (in 2006 it was replaced by SD 13 which has been amended intermittently to raise the wages of farmworkers).<sup>129</sup> The SD requires that employers charge no more than 10% of the wage for food or accommodation and that they provide written information to workers about employment, paid annual leave, sick leave and maternity leave. It also regulates hours of work including payment for overtime and holidays and prohibits child and forced labor.<sup>130</sup> Barrientos and Visser find clear evidence that the core permanent workforce shrunk dramatically on several of the farms they studied relative to the seasonal workforce since the introduction of the minimum wage.<sup>131</sup> More recently, when the farm worker minimum wage was raised after strikes on the Western Cape in 2012, many workers reported a decrease in social wages as farmers raised the cost of rent and other essential services as well as a cut back on their hours.<sup>132</sup> Even with the regulatory improvements that have been enacted, farmers continue to exercise enormous control over workers’ lives, from hiring to land and housing, electricity, water, transport, access to healthcare, education for children and other services.<sup>133</sup>

Unions themselves have had limited access to the farms and relatively little collective bargaining has occurred in the sector. Although farm workers have engaged in sporadic strikes and other work actions, and there are 34 unions organizing in the sector, unionization had declined from 10% in 2007 to 3% nationwide by 2011. In a 2011 assessment of freedom of association and collective bargaining in the sector, the ILO found that many workers were disillusioned with unions, feeling that they only appeared on the farm to solicit members and did not return after that, and made promises they did not keep. On the other hand, they had a more favorable view of trade unions with a local presence and leadership. Overall, most workers said they preferred to be represented in negotiations with farmers, rather than representing themselves.<sup>134</sup>

In the past few years, FAWU, which has the largest number of farm worker members, has resolved to place greater emphasis on farm worker organizing. Historically the union’s membership had been concentrated more in food processing, but in 2004 it merged with the South African Plantation and Allied Workers Union (SAPAWU) which had been organizing farmworkers only and inherited its membership base. Howard Mbana, a FAWU national organizer who had been with SAPAWU and

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<sup>129</sup> It also allowed sub-standard hours--a 45-hour work week, an additional 15 hours per week of overtime and unpaid maternity leave; Theron, 2010, p. 5.

<sup>130</sup> Webster and Nkosi, 2013.

<sup>131</sup> Barrientos and Visser, 2012, p. 23.

<sup>132</sup> This has been widely reported in the media and was told to this author by scores of workers in both Mpumalanga and Western Cape.

<sup>133</sup> “Farm-based strikes are not merely rural versions of what happens on the shop floor,” writes: “Housing, off-farm employment, livestock and grazing, transport and access to land, all the needs of rural dwellers can figure in farm workers’ demands;” Du Toit, 1994, p. 385.

<sup>134</sup> *Ibid.*, pp. 106, 109-10, 112.

is playing a central role in its farm worker organizing noted that migrant workers face issues specific to their status: “When we see a migrant worker we organize them, there is no distinction with other workers, but the challenge is after having organized them we encounter the real challenges that the migrant worker faces on top of being a farmworker... They are easily exploited because if they don’t have papers the farmers can take advantage and say if you give us trouble we will dispose of you. Also, if they have children and they don’t have papers, than the children won’t have papers which means they will not be able to access the benefits of the social protection system that accrues to all South Africans. They can get into a school but when they reach a certain age they cannot get an identity card and so they can’t go further with their educations. The problem of the parent becomes the problem of the child and some even now have grandchildren, so it is a chain of exploitation. These are the things we encounter, but we are unable to deal with them...”<sup>135</sup>

The other issue the union faces is retaliation against farmworkers who join the union, which is particularly brutal for on-farm workers. If they are staying on farm compounds, Mbana reports, and decide to join the union, “the farmer cuts off the electricity and water to the compound and tells them if you joined the union then ask them to bring you water and electricity.” For migrant workers farmers have additional leverage: “they go and recruit them, pay for their papers and everything and make sure they get transport to work, but once you join a trade union, you will fend for yourself.”

A 2011 NALEDI study of obstacles to organizing on farms concluded that an important reason that FAWU is not organizing more farm workers is that it is stuck in a vicious cycle—dues are kept low because farm workers earn very little but this makes it difficult to put sufficient organizers in the field to recruit and service the farm workers. Without large enough numbers they cannot achieve recognition, without recognition, they cannot bargain with farmers, if they cannot bargain with farmers, workers do not see the benefit in joining the union. As a consequence, workers perceive them as ineffectual and become disinclined to join.<sup>136</sup> While FAWU has decided to prioritize organizing farm workers, questions about the right strategic approach remain.

Two case studies provide a picture of recent organizing efforts among farmworkers and illustrate the issues and tensions unions and community organizations struggle with when they talk about migrant workers. In Mpumalanga Province, FAWU has been working with the Solidarity Center to organize farms through a program of recruiting and training shop stewards. In the Western Cape, unions including FAWU were caught by surprise when farm workers there went out on strike for close to two months in November 2012, winning a 40% increase in the minimum wage, and have been since attempting to recruit more members among the grape workers in the region.

#### *Mpumalanga Province*

In 2012, the Solidarity Center began working with FAWU to strengthen organizing among farmworkers in Mpumalanga Province who work on high value fruit and vegetable farms. The goal was to improve the union’s organizing capacity in general and to help union officials and stewards develop a program that specifically targeted migrant workers for membership. As Solidarity Center Program Officer Mike Gwamanda explained it: “We had started long ago just trying to convince unions that there was a need for migrant worker trainings. Some unions could not understand that

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<sup>135</sup> Interview with Howard Mbana, October 23, 2013.

<sup>136</sup> NALEDI, 2011, p. 112.

they needed to go beyond saying simply that they do not discriminate among their own members...”<sup>137</sup>

In FAWU’s case, the program is focused on farm worker organizing but when asked, leaders said that they did not see it as a *migrant worker* project: “It is really about them being farm workers not migrant workers in particular,” Howard Mbana said. “The thing is that when we strategize for organizing we say we are going to organize farmworkers only to find the majority will be migrant workers.”<sup>138</sup> Researchers who have looked at the restructuring of labor regimes in high value food systems like export agriculture in Mpumalanga are clear that the growing presence of migrant workers is deliberate. They point to the hiring of migrant workers who are “cheaper, less militant, more flexible and vulnerable”<sup>139</sup> as a centerpiece of a deliberate strategy on the part of farmers.

The division of labor on farms in this region has been that permanent workers have written contracts, are often in positions that require skills and are the best paid workers on the farms, sometimes also receiving medical aid and pensions. They are usually South Africans or Mozambicans with South African Identity Cards who have been in the country for several years. Farmers also hire large numbers of seasonal workers who are less likely to enter into a formal contract and are usually hired on the assumption that they will work only until the crop has been harvested. Some of these seasonal workers are women who live on the farm with their husbands and become part of the workforce during the harvesting period. As to documentation, seasonal workers may or may not be undocumented, but as Mather described it “most farmers demand documents of permanent workers only: ‘the rest we turn a blind eye to.’”<sup>140</sup> In addition to permanent and seasonal workers, there are also temporary workers who live on the farms and are hired for short-term and temporary tasks at very low wages and are usually undocumented migrants from Mozambique. Farmers express a preference for the Mozambican or Shangaan workers, saying they are “hard working in nature.” For the most part South African workers are more likely to take action against the farms and undocumented Mozambican workers less likely to do so, for fear of deportation.

In interviews conducted in late October of 2013 with 14 Mozambican and Swazi farmworkers recruited by the union from farms around Malelane in Mpumalanga Province, it appeared that while migrant farmworkers might begin their jobs as temporary or casual workers, they are increasingly employed as permanent and seasonal workers. On some farms they are now the majority of the workforce. One group of workers had been working and living on the same farm for more than five years, and said this meant it did not make sense to start over in Mozambique or Swaziland. This same group had previously been employed by the farmer directly but were now employed through a labor broker and were being paid significantly less than the sectoral minimum wage of 105 rand that was put in place in 2012. This they were told, was a function of their lacking South African IDs and having only passports. They said that they had been told by the contractor that if they talked about this discrepancy they would be marked absent for days they had worked. They also said they had reported the problem to the DOL inspector who had visited their farm and had promised assistance but had not provided any. Others reported similar experiences of going to the DOL with problems

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<sup>137</sup> Interview with Mike Gwamanda, October 27, 2013.

<sup>138</sup> Interview with Howard Mbana, October 23, 2013.

<sup>139</sup> Mather, 2000.

<sup>140</sup> Ibid., p. 429.

and not receiving assistance and several workers said that the DOL inspector only spoke with the farmer when he or she came to the farm.

A DOL manager in the Malelane office told us that he sees very few violations in his region, gets few unpaid wage complaints and that the vast majority of employers comply with the sectoral determination. He also said that he has seen no labor brokers in the region: “Here on the farm, the farmer is directly involved with the employee...”.<sup>141</sup> He prided himself on having built a good relationship between inspectors and farmers through various meetings, social events and occasional golf games. In terms of undocumented migrants, the DOL manager said that these employees have all the rights of any other worker and that DOL enforces the laws regardless of the worker’s status. However, if a farmer calls with a complaint about an undocumented worker “making trouble” on the farm, DOL might suggest they call DHA. He also said that DOL very seldom, perhaps twice a year, gets called by a worker who has been dismissed because they joined a union. In general, it was his feeling that unions were not visible to workers on the farms.

Most of the workers I interviewed said that they had gotten their jobs by going farm to farm until they were hired and that the only documentation farmers required was a Mozambican passport. While initially some were required to get work permits and to renew them every 30 days, most said they no longer did this. In other cases, farmers applied for contracts that allowed workers to come for 12 months. In all cases, workers said that with their Mozambique passports they were able to easily move back and forth across the border. Swazi workers also used their passports to be hired and were able to move back and forth via a border gate between the two countries. They spoke of the necessity of developing a relationship with the soldiers who control the gate and access to the registration book that migrants sign as they go in and out of South Africa.

On one farm, a number of skilled workers employed through a labor broker were laid off and asked to train their replacements after the farmer told them that they needed to hire South Africans with IDs (the workers had Mozambican passports). Some said that South African farm workers say “you are taking our jobs” and one group described having a manager who frequently told them things like “you people have to go back,” while others said they had not had any workers or managers say these sorts of things to them. Workers from specific farms said they were treated differently than South African workers, especially with regard to safety. Two irrigation workers for example said that while South African workers were given boots and raincoats when irrigating the sugar cane, they are not issued them. On other farms, they said there was no difference in treatment.

Strikingly, none of the farm worker interviewees saw themselves working only temporarily in Mpumalanga; on the contrary; every worker without exception said they imagined themselves working as farm workers in South Africa for the rest of their working lives because jobs in their countries are scarce and paid much worse than in South Africa. Few had had jobs and none had been in a union in either Mozambique or Swaziland.

Most farm worker interviewees seemed reluctant to engage in industrial action (although a minority said they would); many said that they had wanted to become members of a union—in this case FAWU, because they wanted the union to bargain with their employers. All saw the union as necessary to improve wages, get the farmer or contractor to follow the law in terms of overtime pay, gain a provident fund and possibly an annual bonus and have protection against unfair dismissal.

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<sup>141</sup> Interview with DOL manager, 25 October 2013.

Two workers talked about wanting to get the union to negotiate so that the employer no longer held back a portion of their pay until they returned from their annual leave in Mozambique and some hoped the union could help ensure a smoother transition when a farm changed hands to ensure they were credited appropriately for their years of service and got the money they were owed. One group said another reason they wanted a union was so when their manager made arbitrary decisions they wanted to have the ability to talk to managers who were higher up-- they were hoping to be able to do this through their shop steward. The majority of workers were not receiving the increased sectoral determination of 105 rand per day. Their employers had either cut back on the hours per day so that they could limit pay to 93 rand or had been approved for an exemption from the DOL.

Interestingly, although one group described workers having to spray the trees with pesticides and as a consequence of not being given clothing suitable for this type of work, putting the pesticide in direct contact with their skin, they did not talk about trying to address this through the union. Similarly, although several workers described living in dilapidated housing on farm, very few talked about having the union take up this issue. Despite the presence of a growing number of women workers on the farms and the common issues of sexual harassment by supervisors, being consigned to temporary and seasonal worker status as opposed to permanent, lack of on-farm child care or unemployment insurance coverage for maternity leave, workers did not talk about trying to address these issues through the union.

While most workers said they did not feel that they had been treated any differently by the farm shop steward because they were migrant workers, one group said the shop steward had explicitly told them that he would not take care of them because they were “outsiders.” The regional organizer expressed concern about the shop steward and assured the workers that this was not FAWU’s policy. In discussions after the interview, he said that there had been a small number of shop stewards who either did not understand that foreign workers were allowed to join the union or who did not want them to do so.

Migrant workers expressed mixed experiences at the hands of farmers after telling them they had joined the union. Some said the farmer had no problem with it, others said that they were treated differently after joining. In the most extreme example, Swazi irrigation workers without South African IDs on one very large farm said that since joining the union their employer had stopped assisting with the acquisition of work permits and threatened them on a daily basis, saying: “You don’t have the right to be here and we are doing you a favor. You have to shut up. Otherwise, we are calling the truck...”<sup>142</sup> The workers on this farm were also among the few who reported having participated in strikes.

The biggest challenge for FAWU, according to organizer Howard Mbana, has been the fact that most of the organizers are based in towns rather than rural areas and have traditionally organized food processing workers and they fall back on what they know rather than striking off in a new direction. Another reason it has been difficult to focus on farmworkers is that subscription fees (dues) which are set at about 1.4% of monthly salary are lower, which means the revenue base from farm workers will be smaller and makes them less attractive to local union officials and organizers.<sup>143</sup>

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<sup>142</sup> A reference to a police round-up. Interview with Tomahawk Workers, October 26, 2013.

<sup>143</sup> Barrientos and Visser, 2012, p. 4.

Solidarity Center work with FAWU began with discussions in July 2011 with top leadership of FAWU in advance of FAWU's September 2011 National Congress. In discussions with FAWU, it was noted that the union sought a stronger organizing strategy and "a culture of organizing and recruitment" in a number of sectors including farming, forestry, food processing, sales, and fishing. Of particular interest for Solidarity Center was helping FAWU better examine and improve upon attempts to organize migrant workers.<sup>144</sup>

Based on the meetings, the Solidarity Center focused its efforts on two specific FAWU projects – the effort to organize farmworkers (particularly migrants) in Mpumalanga; and a second project to assist FAWU to build upon its existing strength in the sugar processing sector in Kwa-Zulu Natal. The KZN work focused less on migrant worker outreach but more on building an organizing strategy as a means to improving FAWU's ability to enforce collective agreements and negotiate sector-wide gains for workers in the sugar supply chain through sector-level bargaining.

In late 2011 and January 2012, strategic meetings were held with FAWU leaders from Mpumalanga and KZN, along with COSATU representatives, to develop a program strategy for organizing work. While most of FAWU's goals at the time focused on its attempt to build bargaining strength in the KZN sugar sector, according to Solidarity Center, the union agreed to a plan to support on-the-ground organizers in Mpumalanga and the explicit goal of organizing migrant workers.

To implement the migrant worker strategy in 2012, the Solidarity Center focused initial efforts on reviewing FAWU's migrant worker organizing capacity in Mpumalanga, with follow-on strategic planning and organizer training for FAWU's Mpumalanga Branch based in Malelane. An additional part of the initial work was to open dialogue between other NGOs in Mpumalanga working on migrant support activities. In 2012, a key link was made between FAWU and the Migrant Health Forum (MHF), with the Solidarity Center providing some support for the organization's meetings and facilitating dialogue around the policy issues important to MHF, such as access to health care and social security for migrants.

By March of 2013, FAWU's Mpumalanga structures reported more than 1,800 new members of which, 450 members were migrant farmworkers, with the union shifting some of its efforts to collective negotiations in a few newly organized companies. Feedback from FAWU in 2013 noted that its shop stewards were having a difficult time responding to the different needs and demands of migrant workers. Some of this fell in the realm of language difficulties communicating with migrant workers (mostly from neighboring Mozambique), but also demands such as paperwork to formalize their status or to gain access to social services, that FAWU had not traditionally covered in either organizing or bargaining. While organizing efforts had yielded some success, there was an overall sense on the part of FAWU leadership responsible for organizing, that the union still needed more assistance understanding and representing migrant farmworkers.<sup>145</sup>

With access to some research from both MHF and the Solidarity Center's Rule of Law Department, the Solidarity Center was able to develop basic training on the nature of migrant work and the applicable laws and legal standards that apply to migrant workers in South Africa. The Solidarity Center developed a basic curriculum covering a number of topics, including:

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<sup>144</sup> Notes from meeting with Chris Johnson, Solidarity Center Country Program Director, December 1, 2011.

<sup>145</sup> Interview with Howard Mbana, FAWU national organizer

1. Specific constitutional provisions covering equality, citizenship, labor relations, housing, health care, education, etc.;
2. Policy changes from the South African Department of Health announcing limited means testing for access to health care for asylum seekers and refugees;
3. Reports of violations of provincial wage determinations by employers seeking exemptions in wages and/or benefits without consulting employees or employees representatives, as per legal obligation.

The Solidarity Center held a number of trainings in 2013, the final event being an organizer training in September in which FAWU participants, along with MHF representatives, discussed working on development of local coordinating committees to support FAWU field organizers and shop stewards, and a potential campaign to promote increased registration by migrant workers – potentially in cooperation with COSATU’s Task Team on vulnerable workers.

At roughly the same time, FAWU noted that it had organized another 232 workers since the 1800 reported in March 2013. FAWU did not break down the new numbers by migrant status. The union additionally produced a targeted organizing strategy encompassing five companies in the province.

Project discussions with FAWU’s Mpumalanga leadership moving forward have focused continuing support for field organizing, but with more structured Solidarity Center assistance to help FAWU shop stewards in Mpumalanga better understand and represent the grievances of migrant worker members in bargaining and dispute resolution. More efforts to integrate the provincial work with national-level policy work of both FAWU and the COSATU Task Team is anticipated, along with better efforts, in cooperation with MHF to increase dialogue between workers with government agencies and structures such as the Departments of Labour, Justice, Home Affairs, and the Commission for Conciliation, Mediation and Arbitration (CCMA) – South Africa’s workplace dispute resolution body.<sup>146</sup>

Sheena Foster, a graduate student who conducted interviews with most of the FAWU shop stewards who have received the training, said that they all appreciated what they learned and expressed a desire to receive more, particularly in politics and economics, and that all of them are very loyal to the union even though it has only been able to give them limited resources for organizing and recruitment and they don’t have much contact with the local FAWU organizer. Foster said that the stewards told her they wished some of the union communication was in their native language. Her impression was that language is a huge issue for organizing on the farm because there are often four different languages spoken and stewards are not multi-lingual. She suggested that some of the stewards were struggling for recognition and respect from the farmers, saying: One said ‘my employer said to me because I do not speak good English, he will not talk to me.’<sup>147</sup> The other overwhelming issue is access to the farms: shop stewards have limited transportation and also are often barred from entering private property.

Themba Chackliss, a South African farmworker in the area who had also been trained by FAWU, gave the sense that some of the shop stewards are having a major impact on employment relations

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<sup>146</sup> This section draws heavily upon a January 2014 report from John Hosinski, Solidarity Center staff.

<sup>147</sup> Interview with Sheena Foster, October 25, 2013.

on their farms. He described an extremely oppressive situation on Libuya Farm in which workers were very isolated, not allowed to stay with their children, and forced to do anything their supervisors said, including cleaning their houses. Women and girls he added, were sometimes forced into sexual relations. Now, he said, “slowly and surely we are seeing a change.”<sup>148</sup> Changes included the fact that they are now allowed to have visitors and managers are much more consultative. “If there is some change, they consult us and they are doing their best to allow those labor laws to be enforced in areas where there had been no safety.”

On the other hand, the treatment of migrant workers still has a long way to go, Chackliss says: “They are still treated badly and paid less because they are foreigners. They use them for whatever they want. But as shop stewards we are doing our best to include them and to say ‘guys, we are all Africans’ but there are still some spaces between African and being foreign. It is not simple for us to come together but as a union we are saying no let’s stop this and let’s work together.” The trainings seem to be having an impact; Mike Gwamanda, the Solidarity Center staff person coordinating this work, reports that FAWU has gained 2,023 new members since they began.

#### *The Western Cape*

On August 27, 2012, 300 farm workers living on Keurboschkloof Farm near the town of De Doorns, including a significant number from Lesotho and Zimbabwe, went on strike after the new owners instituted a wage cut. The first organization on the ground was PASSOP, a migrant rights organization founded in 2007 to provide support to the hundreds of thousands of Zimbabwean refugees displaced by the political unrest in their country. PASSOP had already been working closely with FAWU and COSATU to organize migrants into the union. According to PASSOP director Braam Hannekom, the workers were angry about the unilateral wage cut, many having worked there for ten years or longer.

PASSOP and COSATU organized a meeting with the workers to discuss the possible consequences of an unprotected strike, which could include being fired from their jobs. The workers decided to take the risk and according to Hannekom, saw their wages restored in two days. While organizers had hoped to work with FAWU and COSATU to help more on-farm workers engage in these farm by farm organizing and bargaining efforts, Hannekom watched with dismay as a more confrontational style took hold, when protests erupted in Stofland, the township outside of De Doorns led by farm worker committees and supported by two unions, BAWUSA (the Bawsi Agricultural Workers Union of South Africa) and FAWU. He observed: “People living on farms still remain the most disempowered while those in townships are more able to organize.”<sup>149</sup> Organization and collective bargaining versus direct action is a well-worn divide among working class activists, but Hannekom’s wariness grew from a different source. De Doorns had been a center of xenophobic violence in 2009 when 3000 Zimbabwean migrants were forced out of the townships and informal settlements and had to live on the rugby fields in the middle of town for months. At that time, part of the impetus for the township residents’ actions was anger over the growth of agency work and labor brokers on the farms,<sup>150</sup> but foreign workers ended up becoming targets. For this reason he did not trust the direct action impulse coming from Stofland.

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<sup>148</sup> Interview with Themba Chackliss, October 28, 2013

<sup>149</sup> Interview with Braam Hannekom, October 2013.

<sup>150</sup> Interviews with Jan Theron, Margareet Visser, and Shane Godfrey at the University of Cape Town, October 31, 2013.

A series of sporadic strikes took place in September and October along with larger and larger protests in the townships and on November 1<sup>st</sup>, hundreds of thousands of farm workers went on strike across the Hex River Valley, the main grape-growing region of the country, demanding an increase in the sectoral determination for farm workers from 69 rand, one of the lowest in the country, to 150 rand.

Howard Mbana, FAWU national organizer, recalled how opposed the union was to the strikers' demands and how surprised they were when the strikers succeeded in winning an increase of 52% to 105 rand. "What did we do? We tried to neutralize them, make them understand this is unreachable. We were trapped in negotiating for the ordinary... Workers were always telling us ...this is peanuts to us but we were saying 'no, the way of organizing is you can't demand this much' then what did they do, they demanded their money, it became an issue, everyone started supporting them...So I honestly say we were caught unawares."<sup>151</sup> FAWU had a collective bargaining orientation, but with so little union density in the sector, farm workers' natural demand was on the state to raise the sectoral determination.

A strike of this magnitude among farm workers was unprecedented as was the leadership role played by farm worker committees, local organizations of seasonal farm workers living off-farm in the townships and informal settlements, many of whom although initially employed directly by farmers were now employed, at a lower wage rate, through labor brokers.<sup>152</sup> Although arguably worse off economically than before, the new arrangement meant they were more able to engage in organization. This was ironically an indirect effect of the liberalization and intensified international competition that arose from deregulation. Despite the precariousness of their employment situation in comparison to the permanent on-farm workers, living off-farm put them in a more autonomous position and made them much less dependent upon the farmers for basic needs like housing. In De Doorns, these workers had already been involved in protesting problems with basic service delivery of water and electricity.

Ronald Wesso, an activist in the Surplus People Project, which has worked with farm workers in the area for several years and was a mainstay in the NGO-union coalition that supported the strike on the ground, argued that the farm worker committees, which began as local, informal networks among seasonal workers in the informal settlements and hostels, were an important organizational innovation in the history of farm worker organizing. He noted that while migrant workers made up the majority of their members "their spokespersons were often permanent residents of the area living either on farms or in the townships," adding "the workers who initiated the strike and the vast majority of those that joined them did not belong to a trade union, but that does not mean, as some have suggested, that they were not organized...The story of the farm worker committees is the story of worker organizing during the strike...It was the farm worker committee which kept the coalition rooted among striking workers and provided the coalition with militant energy and mobilizing verve."<sup>153</sup>

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<sup>151</sup> Interview with Howard Mbana, October 2013.

<sup>152</sup> Interviews with farm workers Betty Fortuin, Bonisilie Fyfer, Clarina Filander and Aldrena Fatbois, October 29, 2013.

<sup>153</sup> Wesso, 2013.

According to Wesso, the key things that set the committees apart from unions and NGOs were that they were locally based, inclusive of seasonal workers, women, migrant workers and the unemployed, were community funded, invited all residents to meetings not just members, had no paid staff and management. Moreover, they were not formally registered as non-profit organizations or trade unions and as such “were excluded from the statutory processes that surrounded the struggle.”<sup>154</sup> Politically, the farm worker committee activists were disgruntled ANC supporters who nevertheless supported President Zuma’s re-election and viewed Tina Joemat-Pettersson, the Minister of Agriculture, as an important friend to the strike. In De Doorns, ANC councilors also played a leadership role in the strike.

Also unusual were the size of the protests and the militancy of the farm workers’ direct actions including marching onto the N-1, the main highway between the wine-growing region and Cape Town, the rapidity with which it spread, and the fact that it was not connected to unions. As Betty Fortuin, one of the leaders of the De Doorns farm worker committee recalled almost exactly one year after the strike, “And there was no unions, in the first place there was nothing, we organized ourselves.” From Fortuin’s perspective, although there were unions on the Western Cape, they were only organizing on-farm workers. “People here did not know about the unions, it was only if you were working on the farm and a permanent worker. . . We are seasonal workers.”<sup>155</sup> Interestingly, although the strikes were largely being led by off-farm seasonal workers living in the townships and settlements, many of the demands initially put forward related to social wage-related issues regarding on-farm workers, including the rent being charged and evictions of their children at age eighteen.

According to Fortuin and others in the De Doorns committee as well as leaders from Women on Farms, the farm worker committee realized that they had never done anything of this magnitude before, and that they had never been involved in negotiations and turned to the unions for help. Wesso also said that the farmers steadfastly refused to engage in direct negotiations with the farm worker committees saying they would only enter into negotiations with unions. The committees asked Nosey Pieterse, of the Bawsi Agricultural Workers Union of South Africa (BAWUSA) to come and help. Pieterse was an experienced organizer from the old Retail and Allied Workers Union who had also been with FAWU for several years before becoming an industrial relations manager and in the mid 2000s had become involved in the government’s controversial efforts to get more blacks into ownership positions in the wine sector. He also spent several years as part a group of black professionals and entrepreneurs interested in transforming the ownership and management structures of the sector. First he created the Black Association for the Wine and Spirits Industry (BAWSI) and later on formed a companion union, BAWUSA.<sup>156</sup> At the time of the strike, BAWUSA had been organizing in the wine areas for about four years, and said that it had about 1,000 members on four farms.<sup>157</sup>

The farm worker committees asked Pieterse to represent them in mediation proceedings being started by the CCMA, along with Tony Ehrenreich, the regional secretary of COSATU and ANC

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<sup>154</sup> Ibid., pp. 1-2.

<sup>155</sup> Interview with Braam Hannekom, October 2013.

<sup>156</sup> BAWSI and BAWUSA emerged out of the ANC government’s Black Economic Empowerment program created to seed more black vintners in the white-dominated wine industry. The program has been criticized for defusing pressure for more systemic change that could address the power relations that sustain black farm workers’ poverty and marginalization: “Black empowerment,” Du Toit et al. conclude, “shifted attention from the harshly exploitative conditions of labour for black workers to the colour of “ownership.” Du Toit et al., 2008, pp. 7-8.

<sup>157</sup> Interview with Pieter Visser, October 30, 2013.

leader in the Cape Town City Council. According to Wesso, who was a direct party to the process: “The farm worker committees saw little danger in working with, being represented by and eventually becoming part of COSATU and BAWUSA.”<sup>158</sup> Eventually, the relationship became more contentious, as Pieterse and COSATU regional secretary Tony Ehrenreich became the de facto leaders of the strike and farm worker committee members felt increasingly marginalized.

When Pieterse arrived in De Doorns he was shocked by the size of the crowds: “the amount of people we have seen in the struggle against apartheid, those kind of masses...well above 10,000 people. I thought, I don’t even have more than 1000 members here on these farms...”<sup>159</sup> Pieterse says he was asked by the farm worker committee leaders to work with them and to lead the strike, and in turn asked them to have the crowd ratify the decision and to decide on the most important demand. “They just shouted ‘150!’ and I said ‘okay, we must meet with the farmers.” Ehrenreich joined him and the representatives of the farm worker committees after the first negotiations became deadlocked. But as the strike continued, Pieterse became increasingly concerned about the political inexperience of the farm worker committee leaders: “We wanted to build them, we took them with us and then as we went along we realized they are not where we are and we are going to expose ourselves badly....They didn’t see the bigger picture.”

The strike continued for weeks at a time, despite the abject poverty of those taking part, who without regular pay, often could not afford to buy food. The Minister of Agriculture provided food baskets and according to the farm worker committees, local Somali shopkeepers in the settlements also contributed food. Pieterse and Ehrenreich suspended the strikes in different locales every few weeks so that workers could go back to work and earn some money for food and other necessities, but this also created tensions within the movement.<sup>160</sup> As the negotiations went on, the relationship with the farm worker strike committee grew tense as they felt that decisions were being made about returning to work, for example, without their consent: “when they finalized the [sectoral determination] the strike committee was not part of the negotiation, but we started this thing without unions,” Bonisilie Fyfer, another committee leader, said. “Any time there was a meeting they called us, but when they negotiated we were not there. We were hearing it on the radio.”

When the strike was finally ended and the sectoral determination raised, farm workers in the townships and informal settlements around De Doorns got a bitter surprise when they were not rehired by the farmers for whom they had previously worked or were hired for fewer hours. Bongeka Nthshweza, farm worker leader during the strike who is also a member of Women on Farms, said “We don’t work full days anymore and we might have weeks where we only work two days and then be home. The farmers say they don’t have the money to pay us.” Also, many farm workers who were still employed did not receive the new sectoral determination. According to unions and NGOs, while some farmers applied for and received exemptions from having to pay the new minimum, many others simply cut back hours. from 9 to 8 per day so that they could pay 93 rather than 105 rand per week. After Women on Farms began distributing a pamphlet through their networks, encouraging farm workers to ask for the 105 rand, they began receiving phone calls from workers saying that farmers were not paying the increase. In some cases, farmers were also differentiating between women and men, paying a lower wage to the women. Farmers also began

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<sup>158</sup> Wesso, 2013, p. 3.

<sup>159</sup> Interview with Nosey Pieterse, October 30, 2013.

<sup>160</sup> Pieterse says that he could see strikers were hungry, “rubbing their bellies and I also knew their bosses would take them back because nobody was working...”

charging more for rent, water, electricity and transportation, which they had previously been subsidizing. Maria Barlie, another strike leader and member of Women on Farms said “On some farms, all the benefits have been taken away like doctor visits, the rent, the electricity, even now we have to pay for childcare. We think it was the farmers getting even...Some of them said to workers ‘okay, we will give you the 105 but you will see what happens...’”<sup>161</sup>

In interviews conducted on the week of the first anniversary of the strike, leaders in the township and informal settlements where the critical mass of strike participants live, said many workers were either not working or working fewer days and hours. Disillusionment with the unions was palpable. BAWUSA was accused of having kept money it received from the Ministry of Agriculture for food parcels for the strikers, of charging farm workers high subscription fees despite their low wages and of paying the local organizers they hired too little to survive on. Pieterse said that these accusations were baseless and insisted that since it became involved with the strike, BAWUSA had pumped in a great deal of money. “We have gotten almost nothing out of farm worker subscriptions, it is ridiculous. We have dumped our funds into De Doorns...it was never about making money but about liberating farm workers...” He was incensed by the accusations about low salaries for organizers: “I said if you want to come work for us, you must understand the people you are serving are earning nothing. This is not a union that makes money. This is a union that serves you. We don’t talk about how much these guys earn but I am telling you that some of the farm workers earn more than our volunteers. We give them money for petrol, those things we do and reimbursement, otherwise they don’t earn a thing. They have the prospect of someday becoming a full-time organizer or branch secretary.”<sup>162</sup>

Over the course of the week, as the November 1<sup>st</sup> anniversary drew nearer, BAWUSA was considering a strike as a way to jump-start the movement and to call attention to the fact that so many workers had not been rehired and that many others who were working were not receiving the 105 rand. But by this time, there was a clear rift between BAWUSA and the farm worker committee, FAWU and Women on Farms and many workers did not think going back out on strike made sense.

At a mass meeting called by FAWU on the eve of the first anniversary, over 1000 workers celebrated their accomplishment, but the overwhelming sentiment was against striking.<sup>163</sup> FAWU leader Mlungiseali Ndongeni argued forcefully that the focus needed to be on organizing and collective bargaining rather than striking. “Today we can go to the farm owners and speak to them because of you and what you did last time... We all know the demands were not just the 150, but also the conditions on the farm and these things will never happen without discussion. And we thank you but we want to tell you that a strike is not a party, it is something very difficult...this is not the right time to go and vote a strike, not now...” Women on Farms representatives told the crowd that they had consulted women across the Western Cape about going on strike and had received a negative response. They reinforced the message that it was a time not for mass action but for joining the union. Over the course of the meeting, audience members listened and sang and clapped and chanted. Despite the price they had paid, people expressed great pride in the previous year’s strike but did not feel that it was the correct strategy to repeat it.

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<sup>161</sup> Interviews with members of Women on Farms, October 31, 2013.

<sup>162</sup> Interview with Nosey Pieterse, October 30, 2013.

<sup>163</sup> Mass meeting I attended in De Doorns, Thursday October 31, 2013

According to Aida Jacobs, the Women on Farms representative assigned to De Doorns, “Some of the farm workers really regret having taken part in the strike because they feel they are worse off than before. Where are the trade unions now? The farm workers say the trade unions mean nothing to them anymore.” Resentment of migrant workers also came up repeatedly: “They make us fight with each other now,” said Clarina Filander, another member of the De Doorns Farm Committee. “Outside immigrants who are coming to the farm, not the informal settlement, that is who will get work...”<sup>164</sup> As Fortuin, who had been employed at the same farm through a labor broker for several years, described it: “We won this wage but they decided they would not employ us any more...Most of our color, the people who were born in De Doorns, haven’t got work.” Leaders from Women on Farms also believed this: “What happened here is now we are not getting work but the migrants are... the trucks come and pick up the farm workers but only the migrant workers, not the South Africans. If they are on farm, they settle for less than our workers. They will settle for less than 80 rand even. One woman explained it: “I am a qualified teacher, I don’t want to work in South Africa but my situation in my country is such that I just have to provide food for my kids...”<sup>165</sup> The organization said that when it had attempted to set up meetings with migrant workers, they were rebuffed: “They say no they are afraid to belong to any union or NGO...”<sup>166</sup>

The local farm worker committee leaders in De Doorns do not feel that the unions seized on the momentum of the strike to organize farm workers effectively. Some who became involved in BAWUSA after the strike, became disillusioned with the organization. “We didn’t know much but when we were elected to become office bearers in BAWUSA we discovered a lot...It is all about power and money not about people working on the farms.”<sup>167</sup> In general they felt that neither COSATU nor FAWU or BAWUSA had followed up with an organizing campaign. Betty Fortuin of the farm worker committee said she told them, “What will you do now because most of our people are sitting at home and the immigrants are working. You are supposed to force the government to give us our jobs and get rid of the immigrants or something will happen. They told us ‘we will get back to you.’”<sup>168</sup>

Perspectives on the role of migrant workers during the strike varied greatly. Fortuin said that “some stood with us but some were sneaking on a Sunday carrying a bag...They were going to work coming back dressing nicely like me and without any food or anything. The farmer sees they eat on the farms, we discovered...”<sup>169</sup> Others said that many foreign workers participated in the strike, some out of commitment and others out of fear of reprisals from other workers, and that, like local workers who had participated in strikes were not rehired, some foreigners were deported afterward.

But Mlungiseali Ndongeni of FAWU was enthusiastic about the role of migrant workers in the union. Not only does FAWU have many migrant worker members, he said, they are “the ones that are more advanced than any other farm workers that will give it direction and that will speak more about the problems they are facing on the farms...the ones that will tell you stories of how the farm is trying to discriminate and will come up with the wage disparities.” Ndongeni attributed this to their experiences in their home countries: “They are politically motivated, their background is from

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<sup>164</sup> Barrientos and Visser, 2012, p. 11.

<sup>165</sup> Interview with Women on Farms, October 31, 2013.

<sup>168</sup> Ibid.

<sup>169</sup> Barrientos and Visser, 2012, p. 7.

that direction and they know what it means to be liberated and suppressed and exploited.”<sup>170</sup>

Braam Hannekom of PASSOP agreed, particularly with respect to migrant workers from Lesotho, who, he said “are very militant and have a history of worker organizing, respect for trade unions and are known for being particularly well-organized.”<sup>171</sup> Unlike Ndongeni, who acknowledged the rifts between farm workers that had culminated in the xenophobic attacks and mass displacement that took place in De Doorns in 2009, Hannekom believed that the relationship has greatly improved and claimed that there is no longer a conflict of interest between the locals and migrants.

This view clashed strongly with that of the farm worker committee leaders. Recalling what had happened in 2009 Betty Fortuin said it is happening again: “people are going to fight with the immigrants because the farmers want only migrant workers and told them they will not employ us, just migrants, after the strike.” Hannekom disputed this claim, asserting that 95% of Zimbabweans live in the township, not on farms. As he saw it, some organizations were telling people that there is a large number of Zimbabweans living on the farms in order to whip up anti-immigrant sentiment.

In terms of recruitment, Ndongeni said that FAWU did gain members during the strike and has been focusing since on recruitment in De Doorns and elsewhere in the Hex River Valley. “Workers went on strike as a blowout without any arrangement with the union side...Whenever you deal with an unorganized sector, you have to struggle. If you don’t have a proper organization then you don’t have guarantees of any discipline and you can’t direct the workers. They just went out and we just saw it from the TVs. We were not properly organized in Western Cape in the farms sector, but we had members here and there but they were minority members. When we saw that rise, we saw that we had to recruit and recruit...” He says the union is targeting large farms and is trying to “recruit the permanent workers, who are predominantly women, on the farms to have stability because they are always there...” but also wants to recruit and fight for better conditions for seasonal workers. Likewise, there is discussion about assisting migrant workers with their “immigration issues,” including taking them to the DHA to register, although this has not been done. On the policy front, FAWU has spoken out strongly for amnesty for farmworkers.

Ndongeni recognized that to avoid paying the higher wage, farmers retrenched workers, cut the hours of those who were still employed and applied for exemptions from the higher wage. He also said that because the union is weak and does not have a majority on individual farms, it had not intervened to stop this.<sup>172</sup> In general, he feels that although the strike resulted in an increased minimum, it has not changed the willingness of farmers to negotiate: “Farmers didn’t want to listen to anyone and denied the union and that is the case until today. We are still fighting that battle on the farms who do not really want a union relationship...” One indication of the continuing tension with farmers is that some are not paying in the subscription fees they have deducted for workers who have become FAWU members. Despite the difficulties, Ndongeni says that the union is actively recruiting members and planning to open an office with a full-time staff person in De Doorns. He has also hired a contract recruiter in the nearby town of Paarl who is paid a commission for every worker recruited. But the real change will come, he says, “...When we get a majority 50% plus one, that is where we can change all the conditions and bargain for the workers.”

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<sup>170</sup> Interview with Mlungiseali Ndongeni, October 31, 2013.

<sup>171</sup> Interview with Braam Hannekom, October 2013.

<sup>172</sup> Ibid.

Other organizations have also been trying to capitalize on the momentum built during the strike, working in cooperation with government agencies. For example, Women on Farms has been working with the DOL in the town of Worcester to file complaints against farms that are not paying the new sectoral determination. A new organization is the National Farmworker Forum, formed in January 2013 which according to Rita Andreas, its chairperson, claims to have over 7,000 members.<sup>173</sup>

Andreas, a long-time spokesperson for the paternal benevolence of the farm owners, claims that the strike was a political strategy and that a lot of farm workers participated out of fear of getting hurt, not because they believed in the cause. She feels the strike cast farm workers in a negative light: “Every night in De Doorns saw people on TV throwing stones. They showed the whole world this is what farm workers look like and I said enough is enough because we on the farm respect each other and believe in discipline. Most of the farm workers live in better houses than fifteen years ago.... I can’t see why there are all the negative stories about farm workers and farm owners...”

The organization casts itself as a counterpoint to the unions, although Andreas vacillated a bit in talking about them, saying that “I am not against the unions, I think they did some good things but I don’t think we have to have conflict all the time on the farm. We want to live in peace and respect each other...” Andreas believes it is possible to persuade farmers to treat their workers better: “Yes there are some farmers, I would not say that all have adhered to what the law said about the new minimum...there are some farms where the owner doesn’t treat people right. But I say can we ... help you to see that your workers are treated equally? We don’t want conflict, we want to solve our conflicts.” Although most of the farm worker committee activists and BAWUSA and FAWU leaders dismissed the Farm Worker Forum as a front for the farmers, FAWU’s recruiter in Paarl said he felt it was cutting into his ability to recruit workers to the union. Strikingly, leaders of the farm worker committee in De Doorns said they believed that many of the Forum participants were migrant workers.

These two cases shed light on the difficulties of organizing farm workers in general but also on the tensions that arise when unions organize within a sector in which South African workers feel threatened by migrant workers. In Mpumalanga Province, although migrant workers are an overwhelming presence in the sector, FAWU leaders have resisted casting the project as an explicitly *migrant worker* organizing project and have had to contend with resistance from their own shop stewards to organizing and representing them. In the Western Cape, ambivalence towards migrant workers and the feeling that they were taking South African workers’ jobs was much more openly expressed; it was brought up repeatedly by leaders of the De Doorns farm worker committee.

It is arguable that while the prolonged direct action of farm workers on the Western Cape demonstrated enough power to leverage a substantial hike in the sectoral determination, the ability to hold farmers to it and to make other improvements in worker treatment necessitated an ongoing union presence and a deeper level of organizing. To achieve this on each farm, the union would have had to take seriously the different identities and interests within the workforce, to develop an agenda that spoke to these different needs and to facilitate the kind of relationship-building and democratic deliberation that durable solidarity requires. In contrast to policy debates, where it is possible for unions to take up a range of issues, it is tougher for them to “stand in the breach” when

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<sup>173</sup> Interview with Rita Andreas , November 4, 2013.

it comes to organizing, which requires a level of relationship and unity between groups of workers that policy does not.

## Conclusion

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 state/labor union relationships:* The labor movement's positive or negative relationship to the state and its sense of the state's capacity to protect it has a significant impact on its actions regarding immigration policy and organizing immigrant workers. Rules and structures of industrial relations condition the impact of intensified economic competition, and decentralization of neo-corporatist and industry-level collective bargaining make workers more vulnerable to market forces. Although COSATU was an important member of the governing alliance and succeeded in getting the government to adopt an equity-oriented economic development program and put into place a democratic corporatist framework with peak level bargaining on national policy, sectoral bargaining councils and policies that gave unions the ability to extend their agreements to the entire sector once a certain threshold was reached, to cover the entire sector along with workplace co-determination and active mediation and conciliation for industrial disputes, the ANC government ended up embracing a market-oriented set of economic policies that resulted in deregulation, and firms adopted employment practices that allowed them to avoid the new regulations and gave them greater labor market flexibility. As employers have sought to side step labor laws by opting out of traditional employment relations, unions have been fighting a rear-guard action and watching their memberships shrink. 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 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.<sup>174</sup>

*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,

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<sup>174</sup> Matuma Letsoala, *Mail & Guardian*, "Gatvol NUMSA cuts ties with ANC" December 20, 2013.

individual workers are faced with the fear of losing their jobs as well as the reality of having to financially support unemployed family members. These issues contribute to an exclusionary orientation toward immigrant workers. As discussed, South Africa has undergone a *fragmentation* of employment relations through strategies of outsourcing, subcontracting, third party management, franchising, temping and labor brokering and independent contracting in major sectors including manufacturing, construction, building services, hospitality, food services and healthcare. These have resulted in a more attenuated relationship between employees and firms and have made effective industrial organization much harder to achieve. The employer of record is further down on the “industrial food chain” where profit margins are tighter and pressure to lower costs is very strong.

In addition the growing casualization of labor where fewer workers are on permanent, full-time contracts and instead are on fixed term contracts and hired for part-time employment has resulted in a growing divide between the formal economy, which is shrinking, and the informal economy, which has grown significantly and now accounts for the overwhelming number of jobs created each year. Faced with the intensification of product market competition due to globalization, employers adopt strategies that allow them to compete by cutting their labor costs. In South Africa part of this strategy is to utilize migrant workers for meeting variable labor demand. Migrant workers have less power in the labor market and so can be added or subtracted at will, and are often willing to accept lower wages and worse conditions. For these reasons unions in South Africa today are extraordinarily ambivalent about migrant workers: on the one hand they believe they can maintain their privileged positions by excluding them, on the other, they know migrant workers are already present in large numbers in their sectors and need to be organized.

*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.<sup>175</sup> 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. As discussed, the availability of low wage migrant workers strongly complements business strategies to flexibilize employment. COSATU’s ambivalence about what to do and its continued objection to temporary worker programs, given the increased number of migrant workers and their utilization by employers to avoid union-favorable labor and employment laws is not unusual. A similar debate has taken place in the AFL-CIO, which has staunchly opposed temporary worker programs.

*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.<sup>176</sup> 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. Nation building was the broadly accepted pathway to realization of these goods: to quote from the Reconstruction and Development Programme: “Only a

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<sup>175</sup> Fine and Tichenor , 2009.

<sup>176</sup> Peberdy, 2001, p. 28.

program that develops economic, political and social viability can ensure our national sovereignty,”<sup>177</sup> Connected to this shared understanding is one that says that to achieve economic, political and social viability, clear lines must be drawn between insiders and outsiders because resources are finite. Millions lack adequate housing, access to sanitation and clean drinking water, decent education and health services. A quarter of the population is unemployed, as are 50% of young people between 15-24 and 34% of the employed population is earning poverty wages.<sup>178</sup> Polzer summarizes the resulting dilemma for migrant rights advocates: “The powerful evocation of citizenship rights in government circles and in some sectors of civil society, coupled with the sense of limited resources, puts the progressive rhetoric of immigrant rights and anti-xenophobia on the defensive and culminates in a dominant sense of threat and demand for control... Being tough on immigration becomes a kind of proxy for conferring rights on citizens.”<sup>179</sup> These broad societal shared understandings also condition COSATU’s outlook on migration policy and the idea of organizing migrant workers.

Finally, within the ANC, COSATU and FAWU 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 legitimize ‘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.<sup>180</sup> Just as the apartheid regime tried to reinforce tribalism among South Africa’s blacks, the anti-apartheid movement “often rejected ethnic labels as irrelevant.” Indeed, according to Seidman, “...the militant labor movement and most of the new urban groups that emerged to form a legal opposition in the 1970’s and 1980s generally rejected racial identity as a basis for mobilization... activists generally used nonracial principles in defining social movement constituencies....”<sup>181</sup> Thus it makes sense that the unions are continuing to reject anything that smacks of ethnocentrism, but ignoring the specific origins and experiences of migrant workers can lead organizations to miss issues that are very important to the sub-sectors of workers who make up the larger whole. Migrant workers have a set of issues and needs that stem from their status as migrants. When trade unions reject the idea of organizing them explicitly *as* migrant workers, they cut themselves off from important issues and concerns that could deepen their relationships, strengthen workers’ commitments to the union and mitigate against ethnic violence.<sup>182</sup>

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

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<sup>177</sup> ANC/COSATU/SACP, 1994, para 1.3.5.

<sup>178</sup> Decent Work Country Fact Sheet, South Africa, 2010.

<sup>179</sup> Polzer, 2005, p. 90.

<sup>180</sup> Seidman, p. 425.

<sup>181</sup> *Ibid.*, p. 428.

<sup>182</sup> Webster (2007), p. 504.

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 a 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 programs<sup>183</sup> 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,”<sup>184</sup> 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.

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<sup>183</sup> 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.

<sup>184</sup> Von Holdt, 2002, p. 289.

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