

**‘ILLEGALITY’ AND ‘LABOUR RELATIONS’ IN CONSTRUCTION: A
CASE STUDY OF ZIMBABWEAN UNDOCUMENTED MIGRANT
WORKERS AND EMPLOYERS IN JOHANNESBURG**



**A RESEARCH REPORT SUBMITTED IN PARTIAL FULFILMENT OF
THE REQUIREMENTS FOR THE DEGREE OF MASTER OF ARTS IN
SOCIOLOGY**

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DECLARATION

I, **Thabiso Moyo**, candidate number **754847**, hereby declare that this research report is my own original work. It is hereof submitted as part of the requirements for the degree of Master of Arts in Sociology at the University of the Witwatersrand, Johannesburg. This report has not previously been submitted for any other degree or examination in any other University. Where I have used the work of other authors, I have properly acknowledged them and I have not copied any author or scholar's work with the intention of passing it as my own.

Signed: -----

On----- Day of----- 2017

DEDICATION

I dedicate this work to Bokani, Thembani, Lulu and 'Aunty' who took me (a stranger) into their home when I was homeless and hopeless in Johannesburg.

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I am especially indebted to my supervisors and mentors, Dr. Ben Scully and Professor Bridget Kenny, who have always been readily available and very supportive from my initial speculative research ideas to the completion of this research report. A student cannot wish for better supervisors.

I also wish to express a sincere thank you to all those who graciously agreed to participate in my study. Their invaluable experiences and narratives are what this study is built upon. Without them, the completion of this study would not have been possible.

I also express my sincere gratitude to my family members, especially my uncle and aunt, Thanda Moyo and Concilia Moyo for providing me with a home and encouragement in my academic journey.

Lastly to my fellow comrades, Sello, Fikile and Greg I can only shout, “*Witness Me!*”

ABSTRACT

This study sought to explore how undocumented workers in the construction industry and their employers manage the employer – employee relationship in the absence of citizenship and (de facto if not de jure) labour rights for employees. Put simply, it sought to address the question, what governs workplace relations outside labour laws? Because of ‘illegal’ status in receiving countries, the literature has largely made it a norm to portray undocumented workers’ experiences as hyper-exploitative characterised by antagonistic relations with their employers. However by focusing on this subsection of the construction industry made up of Zimbabwean immigrant workers and their employers I was able to get a detailed picture of how labour relations take place in the absence of recourse to the law. Instead of antagonistic relations I found a more complicated picture which was nonetheless more harmonious and cooperative. This goes to show that while ‘illegality’ is an issue in the literature, it is less of one in a sector where ‘skilled’ work is important. These workers are able to assume greater leverage and negotiate (with employers) to a greater extent than the literature on precariousness and migrant labour reveals. This research thus calls for more investigations into spaces of negotiation in undocumented workers’ workplaces and relationships with employers so as to highlight more nuances and avoid generalising conclusions. In presenting these spaces of negotiation and workplace nuances, this study drew on narratives and experiences from both Zimbabwean employees and their employers who were in most instances subcontractors who also originated from Zimbabwe. These were obtained through in-depth interviews with workers and employers conducted between October 2016 and January 2017 and participant observations.

Table of Contents

DECLARATION	2
DEDICATION	3
ACKNOWLEDGEMENTS	4
ABSTRACT	5
LIST OF ACRONYMS AND ABBREVIATIONS	9
1 CHAPTER 1: INTRODUCTION	10
1.1 Introduction	10
1.2 Background and Context of the Study	11
1.3 Main Research Question	15
How do undocumented construction migrant workers and employers in Johannesburg manage employer – employee relations in the workplace?	15
1.3.1 Sub-questions	15
1.4 Research Objectives	15
1.5 Structure of the Chapters	15
2 CHAPTER 2: LITERATURE REVIEW	17
2.1 Introduction	17
2.2 Zimbabwe – South Africa Migration. A ‘Revolving Door Syndrome’	17
2.2.1 Johannesburg and its appeal to migrants	19
2.3 The concept of illegality	20
2.3.1 Multiple regimes of illegality	21
2.3.2 Neoliberalism and the illegal subject	21
2.3.3 Illegality as a master status?	23
2.3.4 Immigration laws and the creation of the illegal subject	23
2.3.5 The challenges associated with obtaining “legal” status in South Africa	25
2.4 Immigration law and Labour rights. De facto but not de jure labour rights	28
2.5 Construction Labour. Formal or Informal Employment?	30
2.6 Exclusions and Precarious Lifestyles	34
2.7 “Politics of Sympathy”. Undocumented immigrants and Victimhood	36
2.8 Immigrants’ “dual frame of reference”	37
2.9 A Focus on Workplace Relations / Spaces of Negotiability	38
2.10 Workplace/labour relations and labour organising: an impossible task for undocumented workers?	39
2.11 Conclusion	42
3 CHAPTER 3: METHODOLOGY	43
3.1 Introduction	43

3.2	Research sites and access	43
3.3	The Qualitative Design	44
3.4	Research methods	45
3.4.1	In-depth Narrative Interviews.....	45
3.4.2	Participant Observations.....	48
3.4.3	Sampling.....	49
3.5	Data analysis	50
3.5.1	The Narrative Method	50
3.5.2	Thematic Analysis.....	51
3.6	Methodological Challenges and Reflexivity: ‘Illegality’ as Access Barrier	51
3.6.1	Translation and Lost Meanings	53
3.7	Ethical Considerations.....	54
4	CHAPTER 4: OVERVIEW OF THE CONSTRUCTION INDUSTRY	56
4.1	Introduction	56
4.2	Main Contractors	57
4.3	Sub-contractors.....	59
4.3.1	The Pleas from Subcontractors.....	62
4.4	Worker recruitment	64
4.4.1	Labour brokers	65
4.4.2	Casual Workers in Construction.....	66
4.4.3	‘Permanent’ workforce	69
4.5	Differences between casual workers and “Permanents”	71
4.5.1	Mobility to Permanent status	73
4.6	Relationships between casuals and permanent workers at the workplace	73
4.7	The contents of the contracts.....	75
4.8	Conclusion.....	76
5	CHAPTER 5: ‘ILLEGALITY’	78
5.1	Introduction	78
5.2	The challenges associated with obtaining legal status in South Africa	79
5.3	Porous borders.....	82
5.4	Experiencing and navigating ‘illegality’	83
5.5	‘Illegality’ becomes invisible in the workplace	86
5.6	Weak monitoring by Home Affairs	89
5.7	Access into gated communities	91
5.8	Legality and Promotion/Mobility Opportunities	94
5.9	The legal consciousness framework	95

5.9.1	“No right to rights”	96
5.10	Breaking the law to Survive	97
5.11	Self-marginalisation as a survival strategy.....	97
5.12	Conclusion.....	98
6	CHAPTER 6: WORKPLACE NEGOTIATIONS	101
6.1	Introduction	101
6.2	“New Slaves”? A Focus on spaces of negotiability.....	101
6.3	‘Affective’ employer - employee relationships.....	102
6.4	Skill and Construction. A predominantly seller’s market.....	103
6.4.1	Advantages of Skill in the Labour Market	104
6.4.2	Skill as bargaining power	105
6.4.3	Skill and worker autonomy	107
6.4.4	‘Excessive’ worker value. Skill impacting leave days.	107
6.5	Self-Management and Self-Discipline	109
6.6	Kinship ties and the labour market.....	110
6.6.1	Kinship ties and benevolence in employee relations	112
6.7	The character of the city and mistrust.....	113
6.8	Disputes between Employers and Workers.....	115
6.8.1	Passivity, hard work and Non-Citizenship. A distorted nexus.....	115
6.8.2	Workers and Resistance.....	117
6.9	Conclusion.....	122
7	CHAPTER 7: CONCLUSION	124
7.1	Introduction	124
7.2	Research Conclusions.....	125

LIST OF ACRONYMS AND ABBREVIATIONS

BAMCWU	Building Allied Mining and Construction Workers Union
BCAWU	Building, Construction & Allied Workers Union
BCEA	Basic Conditions of Employment Act
CCMA	Commission for Conciliation, Mediation and Arbitration
COSATU	Congress of South African Trade Unions
CIO	Central Intelligence Organisation
DHA	Department of Home Affairs
ILO	International Labour Organisation
ZDP	Zimbabwe Documentation Project
ZSP	Zimbabwe Special Dispensation Permit
SAHRC	South African Human Rights Commission
UIF	Unemployment Insurance Fund

1 CHAPTER 1: INTRODUCTION

1.1 Introduction

This study sought to explore how undocumented workers in the construction industry and their employers manage the employer – employee relationship in the absence of citizen and (de facto if not de jure) labour rights for employees. Put simply, it sought to address the question, what governs workplace relations outside labour laws? In this context workplace relations encompasses analyzing labour relations¹ and how these impact on everyday employer-employee relationships in the Johannesburg construction scene as this industry is usually typified by a high portion of undocumented immigrant workers. Usually the assumptions by the literature on migration and labour are that employers hire undocumented workers because they enjoy fewer de facto protections in the receiving country. While for most cases this is probably correct, this research report disputes the universalizing conclusions drawn from employees' lack of legal protections.

These conclusions are premised on the basis that because undocumented employees do not have recourse to the law then we can expect and conclude that the labour relations of many undocumented workers are hyper-exploitative or 'slavery like'. This non-documentation status will in the course of this report be referred to as 'illegality'. In the migration and labour literature such as ILO, (2008); Lewis et al., (2014); Gleeson, (2010), it is this 'illegality' that pushes undocumented immigrant workers to 'slavery' like working conditions and workplace arrangements. I thus found a more complicated picture which was nonetheless more harmonious, cooperative than antagonistic coercion. This also has to do with the fact that many of the subcontractors are also immigrants and hence the relations of 'illegality' are much more complex and because of layers of relation, they are in fact mediated from the harsh portrait of hyper-exploitation. Thus my contention is that while 'illegality' is an issue in the literature, it is less of one in a sector where 'skilled' work is important. These workers are able to assume greater leverage and negotiate (with employers) to a greater extent than the literature on precariousness and migrant labour reveals. The chapters in this report are organised to argue against the tendency to associate migrant workers with precarity and hyper-exploitation. Therefore I do not only show that all workers do not experience hyper-exploitation, I also

¹ Includes but not limited to how pay and working hours are determined, rules for taking leave, how tasks are allocated and assessed, dispute settlement, etc.

illustrate the mechanism by which workers' experiences vary, namely skill and kinship networks.

The research thus drew on narratives and experiences from both Zimbabwean employees and their employers who were in most instances subcontractors who also originated from Zimbabwe. The report also makes clear that the South African construction scene is comprised of more than these two actors. Nonetheless by concentrating on this subsection of the industry made up of Zimbabwean immigrant workers and their employers I was able to get a detailed picture of how labour relations take place in the absence of recourse to the law.

1.2 Background and Context of the Study

This study is situated in the literature encompassing migration, 'illegality', labour relations, precarity and the South African construction industry. The city location of the study is Johannesburg. The discussions explored throughout this report are an interaction between these five areas of the literature or study. This study seeks to find its place among the literature encompassing these issues. This might entail adding to the already existing narratives around these issues or filling up on existing literature gaps. Existing literature and research on the relationship between migration, undocumented workers and labour relations largely focuses on themes revolving exclusion, xenophobia, hyper-precariety, lack of collective bargaining and forms of resistance (see Hlatwayo 2011; Bloch 2008; Landau 2007; Palmay and Landau 2009; Bolt, 2013; Lewis et al., 2014; ILO, 2008). These are usually presented as interlinked and connected with precarious citizenship being the basis of analysis or the root of undocumented workers' excessive perilous lifestyles.

The literature has focused less on individual spaces of negotiation or workplace bargaining and as such immigrant workers are largely all painted with the hyper- precariousness brush which largely portrays all undocumented immigrant workers as mere victims without any sort of agency over their lives in receiving countries. This report does not dispute that such precarity exists and that it is usually linked to an 'illegal' citizen status. The report also takes cognizance of the fact that precarity also characterizes most occupations with significant amounts of informality. However this research seeks to include more nuances to the picture and avoid a generalization of all undocumented workers as discouraged victims. Without examining individual cases of spaces of negotiation it becomes easy to strip immigrant 'extra-legal'

workers of their agency and erroneously conclude that they are all involved in contemporary slave like conditions or ‘unfree labour’ (Rogaly, 2008). Peck (1996) cited in Thiel (2010, 444) concludes “labour cannot be completely commodified or alienated from its incumbent because workers are frequently resistant and entwined in broader sets of social relations and normative structures that block total commodification”.

Existing literature dwells less often on the complex set of issues involving employer – employee relations; issues that migrants negotiate when they enter or are deeply entrenched in the job market. My study thus sought to reverse this trend and put the agency of immigrant workers over the structure in a qualitative way. Hodson (2001:50) argues that workers are not passive victims of social structure but are active agents in their own lives. Thus while their actions may be constrained, people’s agency ensures that they always have some degrees of freedom and some room to maneuver. Bakewell (2010) posits that agency is taken to refer to the capacity for social actors to reflect on their position, devise strategies and take action to achieve their desires. Thus Long (2001) cited in Bakewell (ibid: 1694) concludes that concern should be with social actors who exercise agency to ‘process *social* experience and to devise ways of coping with life, even under the most extreme forms of coercion’.

Bakewell (2010) also contends that most approaches in migration studies lean towards a more determinist position and play scant regard to the decisions and behaviour of individual actors. Likewise few studies dwell on the relationship from both the angles of the undocumented employee and the employer, that is, by analysing the interactive aspect of these relationships. However some new works importantly begin to add to this perspective that these relations are complex (Bolt, 2013), and this study works within these new insights. Bolt (2013) has nonetheless explored such aspects on farm workers and their employers. I seek to forward the study to the construction industry as it is also characterised by significant undocumented employees and similar trends.

Zimbabwe to South Africa migration trends are the foundation on which this research is based. According to Waller (2006) migration from Zimbabwe to South Africa has been described by the media as a ‘revolving door syndrome’ where migrants are deported and then return. Migration to South Africa by Zimbabweans is not a difficult case to understand as the two countries share a land border. Zimbabweans migrating to South Africa is therefore not a new phenomenon. However migration trends from Zimbabwe to South Africa have intensified over

the past decade due to Zimbabwe's collapsed economy, hyperinflation, human rights violations and lack of jobs (Bloch, 2008). Thus as Black et al. (2006) contend migration to South Africa is often a household 'poverty reduction strategy' and therefore forms part of a survival strategy for some households who depend on the remittances sent by those who have migrated. Johannesburg and its aspirations as a global city status (2013) presents plenty of opportunities for Zimbabweans seeking to break into the South African labour market. Palmary and Landau (2009) posit that it is well established that after 1994, the majority of both internal and cross-border migrants have been concentrated in the country's urban centers, but mainly in Gauteng Province of South Africa. Thus the setting of this research is in Johannesburg which has a vibrant construction industry.

Nevertheless, close proximity and sharing borders does not mean that every Zimbabwean immigrant is welcome in South Africa. The South African Department of Home Affairs (DHA) selects who is eligible for residence and work authorization mostly through the basis of skill or what they deem as critical skills at any particular time. Therefore obtaining legitimacy to stay and work in South Africa is principally complicated for low skilled and semi-skilled immigrants. The average construction worker is not deemed to possess a critical skill to warrant an automatic work permit or visa. Nonetheless, this research does not dismiss the DHA presented solutions to legalise the stay of undocumented immigrants. Asylums are eligible to pass as authorisation in the workplace and policies such as the Zimbabwe Documentation Project (ZDP) and the Zimbabwe Special Dispensation Permit (ZSP) are explored in the research. However this research affirms that these have not conclusively tackled the problem of Zimbabwean immigrants' non-documentation or rather 'illegality' as these immigrants are pitted against the law enforcements agencies and the DHA over this lack of authorisation. Nevertheless even in the face of such DHA solutions migration does not cease and new immigrants are not in a position to be authorised instantly. Thus De Genova (2002, 422) concludes that undocumented migrations are predominantly labour migrations. The law however ultimately prohibits the employment of 'illegal' immigrants.

Despite all the obstacles associated with immigration policies and a precarious citizenship, undocumented workers continue to gain access to employment. Construction, commercial farms and small businesses in the informal sectors are key areas of work for undocumented migrants coming to South Africa (Crush and Williams, 2005). Trimikliniotis (2008, 1331) observes that migrant workers are often preferred as cheap labour with limited, if any security

and meagre pay. In other words, profits and other benefits for capital are the fruits of the exploitation of migrant workers. This 'illegality' is also another important focus of this research as authors like Gleeson (2010) equate it to a 'master' status where it has similar and wide ranging effect on life experiences in similar ways to race, class, and gender. For Gleeson (2010, 580) this 'illegality' as a 'master status' also translates to the workplace as she points out that, "undocumented status also has constitutive effects that can undermine the expansive instrumental effects of workplace rights". Instead I argue that undocumented immigrants do not experience 'illegality' in similar ways, thus their 'legal consciousness' is not necessarily universally against the law as Gleeson has pointed out. Different ways in which undocumented workers experience and navigate 'illegality' will be explored in detail in Chapter 5 of this research.

This study is situated within the South African construction industry. Apart from having significant numbers of undocumented workers, the construction industry is also characterized by both the 'formal' and 'informal sector'. Authors like Chun (2014) highlight the increasingly difficult nature of distinguishing between formal, semi-formal and informal employment. Lindell's (2010) definition of informal workers includes all of those in the 'informal sector', meaning they work for businesses which are not registered as required by law. However, it also counts workers in formal sector enterprises or private households as informal workers if they have neither a written contract, nor medical aid or pension benefits. In the construction industry this continuing blur between formal and informal work is added on to by sub-contracting. Moreover it might be the case that these informally employed workers work alongside formal, unionised employees of major construction companies, even on mega-projects such as shopping malls and football stadia. Thus Thiel (2010, 454) contends that the existence of no formal employment contracts between building workers and their subcontractors is unexceptional.

Thiel (2010, 451) has documented the presence of informal procedures in the construction industry where he implies that there is significant informal recruitment in which subcontractors receive workers whose skill rank can be predicted, or vouched for, by the other workers and instructions assigned informally. The link between informal work, insecurity, both in terms of tenure as well as the living conditions afforded by the wages paid is well documented in literature. Moreover job recruitment by subcontractors also relies greatly on

ethnic and kinship social networks. Such kinship based employee-relations entail a form of harmony in the workplace as kin are likely to be more well-meaning towards one another. Nevertheless all of these studies point to the range of networks and practices that govern informal work. They suggest that even in areas of the informal and/or labor market that exist outside the control of the law, there is some organisation of work. The main research question and its sub-questions explore these workplaces and organization of work.

1.3 Main Research Question

How do undocumented construction migrant workers and employers in Johannesburg manage employer – employee relations in the workplace?

1.3.1 Sub-questions

To answer the main question this study first sought to address these questions:

- What are the main layers and divisions of the South African construction industry?
- How do undocumented immigrants experience and navigate ‘illegality’ in the workplace?
- What governs employer-employee labour relations in the absence of recourse to the law?

1.4 Research Objectives

This research report’s main objective is to examine the workplace labour relations between undocumented immigrant workers and their employers. In addressing this the study seeks to:

- Describe the layers and divisions of the South African construction industry so as to examine the formal and informal relations which determine employee-employer relations.
- Explore how undocumented immigrants find work and continue to work without legal documentation.
- Explore undocumented workers’ spaces of negotiation in the workplace.

1.5 Structure of the Chapters

Chapter 2 reviews the literature critical in explaining the arguments of this study. Some of the topics explored include ‘illegality’ and a need to focus on workplace relations. Chapter 3 addresses the methodological concerns of the report. This chapter discusses and justifies the methodological choices of this research which are informed by the qualitative techniques of in-depth interviews and participant observations. Access and choice of the purposive sampling

techniques are also discussed together with the challenges encountered during the data collection process which warranted reflexivity from the researcher. Chapters 4, 5 and 6 discuss the findings of the report. Chapter 4 is a descriptive overview of the South African construction industry and introduces to the reader the construction scene together with its role players. This descriptive account outlines the construction industry structures and links with or sets the tone for Chapter 5 and 6, in which chapter 5 reveals that illegality is less of an issue at the workplace than at other sites, and therefore shifts the relationship with the law as a defining feature of labour relations. Chapter 6 discusses spaces of negotiability so as to reveal the greater power of skilled workers and the importance of kinship based social networks. These chapters link to the overall argument that ‘illegality’ does not brush all with precarity in the same way the literature has documented.

2 CHAPTER 2: LITERATURE REVIEW

2.1 Introduction

This literature review chapter explores the critical areas that help explain the arguments for this research report. The chapter opens up by reviewing the Zimbabwe to South Africa migration trends which have been exacerbated by the Zimbabwean economic meltdown and the tense political situation post the 2008 elections. Johannesburg and its prospective global city status (Murray, 2003) has seen Zimbabwean migrants trek to the city seeking various employment opportunities in the growing city. However the influx of capital and goods into Johannesburg has not meant an equally open labour mobility as immigrants need authorisation from the Department of Home Affairs (DHA) to work and reside in South Africa.

Despite this restricted movement, most immigrants find their way to South Africa where they are nevertheless deemed ‘illegal’ by the receiving country’s immigration laws. Challenges associated with attaining this authorisation will also be emphasised in this literature review. This chapter will thus explore the resultant multiple regimes of ‘illegality’ that shape migrants’ experiences and how they navigate this ‘illegality’. One of the reasons the construction sector was chosen for its research was because the industry is usually typified by a high portion of undocumented immigrants. Thus this chapter will further explore the nature of construction work in South Africa and in connection with it emphasise the importance of focusing on workplace relations or spaces of negotiability where workplaces are governed by more than immigration status and formal laws but rather complex ‘informal’ rules and relations.

2.2 Zimbabwe – South Africa Migration. A ‘Revolving Door Syndrome’

The United Nations cited in Adamson (2006, 170) defines a migrant as “someone entering a country for twelve months or longer”. Black et al., (2006) cited in Bloch (2008) note that South Africa has a long history of cross-border migration from surrounding countries and is the main migrant-receiving country in the region. Bloch (2008) also contends that Zimbabwean migrants are among the largest and frequent population to migrate to South Africa particularly due to its proximity to the country. Bosniak (1991, 744) observes that general migration trends, particularly un-authorised cross border movements have been on the rise in the past two decades due to the deterioration of the international economy. The influx of Zimbabwean migrants into South Africa can largely be said to be exacerbated by the economic challenges

that the latter country has been facing especially since 2008. Rutherford and Addison (2007), cited in Bloch (ibid), contend that among undocumented migrants, reasons relating to the economy and employment were given most frequently as the main reason for leaving Zimbabwe. Therefore, migration to South Africa is often a household 'poverty reduction strategy' and therefore forms part of a survival strategy for some households who depend on the remittances sent by those who have migrated (Black et al, 2006). South Africa and migration from Zimbabwe has been described by the media as a 'revolving door syndrome' where migrants are deported and then return (Waller, 2006).

The economic meltdown in Zimbabwe had developed concurrently with a tense political situation especially after the 2008 elections and the ensuing electoral violence. Although the political outlook has improved, 2008 and the subsequent years witnessed a major influx of migrants into South Africa as people sought refuge. Bloch (2008) contends that migration from Zimbabwe into South Africa has largely been motivated by a collapsed economy, lack of jobs, hyperinflation and human rights violations. South Africa is thus host to regular (documented) migrants and irregular (undocumented) migrants, skilled and unskilled migrants, professionals, students, informal traders and asylum seekers all of whom perceive economic opportunities in the country (Crush and McDonald 2000; Waller 2006, cited in Chereni 2014). De Genova (2002, 422) concludes that undocumented migrations are predominantly labour migrations.

As a result of both the high migration frequency, mostly for economic reasons, and the strict South African immigration policy (as will be revealed later in this section) an unknown number of irregular migrants acquire fraudulent permits and other necessary documentation (Waller, 2006). The pronounced desire to migrate to South Africa has led to the borders becoming permeable to a host of both authorised and unauthorised migrants. Murray (2003, 444) concurs and reasons that "whatever the official policy on immigration, the borders separating South Africa and its neighbours are extremely porous". Murray (2003, 444) adds that there are limited barriers that can bar resolute migrants from entering South Africa and staying in the country illegitimately. Czaika and De Haas (2003, 487) also contend that the ability to control migration has shrunk as the desire to do so has increased and this is because borders are beyond control and little can be done to really cut down on migration.

However, even in light of the above assertions, the exact size of the population of Zimbabwean 'illegal' immigrants in South Africa is not known. Trimikliniotis et al., (2008) suggest that

there are two million ‘illegal’ Zimbabwean immigrants in South Africa alone and that generally legal migration into South Africa is very low. However such estimations are disputable due to the inconspicuousness of undocumented migrant workers which renders it impossible for research to document this. Freeman (1978) contends that un-authorised migration is almost impossible to measure because of its clandestine nature and thus according to Murray (2003, 445) there are no “reliable methodologies available for determining the actual number of foreign immigrants and migrants in South Africa”. Murray (2003, 445) adds that the movements both in and out of the country are too complex to be simply described by the conventional distinction between permanent migrants and temporary sojourners. Thus in most cases, figures on the number of ‘undocumented’ immigrants are magnified for political opportunity and are intended to reinforce anti-immigration attitudes (Landau, 2004a).

Although the post-apartheid South African government replicated the old system of labour control through legislation which criminalises ‘undocumented’ immigrants as defined by the Immigration Act (13) of 2002, this has not deterred the trend of irregular migration. Peberdy and Crush, (1998b) cited in Bloch (2008) contend that between 1913 and 1986 black people could only enter South Africa illegally or as contract workers as they were not allowed to apply for temporary or permanent resident permits. South Africa also introduced the stricter Aliens Control Amendment Act of 1995 (Bloch, 2008) to regulate immigration flows, but despite this strict mechanism South Africa continued to be overwhelmed by waves of both legal and ‘illegal’ immigrants from many parts of the African continent (Minaar and Hough, 1996).

2.2.1 Johannesburg and its appeal to migrants

Johannesburg was selected as the site for the research because of its global city status and hence its ability to attract immigrants including Zimbabweans. Murray (2003, 441) points out that due to its aspirations as a global city, Johannesburg after apartheid has sought to find an elevated position for itself in the world economy. Therefore “the influx of capital, commodities, and ideas from around the world has gone hand in hand with the movement of people” (Murray 2003, 441). As a consequence this explains that after 1994, both internal and cross-border migrants have been concentrated in the country's urban centres, but mainly in Gauteng Province of South Africa (Palmary and Landau 2009).

Palmary and Landau cited in Chereni (2014, 297) further estimate that about 7.9 per cent of the population in Johannesburg, the biggest city in Gauteng Province and the country is foreign-born and in some inner city areas like Yeoville, Berea and Hillbrow, more than 50 per cent of the residents are non-citizens. These non-citizens are part of the large force of marginalised “(but not necessarily hopeless) people seeking a tenuous foothold in low-wage work, the informal economy, or whatever ‘survivalist enterprise’ that presents itself” (Murray 2003, 441). Murray (2003, 441) also observes that in cities such as Johannesburg there is a growing informal economy and thus the growth of flexibility of labour relationships which have contributed to the expansion of job opportunities in the casual labour market for transnational migrants. Johannesburg is thus an appealing destination to migrants and Sibanda (2010, 47) contends that most Zimbabwean migrants “have many social networks in the city of Johannesburg in the form of relatives, family and friends upon whom they rely to achieve their dreams in the ‘city of gold’”.

Zimbabwe to South Africa migration is not a new trend as the two countries share a border. However the movement of immigrants from Zimbabwe to South Africa has been intensifying largely due to the deteriorating economic climate and the tense political situation after 2008. Johannesburg with its reputation as a prospective global city status attracts these Zimbabwean immigrants because of the opportunities that are presented by both the formal and the informal sectors in the city. However not every immigrant is authorised to reside and work in South Africa and those without the necessary documents are deemed illegal and have to navigate this illegality on a daily basis. The subsequent section thus introduces the concept of immigrants’ illegality.

2.3 The concept of ‘illegality’

Bosniak (1991, 742) asserts that the connotation of migrants’ un-authorisation is variously defined under different states’ legal systems. According to Cohen (1997) there are two main forms of un-documented workers, those who are overstaying after expiry of visas and those who wilfully enter the country unlawfully. Whilst a considerable portion of migrants enter the country using legal documentation such as a visitor's permit, they often remain in the country much longer than is legally permissible, swelling the population of irregular migrants (Palmary and Landau 2009). This also includes migrants who are employed in the receiving country without permission from that country’s immigration policies (Bosniak (1991, 742). De Genova

(2002, 422) concludes that ‘Illegality’ (much like citizenship) is a juridical status that entails a social relation to the state; as such, migrant ‘illegality’ is a pre-eminently political identity”. Undocumented migrant workers in this study included those who wilfully enter the country unlawfully (Cohen, 1997) and another conception of un-documentation were those on temporary visitor permits and similar permits which are inappropriate as work permits. However main emphasis was placed on workers without any form of a legal permit or rather those who are in the country illegitimately. This is because I assumed that workplace experiences differ according to one’s form and extent of ‘illegality’. However these are not the only forms of ‘documentation’ that the study focused on. Rather the research focused on multiple and changing regimes of ‘illegality’ affecting undocumented employees in the workplace. The subsequent section explores these ‘illegality’/‘legality’ categories or nuances.

2.3.1 Multiple regimes of ‘illegality’

My research focused on the multiple and changing nature of the construction of “illegality”. This informs part of my argument in the report that emphasises that there are multiple ‘illegalities’ that shape immigrant workers’ experiences. According to Griffin (2011, 85), “Illegality is not simply a legal category imposed by a ‘monolithic’ state, rather, it is subject to ongoing social and discursive construction through a range of sites and relations”. Terms that describe unauthorised migration and immigrant are various and this research report uses terms such as “un-documented”, “un-authorised”, “irregular”, “extra-legal”, “clandestine” and the obnoxious term “illegal” interchangeably (De Genova, 2002, 420).

2.3.2 Neoliberalism and the ‘illegal’ subject

Neoliberalism or rather neoliberal globalisation has played an important role in migration trends and in the creation of the ‘illegal’ subject. Neoliberal globalisation has been so vital in the moderation of conditions for the expansion of transnational corporations and thus capital across national borders. This penetration of transnational corporations and mobility of capital across national borders has however not necessarily translated to an open labour mobility. Scholars have also argued that public sector employment has contracted under neoliberal globalisation which in turn has exacerbated informal labour, especially in the global South (Barchiesi, 2011). Likewise the dissimilarities between formal and informal employment are blurring. Czaika and De Haas (2003, 489) uphold these sentiments and point out that flexible labour market policies have gone hand in hand with neoliberal globalisation where the demand

for both high- and low- skilled migrant labour has swelled. Similarly the Global Commission for International Migration observed in its final report, that, “in some parts of the world, certain sectors of the economy, including agriculture, construction...have come to rely to a significant extent on migrants with irregular status, who are prepared to work in difficult, dangerous and dirty jobs with little security and low wages”(2005: 36).

The sentiments above highlight the increasing importance and reliance upon of un-documented labour by both advanced and developing states (Bosniak 1991, 745). It also underscores the frequency of irregular migration and how it is unlikely to diminish soon, despite renewed regulatory efforts in many countries of employment (ibid). Therefore under neoliberalism nation states find themselves in what Varsanyi (2008, 879) refers to as the “neoliberal paradox” where, as members of a global community, nation states must still “maintain a distinction between insiders and outsiders”. Turton (2003) contends that undocumented immigrants pose questions for the liberal global community where issues such as membership, citizenship and democratic liberalism are put under scrutiny. Turton (2003, 8) points out that nation states in a liberal global community are posed with moral dilemmas such as the questioning of responsibilities “to the stranger in distress, the stranger amongst us, on our door step, who is seeking a better life for himself or herself and for his or her children...they require us, in other words, to consider who we are – what is or should be our moral community and ultimately what it means to be human”.

Nevertheless, the neoliberal nation state has no alternatives but to operate under conditions of closure, “carefully selecting would-be immigrants and excluding undesirable ‘others’ (Varsanyi, 2008, 879). Varsanyi (2008, 882) thus concludes that, “the neoliberal subject is marked more than ever by the status of ‘illegality’ and the state’s authority to discriminate on the basis on non-citizens does not end at national borders but that the “status of alienage entails the introjection of borders or, in other words, that "the border effectively follows [noncitizens] inside" the territory of the nation-state (Varsanyi 2008, 880). Thus Turton (2003, 4, 5) points out to how even “the language of migration is spoken from a sedentary, or state-centric perspective” in which the immigrant subject is depersonalised or de-humanised when talking about them.

2.3.3 ‘Illegality’ as a master status?

According to Gleeson (2010, 563) ‘illegal’ status has the same wide ranging effect on life experiences in a similar way to race, class, and gender. Gleeson (2010) further adds that “illegal status shapes the voice, purpose, and future that undocumented workers may believe they have a right to, irrespective of the extent of the rights offered to them” (563) . Gleeson (2010, 580) also transfers his concept of ‘illegality’ as a master status to the workplace and he points out that “undocumented status also has constitutive effects that can undermine the expansive instrumental effects of workplace rights”. Gleeson thus concludes that “immigration status operates as a master status at the workplace”.

In as much as Gleeson’s conception of ‘illegality’ as a ‘master status’ on undocumented workers’ daily lives is a constructive addition to understanding immigrants’ precarious citizenship, I dispute that it is not as holistic as made out to be. De Genova (2002, 422) also disputes this all-inclusive effect of ‘illegality’ on immigrants’ lives as he reasons that the ‘illegality’ of immigrants “may be irrelevant to most of their activities, and only becoming an issue in certain contexts”. De Genova (2002, 422) further adds that un-documented migrants’ ‘illegality’ may become irrelevant in everyday life as undocumented immigrants are regularly engaged with citizens as well as ‘legal’ migrants and in most of these activities they are undifferentiated from those around them. Furthermore my argument is that even as non-documentation limits immigrants to what Bosniak (2010) refers to as “alien citizenship”, that is, a life with limited citizenship rights and a constant peek over the shoulder, it is not the same in workplaces. I believe that workplace arrangements are governed by more than laws and rights. This assertion is tied to my argument that employer – employee relations are governed by more complexes which are more based on informal ‘rules’ than laws and immigration status. The next section takes a step back and explores the connection between immigration laws and the creation of the ‘illegal’ subject.

2.3.4 Immigration laws and the creation of the ‘illegal’ subject

Calavita (1998, 560) cited in Abrego (2011, 341) upholds that “despite the rhetoric of control and integration, immigration laws and policies have one conspicuous effect: Instead of controlling immigration, they control the immigrant”. This therefore leads to the normalisation of the term ‘illegal’ migrant when what is ‘illegal’ is the journey and the continued existence in the country without legal documentation and not the migrant. The ‘illegal’ subject is

therefore socially created because it is the action that is illegal and not the individual. De Genova (2005) cited in Abrego (2011, 342) also contends that people are only produced and deemed as 'illegal' through immigration laws which like all laws are socially constructed. Immigration laws in nation states are constantly revised and these in turn affect the status of migrants and ensure the production of an undocumented workforce which is deemed 'illegal' and subject to criminalisation in the receiving country (Murray 2003, Klaaren 1998). For Varsanyi (2008, 882) "an act of migration is designated as illegal due not to a timeless standard of what is right and wrong. Rather, 'illegality' is actively produced by a changing suite of laws that determine what is, or is not, against the law". Klaaren and Ramji (2002) posit that in South Africa the themes of control and 'illegality' run rampant and the South African legislation produces the 'illegal immigrant' in which the individual is deemed illegal rather than the migration.

Migration is inevitable and immigrants' desire for job opportunities in receiving countries thus only means the continued production of 'illegal' immigrants as people will seek work without the necessary documents which are themselves marred with challenges and out of reach for many, (The subsequent sections will explore this). According to Gleeson (2010, 562) in the United States most undocumented immigrant workers find employers who are ready and willing to hire them including the availability of labour laws and rights. The solitary impediment is that they are restricted from living or working in the United States. The lack of legal citizenship status but the availability of employment opportunities and labour rights is similar to South Africa. The existence of such employment opportunities is thus sufficient stimulus for immigrants to be in South Africa and documentation is the least of immigrants' concerns. Foucault (1979, 280) cited in De Genova (2002, 422) contends that the existence of a legal prohibition creates around it a field of illegal practices.

Studies examining undocumented immigrants also play a collaborator role to immigration laws' production of the 'illegal' subject (De Genova, 2002). De Genova (2002, 423) considers the discursive power of immigration law in the everyday production of the 'illegality' of immigrants by scholars, particularly social scientists and reasons that "by constituting undocumented migrants (the people) as an epistemological and ethnographic "object" of study, social scientists, however unwittingly, become agents in an aspect everyday production of those migrants' 'illegality' --in effect, accomplices to the discursive power of immigration law". Plascencia (2009, 378) also adds that, although the tag 'undocumented migrant' is seen by most

as being neutral or a positive substitute, it is nevertheless equally implicit in the production of migrant ‘illegality’.

2.3.5 The challenges associated with obtaining ‘legal’ status in South Africa

Most immigrant workers resort to working ‘illegally’ in South Africa as attainment of required documents is hindered by a plethora of challenges. Obtaining legitimacy to stay and work in South Africa is principally complicated for low skilled and semi-skilled immigrants regardless of the Department of Home Affairs’ (DHA) presented resolutions. Landau (2010, 222) concurs that while the South African government actively promotes regional integration vis-à-vis foreign direct investment and highly skilled labour, it has actively discouraged the movement of low and moderately skilled migrants. It is almost impossible for non-nationals with temporary contracts, without contracts, or with refugee/asylum status to regularize their stay or claim the status of inalienable, unfringeable insiders (Landau 2010, 222). SAHRC (1999: 51-57) further contend that “in certain instances, DHA officials not only apply irrational standards but actively ‘make people illegal’ through refusal of access to buildings, endless lines, and failure to provide proper documentation”. Police commonly destroy or confiscate the documents of individuals whom they have arrested (Human Rights Watch 1998:54-55). Below I explore the contestations associated with immigrants authorising their stay in South Africa and examine how even the DHA’s purported solutions to the immigration question are still inadequate.

2.3.5.1 Acquiring work visas/permits

Sutton and Vigneswaran (2011) note that entry across the land borders has become considerably easier over the last few years following the signing of bi-lateral entry agreements with Zimbabwe and Mozambique. While this is a very positive development for immigrants it is still not a very comprehensive solution. Moreover the bi-lateral entry agreements mostly benefits temporary visitors or traders and not those who seek prolonged stay and work authorisation in the country. Besides many migrants still cannot take advantage of these or other visa application systems. This is because the various methods or policies employed by the Home Affairs to legalise the stay and employability of immigrant workers are mired by rigid bureaucracy, ambiguity and chaos. The Zimbabwe Dispensation Permit (DZP) is an example of such a policy that sought to legalise the stay and employability of Zimbabweans. The DZP was introduced in 2010 by the then Minister of the Department of Home Affairs to

legalise the stay of undocumented migrant Zimbabweans by issuing out work visas and study visas for a period of three years (Tarryn Pokroy-Rietveld 2014). According to Amit and Kriger (2014), significant administrative barriers accompanied even the Zimbabwe Documentation Project (DZP), the scheme targeting undocumented Zimbabweans in order to facilitate access to the correct documents. Furthermore, although looking very effective on paper it has however not done enough to regularise 'legality'. According to the Department of Home Affairs' figures, approximately 295,000 Zimbabweans applied for this kind of permit and just over 245,000 permits were issued (Tarryn Pokroy-Rietveld 2014). The numbers that applied seem to be a small fraction of the population of Zimbabwean immigrants in South Africa. This means that most Zimbabweans immigrants continue to live and work in the country against the authority of the DHA.

The introduction of such permits is seen as a 'stop-gap' measure by the South African Home Affairs while it considers a long term strategy. Therefore it is for this reason that the applications are low as people are worried on what will happen upon their three year expiry. Furthermore the application process is done electronically and applications with all necessary paper work is submitted via an outsourced company (VFS global) through the internet. This potentially excludes computer and internet illiterate immigrants. The application deadlines are also very strict for such a large population of immigrants. Although they have also been extended to the end 2017 with the roll out of the new Zimbabwe Special Dispensation Permit (ZSP), more fears and anxieties still remain among Zimbabwean immigrants because of the uncertainties about extensions beyond 2017 with the South African Home Affairs department stating that Zimbabweans will need to apply for new permits at the South African embassy in Zimbabwe. This is viewed with much skepticism by Zimbabweans as it seen as a strategy to restrict future legalisation procedures. For such reasons most migrants seem to choose to remain undocumented and operate under the radar.

The DHA has since pronounced that all new visa or permit applications are to be done at the South African embassy in Harare, and that the Home Affairs in South Africa will not accept any new application. The fact that all kinds of visas or permits including work permits, student visas, spousal permits etc. have one processing centre in Harare makes the whole process of acquiring legal documentation very cumbersome for would be immigrants. This means that most would forego such efforts and choose to be in South Africa clandestinely. Murray (2003) and Klaaren (1998) reason that immigration laws in nation states are constantly revised and

these in turn affect the status of migrants and ensure the production of an undocumented workforce which is deemed 'illegal' in the receiving country. This observation is affirmed by the always changing visa and permit provision process for Zimbabwean immigrants.

According to McDonald et al (2000, 824) there were only two places in Zimbabwe to get a South African visa, these were Harare and Bulawayo, and these two offices processed up to 30, 000 visas a month. McDonald et al add that it was a burdensome task especially for those in the rural areas and those who have to travel north before traveling to South Africa. This meant that queues at the visa offices commenced well before dawn each day. In early 2000s to mid-2000s the visa allocation system changed again to the detriment of many would-be immigrants. Instead of two allocation points, Harare became the sole visa and permit allocation centre in the whole country. This entailed more queues and more complications for would be immigrants, meaning that choosing the clandestine route to moving and staying in South Africa became the easier alternative. These complications were further propounded by the difficulties of acquiring a Zimbabwean passport during this time, with the costs of acquiring one being out of reach for many citizens.

At the time of writing this report the visa and permit application process had changed again with announcements made in December 2016 that VFS global (the company outsourced by the South African DHA) will take over from the embassy and handle all applications and that it was to operate in two centres only, Harare and Bulawayo. The future will only tell as to what other problems will arise with such changes, but the challenges associated with making it difficult for the whole countries to access these two centres and the application process still remain at a time when economies are tumbling and migration trends intensifying. Therefore acquiring legal status is still out of reach for many who would rather choose the clandestine migration process. McDonald (2000, 824) contends that despite the fact that so many Zimbabweans make the effort to get proper documentation in the face of so much costs and obstacles only serves "to reinforce the argument that clandestine border crossings are very much the exception rather than the rule".

After having explored the relationship between immigrants' illegality and the South African immigration laws, in which the former generates the latter, the next section of the chapter seeks to interrogate the nature of construction work in South Africa.

2.4 Immigration law and Labour rights. De facto but not de jure labour rights.

In South Africa, such multiple regimes of ‘illegality’ are propounded by the rigorous and out of reach immigration policies which only exacerbate clandestine stay and work in the country as has been revealed. Labour laws might grant immigrant employees with certain rights as employees in South Africa but an ‘illegal’ stay in the country makes such rights seem out of reach as undocumented immigrants have no right being in the country.

Most literature on ‘illegal’ migrants and labour relations is structured around the immigration law which in South Africa essentially de facto override any labour rights that undocumented immigrants might claim. Gleeson (2010, 568) points out that undocumented workers enjoy the majority of formal workplace protections, nonetheless they also share the challenges related with accessing them. Gleeson (2010, 580) thus reckons that “undocumented immigration status presents a practical barrier to those individuals whose employers choose to wield it as a tool of coercion. Labour law in South Africa as it specifically relates to the status ‘employee’ would include all workers regardless of their immigration status. An example of such labour law is the Basic Conditions of Employment Act (BCEA) which establishes a set of legal minimum working conditions for all employees in South Africa, including working hours and overtime, leave, termination, etc. It defines ‘employee’ as ‘any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration’ (at section 1) (Griffin 2011, 86).

Gleeson (2010, 580) also reasons that it is understandable for workers who know their workplace rights to assume that rights do not extend to them. Motomura (2010, 1729) concurs that “unauthorised migrants remain at the law’s margins with rights that are indirect and oblique.” An example of such ambiguity affecting employees is that “South African immigration law prohibits any person from employing any foreigner who is not authorised to be employed, and even assumes that employers know that such employment is illegal. The law appears to hold employers primarily responsible for the ‘illegal’ employment of foreigners, but in practice, the burden of ‘illegality’ is shifted onto the migrant worker” (Griffin 2011, 86).

Gleeson (2010, 592) also deduces that undocumented immigrants are in a cognitive dilemma regarding their labour rights because despite being told that they have a right to be protected they are not legally permitted to reside here, regardless of the rights and protections. Thus they are left wondering if, indeed, they have the right to have rights. Claiming a labour right would therefore mean risking deportation. According to Munakamwe (2015) the cause of such

ambiguity is because there is a theoretical disjuncture between immigration law and labour law. She argues that this theoretical rift has led to weak intersection and interaction between these two sets of law, which often results in conflicting laws and policies. Thus in many countries (including South Africa) there is usually a contestation between the purpose of labour law, which is to protect workers' labour rights, and migration law, which operates on the principle of demand and supply, with receiving states exercising the privilege of regulating the migration process.

Davies (cited in Munakamwe 2015) also argues that there is an imbalance of power between migration law and labour law. Davies further argues that although migration law facilitates the smooth movement of individuals across borders and safe-guards migrants against unscrupulous practices such as human trafficking, it creates deeply entrenched personal statuses that are conditional and often precarious. This migrant status has a negative impact on migrant workers in relation to labour law. For instance, migration laws that label migrants as temporary or irregular tend to have consequences for the subjects' employment contracts (Munakamwe 2015). Munakamwe through a review of authors such as Anderson and Davies also adds that such laws also tend to determine the types of economic sectors in which migrants participate. For instance, irregular migrants may be forced to confine themselves to informal jobs, such as engaging in exploitative and irregular short-term contract jobs that are subject to continuous contract renewal.

Similarly in 2008, the Commission for Conciliation, Mediation and Arbitration (CCMA) and the labour court officially extended basic labour protections and rights to apply to foreigners working 'illegally' in South Africa (Griffin 2011, 83). However this is only a policy on paper which is not the case practically. Landau (2010, 222) also contends that, "migration and asylum policy in South Africa is inconsistent on paper and remarkably sloppy in practice". Moreover migrants might also shun seeking asylum but instead focus on the urgency to earn money for remittances. Landau (2004) also points out that before 2003, asylum seekers were not allowed to work legally in South Africa which might also have acted as a restraint to asylum seeking for those arriving prior to this.

Such complexities, red tape and categories also become too complex for employers to follow such that they 'illegally' employ migrant workers without even knowing the full laws and policies regarding such practices. Moreover even if they were to be conscious of such laws or

legal frameworks barring them from employing migrants illegally this would not stop an employer from engaging a skilled employee who often comes cheap and with submissiveness compared to South Africans (Griffin, 2011).

Grant (2005) cited in Bloch (2008: 8), notes that in most countries, in reality, despite universal human rights declarations which include migrant workers, migrant workers are “frequently subjected to unequal treatment and unequal opportunities, as well as discriminatory behaviour”. Bloch (2010) also contends that in spite of such laws Zimbabwean undocumented migrants are shown to be marginalized and defenceless with limited capabilities and protection, which in turn limits remittance activities and therefore negatively impacts on families in Zimbabwe who are dependent on the remittances of those living in South Africa.

Taking into account the above opinions one major question that then arises is, can undocumented immigrant workers assert workplace rights? Workplaces are not homogenous for workers in the construction industry and the relationships are not always exploitative. Motomura (2010, 1728) also utilizes a concept that referred to as “comparative culpability argument” to explain how unauthorised immigrants might successfully proclaim a right against an exploitative employer. Motomura (2010, 1728) uses an illustration of unauthorized workers who have been injured on the job and how “they may enhance the likely success of lost future wage claims against their employers by arguing that the employer's culpability in allowing the employees to work outweighed the employee's own culpability in working without authorization”. However this is just an example and it does not imply that all employer-employee relationships are adverse like this.

2.5 Construction Labour. Formal or Informal Employment?

The South African construction industry can best be described as an illustration of a combination of formal and informal work activities with the latter seemingly gaining an upper hand in the work process. In a sector like the construction industry, formal and informal work often intersect and overlap such that informality tends to coexist within formal work. Informality complements formal work processes in the construction industry and is thus vital for most construction work processes. This thus takes into consideration that there is no broad consensus on the definition and distinction between formal and informal work. However the

norm is that informal work is not regularised, it is casual, almost always insecure, both in terms of tenure as well as the wages paid.

Lindell (2010) notes that informal employment has been redefined as *any* type of employment lacking secure contracts, social protection or worker benefits. However informal employment is not confined to small, informal businesses, but is even found in the formal sector and large firms. Moreover authors like Chun (2014) also highlight the increasingly difficult nature of distinguishing between formal, semi-formal and informal employment. For Mitullah and Wachira (2003, 1) informal labour in the construction industry includes all construction workers who are employed on a casual or temporary basis without any proper form of contract, as well as those who work for themselves either alone or in small groups. Other traits include worker benefits, or social protection. For Wells (2001, 270) the distinguishing factor between the formal and informal construction industries is largely to do with government regulations where in the formal construction industry regulations with regard to construction (licensing, registration, etc) are adhered to, while in the informal construction industry some or all of the regulations are not complied with. Wells (2001, 271) further adds that not all of these regulations may be adhered to, which means that there may in practice be no clear-cut division between the formal and informal sectors in the construction industry. Thus in the construction industry the differences between formal work and informal work are blurred further.

The fusion of formality and informality in the construction industry which further distorts the differences between the two in most work processes is particularly caused by subcontracting. According to Mbachu (2008, 471) a majority and about 85% of all construction jobs in the building industry are handled by subcontractors. Wells (2001, 273) adds that in recent years there has been an upsurge of “labour only subcontracting” in developing countries. Similarly a 2002 study of construction labour in Cape Town shows this heavy presence of subcontractors where almost all of the workers on construction sites around the city were hired by subcontractors (Wells, 2001, 109). Construction work and specifically building contracting is a risky venture mostly due to numerous uncertainties and ‘unforeseens’ that occur during the building process (Thiel 2010).

Construction work is commonly project-based and construction projects are all fixed-term rather than continuous. Thus Wells (2001, 270) adds that the construction industry is characterised by unpredictable workloads and high costs involved in keeping idle labour and

as a result formal registered enterprises are resorting to subcontracting to the informal sector (Wells, 2001). Thus Thiel (2010, 446) concludes that most building contractors are ‘hollowed out’ and operate like knowledge brokers where they do not directly build anything or own any means of production. Instead they only possess computers, methods of administration, managers, co-ordination and regulatory knowledge to construct buildings and thus they contract-in craft skill and labour via trade specific subcontractors (ibid, 446). Wells (2001, 269) adds that small, unregistered construction enterprises who previously were only involved in the building, maintenance and repair of individual residential houses are now increasingly involved in the construction of complex and much larger commercial buildings. Thus most large scale companies or contractors outsource most work processes or trade- precise portions of the work to subcontractors that can provide trade expertise, machinery and large amounts of flexible labour at short notice (Thiel, 2010). The key word in this assertion and what weightily informs my report is flexible labour which can be provided at short notice by subcontractors and sometimes via labour brokers.

Small contractor development within the construction industry in sub-saharan Africa began in the late 1970s due to concerns of a shortage of local indigenous contractors and the dominant presence of large expatriate contractors (Croswell and McCutcheon, 2001, 366)). Despite such efforts to ensure operating space for local small contractor development, small contractors still faced other challenges such as lack of capital, expertise, an inability to provide sureties, raise insurance cover and obtain professional indemnity, lack of resources for either large or complex work, the lack of continuity in relation to type, scale and location of work. (ibid. 366). From these beginnings, the South African construction industry is multi-dimensional and has kept growing where it was further fuelled by the hosting of the 2010 FIFA World Cup. Moreover the progress of the industry, particularly of small contractors has been owed to the special attention given to the empowerment of previously disadvantaged groups through provision of opportunities such as tender preferences and through “the packaging of large contracts in such a way as to “enable” the participation of small contractors and improve their access to components of the projects” (Croswell and McCutcheon, 2001, 367).

Work descriptions in the construction sector are therefore also multi-faceted and include but are not limited to demolishing, brick laying, painting, paving, tiling, and electrical security systems. These work activities can be performed on a gamut of projects that includes the building and maintenance of stadia, large malls, the building and maintenance of private

residences. This then explains the inevitable need to outsource most trade specific work processes to people who specialise in these jobs. The construction industry is hierarchical where large companies like Murray and Roberts, Aveng and Group Five dominate large scale projects. Such companies have their own few permanent registered workers but depending on the scale of projects undertaken most workers are then outsourced through subcontractors and even labour brokers. Such processes generate levels of informality and casualization in workplaces. Therefore it is incomprehensible to talk about construction work without subcontracting and significant levels of informality and casualization. Owing to the multi-dimensionality and diverse project magnitudes, sub-contractors are also varied depending on their specialties, services and size of operations. Wells (2001, 273) concurs that small scale informal construction contractors are also on the rise and are involved in housing projects, or maintenance as they offer private clients who cannot afford expensive formal contractors a cheaper alternative.

The existence of significant informal work processes in the construction industry presents undocumented or 'extra-legal' workers with ease of entry into the industry. Crush and Williams (2005) concur that together with commercial farms, small businesses in the informal sectors, construction work is a key area of work for undocumented migrants coming to South Africa. Other distinctive features of construction work are the predominance of self employment, labour intensive production methods, low levels of organization, low productivity and income (Mitullah and Wachira 2003, 6). The presence of informal procedures in the construction industry also implies that there is significant informal recruitment where sub-contractors receive workers whose skill rank can be predicted, or vouched for, by the other workers and instructions assigned informally (Thiel (2010, 451). Furthermore the existence of no formal employment contracts between building workers and their subcontractors is unexceptional (Thiel 2010, 454). As a consequence job seekers in the construction industry heavily rely on their social networks.

The rising levels of informality within the construction industry have also led to an intensification of casualization of workers where workers are increasingly being employed on a casual or short term basis. According to Goldman (2003, 1) this casualization of work does not only apply to unskilled labourers but also office workers and technicians within the industry. The 'casualisation cancer' in South Africa has reached the point where most casual or temporary workers remain perpetually in this status and have thus become 'permanent

casuals' (Bezuidenhout, Theron & Godfrey 2003). Goldman (2003, 1; 12) points out that employers in the construction industry are said to be operating on an 'informal policy' of 'hire and fire'.

2.6 Exclusions and Precarious Lifestyles

Existing literature and research on the relationship between migration, undocumented workers and labour relations largely dwells on themes of exclusion, xenophobia, precarity, lack of collective bargaining and forms of resistance (see Hlatwayo 2011; Bloch 2008; Landau 2007; Palmary and Landau 2009; Bolt, 2013). These are usually presented as interlinked and connected with precarious citizenship being the basis of analysis or the root of undocumented workers' perilous lifestyles. The major factors behind these issues is the ambiguity between immigration policy, labour law and ultimately human rights. Migration for construction work is arguably one of the most precarious forms of labour, owing to high risks of accidents, flexible labour market policies, and the prevalence of outsourcing in the industry (Baey and Yeoh, 2015). This is further illustrated by Bosniak (2004: 323) cited in Bloch (2008) who observes that illegal immigrants usually lack access to many, if not most, civil and labour rights and social benefits, and they are afraid to avail themselves of the rights they may enjoy for fear of exposure to immigration authorities. Bloch, (2008) further adds that at the other end of the gamut are undocumented migrants and rejected asylum seekers who exist on the margins of society with few or no rights, often exploited economically and unable to gain protection from the police or courts in the country where they live.

Another aspect linked to the above notions (and that most literature on migration and labour relations has exclusively focused on) is the common linkage between migration and precarity. Munakamwe cites Anderson who argues that, 'the precariousness of migration status creates a precarious, "ultra-flexible" workforce. Migration law, in this account, combines with less formalized migratory processes to help produce "precarious workers that cluster in particular jobs and segments in the labour market" (Anderson cited in Munakamwe : 240). Shierup et al., (2014, 50) also contend that migrants make up a disproportionate part of the social category whose experience in the world of work is marked by "precarity" in terms of informal labour, wage squeeze, temporariness, uncertainty and pernicious risk. They thus belong to the most disadvantaged among a globally growing workforce of casual labour which has come to be called the "precariat". Standing (2011) conceives the precariat denizens, that is, people who

lack full citizenship rights and have minimum trust relationships with capital or the state. But migrants also increasingly belong to the most vulnerable among the growing numbers of temporary ‘contracted workers’, who are, contends Frankel (2013: 99), in fear of dismissal ‘persuaded’ to enter “hazardous areas where permanent workers will not go ... and do not have to go under existing legislation”. Thus the norm is that skilled migrant workers in the construction industry experience precarious conditions due to the very nature of construction work.

By virtue of being undocumented, migrants are particularly powerless, being subject to removal and possible persecution for immigration violations. Bolt (2013, 202) adds that in local stories, farmers in Limpopo even report their undocumented Zimbabwean workers, thereby avoiding paying for the labour already provided. Nevertheless little literature dwells on the analysis of the work place relationship between the employer and employees especially in the sphere of the “illegality” of the latter. Likewise few studies dwell on the relationship from both the angles of the employee and the employer, that is, by analysing the interactive aspect of these relationships.

Nevertheless Standing also affirms that not all those in the precariat should be regarded as victims as for some, there is freedom in having no moral or behavioural commitments that would define an occupational identity. Van der Linden (2014) links this attribute of the precariat with self-employment as an alternative to joblessness and that which is quickly rising. Nonetheless this does not entail that the self-employed are exempt from most forms of precarity. Van der Linden (ibid) contends that contemporarily, “the relationship between a self-employed individual and his major customer is often hard to distinguish from the relationship between a wage earner and his employer”. Based on this, my research also focussed on a few self-employed labour contractors. Moreover although precarious work has been on the rise throughout the world, fundamental differences in the histories of work, and of workers, in the global North and South should caution against viewing precarity as a universal phenomenon whose meanings and implications are cognate for workers everywhere. Therefore employees under my study fall under this precarious form of employment which is largely characterized by low wages, irregular working hours, and anomie and job insecurity among many others. Thus while these employees are ‘skilled’ they are still precarious but in terms of ‘illegality’, the skill (while not gaining them any better employment offers), offers them a sense that their precarity is not out of the ordinary. This skill mediates the ‘legal’ realm. However as literature

has shown (or not) such conclusions have been analysed broadly without taking account of the everyday workplace employer-employee relationships. The majority of these conclusions have generated unnecessary themes of unpromising victimhood for undocumented immigrants. The subsequent section thus shifts focus to these “politics of sympathy” for undocumented immigrants.

2.7 “Politics of Sympathy”. Undocumented immigrants and Victimhood

While the link between un-authorised immigrants and precarity is irrefutable as emphasised above, sometimes the literature has tended to elevate this immigrant position to redundant victimhood. An extensive amount of literature has tended to portray undocumented immigrants as powerless victims without any expressive agency. Undocumented migrants are portrayed as passive and submissive workers who are always ready to enter into coercive ‘slavery’ like conditions of labour or terms of employment. Rogaly (2008, 1435) also underscores the ‘contemporary slavery’ issue and points out to a report published by the UK's Joseph Rowntree Foundation on contemporary slavery in Britain which suggests that “migrant workers ... are most at risk of slavery or slavery-like working conditions”. Rogaly (2008, 1436) also points out that indebtedness is often the key characteristic of these unfree labour relations. Thus my argument is that the terms of employment relations that undocumented immigrant workers find themselves in are not as unfree as commonly claimed.

According to Griffin (2011) some studies have even suggested that this passiveness and submissiveness is what makes migrant ‘illegal’ workers more attractive employees vis-à-vis their ‘troublesome’ South African counterparts. Another example of this is the claim made by Frankel (2013, 99) above that undocumented migrants work in fear of dismissal and are ‘persuaded’ to enter “hazardous areas where permanent workers will not go ... and do not have to go under existing legislation”. Bosniak (1991, 747) also associates the powerlessness of the undocumented immigrant workers within the receiving states to the “illegality of their entry, presence and/ or employment. Moreover Rogaly (2008, 1444) concludes that this victimhood language risks a “descent into what Puwar (2004) has termed a 'politics of sympathy'.

The ‘politics of sympathy’ alluded to by Rogaly above have not been progressive for undocumented immigrant workers and have instead done more harm than good. This purported stigma and bias has instead yielded undocumented immigrant workers as real casualties up to

the point of where “support for enhanced restriction and enforcement is also expressed by some proponents of rights for undocumented immigrants, who view stringent border control measures as an indispensable part of any human rights program” Bosniak (1991, 749). Bosniak adds that “the theory is that to the extent that undocumented migrants are prevented from illegal entry or employment, they are protected from the forms of exploitation which characterise their status”. Bosniak (1991, 751) also reasons that “un-documented migrants themselves are alternately viewed as subjects of rights and objects of regulation, as in need of protection and as threats to the rights and fulfilment of others”.

Some scholars perceive such levels of informality as being detrimental to undocumented workers in the construction industry. Kim (2009, 498) reasons that hiring undocumented workers facilitates their exploitation by employers which is triggered by the informality of agreements over wages, work hours, and conditions of work which are only created with the best interests of the employer in mind. Kim further adds that in this relationship employees have nowhere to bring their grievances. Conversely such informality means that communication processes are not bureaucratic and rigid and it is easy to assume that grievances by workers are easily brought forward. In a study conducted by Thiel (2010, 453) in Britain some workers even benefited from subcontractors as their loyalty was even bought through informal gift giving. Moreover it is also important to note that informality tiers are not the same and there is a hierarchy to informality levels. Therefore it is safe to say that in some instances undocumented immigrant workers’ struggles are blown out of proportion and ‘politics of sympathy’ unnecessarily prevails. Brodie (2006, 204) cited in Gleeson (2010, 565) concurs that “unliveable wages, lack of job security, wrongful terminations, lack of benefits and unsafe working conditions are common in the low- wage workforce, whether the workers are undocumented or not”. In the next section I explore immigrants’ “dual frame of reference” in which I contend that undocumented immigrants are consciously willing to accept precarious working conditions if it guarantees they can send remittances back home.

2.8 Immigrants’ “dual frame of reference”

The dual frame of reference is conceptualised by Gleeson (2010, 566) who draws inspiration from Michael J. Piore’s “Birds of Passage” to reason that “immigrants often possess a dual frame of reference in evaluating their migrant experience”. Gleeson points out that Piore’s significant theoretical inquest which declares that immigrant workers are always referring back

to their reasons for migrating in the first instance. In doing so they thus refer back to the work conditions in their home countries so as to access their current position (as precarious workers) and look to their return home when considering their aspirations for mobility (Gleeson, 2010, 566). Therefore I affirm that ‘extra-legal’ immigrant workers are not enormously bothered by their precarious citizenship lifestyles or work processes borne out of ‘illegality’. Precarious workers would thus perceive this precarity in a different approach to the one that constantly identifies them as hopeless victims. Therefore these workers are consciously willing to accept more precarious conditions if it means they can send remittances back home.

2.9 A Focus on Workplace Relations / Spaces of Negotiability

Similarly and in addition to the portrayal of ‘extra-legal’ immigrant workers as mere casualties or victims without any sort of agency over their lives in the receiving countries is literature’s lack of attention to spaces of negotiability or workplace bargaining. In backing this assertion Rogaly (2008, 1432) critiques the International Labour Organisation’s (ILO) “Global Alliance against Forced Labour” Report and its failure to “see and understand recruitment or workplace bargaining, co-operation or conflict from the perspective of individual workers”. Additional failures of the ILO report cited by Rogaly (2008, 1444) are its obscurity of essential prevailing power interactions and contestations across diverse hierarchies with multidirectional impacts. Before embarking on this study my assumptions were that actual workplaces where ‘extra-legal’ immigrant workers worked were of a complex picture and that there had to be some ‘rules’ of interaction to govern the employment relationships.

The downplaying of immigrant ‘extra-legal’ workers’ agency and their presupposed contemporary slave like conditions or ‘unfree labour’ and the need to focus more on spaces of negotiability in the workplace is further espoused by Peck (1996) cited in Thiel (2010, 444) who draws on Polanyi’s notion of ‘fictive commodity’. Peck’s argument is that “prices and conditions for human labour are not fixed in product market-like processes but are ongoing and negotiable”. This is so because “labour cannot be completely commodified or alienated from its incumbent because workers are frequently resistant and entwined in broader sets of social relations and normative structures that block total commodification” (ibid, 444). However at the same time we cannot negate the authority an employer has in such employer – employee relations in the workplace. Thus Thiel (2010, 453) chooses to use the term “quasi-reciprocity” because (in classic Marxist terms) he reasons that in capitalist economies labour is seldom

equally reciprocated as extra profit is produced through obligatory wage labour whereby wage labour has little choice but to accept only inadequate compensation. In as much as this argument is accurate, the agency of undocumented workers and their bargaining power or any other advantage they might have in such relationships is downplayed by literature on the subject.

A recent publication by Bolt (2013) examining Zimbabwean migrant farm workers in Limpopo begins to indicate precisely how nuanced and contradictory these relations can be. For example apart from employer-employee relations Bolt examines how varied socio-economic backgrounds, paternalism from permanent employees towards seasonal employees, obligations among workers and non – contractual relationships creates a more nuanced and divergent everyday employer – employee relations.

Furthermore my postulation is that even as un-documentation limits immigrants to what Bosniak (2010) refers to as “alien citizenship”, that is, a life with limited citizenship rights and a constant peek over the shoulder, it is not the same in workplaces. I believe that workplace arrangements are governed by more than laws and rights. Skill and experience are some of the entities that might blur ‘illegality’ in the workplace.

A focus on workplace spaces of negotiability would not be complete without focusing on the feasibility and potential of undocumented immigrant workers to engage in collective bargaining or any other forms of resistance. The subsequent section explores undocumented workers’ workplace relations and the position of formal trade unions.

2.10 Workplace/labour relations and labour organising: an impossible task for undocumented workers?

Interlinked and interconnected to the above issues of the ambiguous views and outcomes of labour rights/law and immigration policy, most literature has sought to analyse ways in which undocumented migrant workers can be protected. Paret and Gleeson (2016, 278) examine how migrants navigate structures of power by focusing on moments of agency, whether individual or collective to help us understand how social change happens – even for those individuals who may be defined as outsiders that are unworthy of protection and voice. The precarious, informal and clandestine nature of immigrants’ lives makes it difficult for them to be organized as has been concluded by various authors and literature. Bogg and Novitz cited in Munakamwe (2015)

contend that the precarious nature of migration status and the ‘illegality’ of migrants adversely impacts the ability of trade unions to organise and mobilise these workers.

Hlatshwayo (2011) examines trade unions and points to the xenophobia and national chauvinism which seems to be based on COSATU’s privileging the interests of South African workers at the expense of immigrant workers. He argues that despite an increase in the number of immigrant workers located within the South African borders, the union movement has not been able to pledge ‘solidarity within the South Africa borders’ with immigrant workers. Polzer and Segatti (2011) cited in Hlatshwayo (2011) have examined social agency of organisation of immigrant organisation in the Gauteng Province after May 2008 and according to Hlatshwayo (2011) they did not look at the relationship between immigrant workers and trade unions in a context of the workplace where immigrant workers spend most of their time. However again here Hlatshwayo only focuses on contributing to the thin literature on the relationship between immigrant workers and trade unions at the workplaces with a particular focus on xenophobia. My study sought to incorporate all these issues but focus more on the nuances of everyday workplace situations. Moreover as already explained, immigration policy seems to override any de jure rights that ‘illegal’ migrant workers stand to enjoy. Thus most scholars have dwelled on analysing issues to do with migrant worker organizing and issues mostly to do with resistance, specifically on how immigrant workers can be coopted in the formal trade union setting.

Trimikliniotis et. al, (2008, 1332) also posit that in the post-apartheid period, labour immigration has been reconstructed as a mechanism for capital (referred to as employers within the documentation of organised labour) to undermine labour standards. Thus they conclude that this logic allows the trade union movement to be anti-immigration while at the same moment pro-immigrant, declaring that the “working people of Southern Africa are not the enemy of South African workers. The enemy of the migrant labour system is, under this logic, the employers of ‘illegal’ migrants who become the causal factor behind the erosion of workers’ rights”. Rather than target the ‘illegal’ migrants themselves, the trade unions advocate heavy penalties and more extensive enforcement mechanisms to prevent the practice of employing ‘illegals’ (ibid, 1332). Thus Trimikliniotis et. al, (2008, 1333) conclude that although the trade union movement shares its sympathies with migrants, it seems to believe that large-scale entry of foreigners into the labour market would disadvantage citizen workers,

and these citizen workers must have priority. This resonates with the national chauvinism of COSATU alluded to by Hlatshwayo (2011) above.

As a result of the same immigration policies that render undocumented workers invisible and excluded, collective organising for ‘illegal’ migrant workers is also affected. According to Bonner and Spooner (2011), most informal workers are excluded from the legal framework for formal workers, with less rights and protections around which to organize and make gains, and there being no traditional collective bargaining forums. Moreover due to their invisibility and thus choosing to operate under the radar, migrant workers do not fit easily within a union culture. Consequently literature and research has thus tended to narrowly focus on ways in which informal undocumented workers can be organized so as to safeguard their labour and human rights. However the limitations of such an approach is that it takes for granted that migrant workers seek cooptation into labour organising movements, which my findings suggest is not really an important issue with migrants I interviewed.

Besides, as Bonner and Spooner (2011) have noted, it is a difficult task to organise ‘illegal’ migrant workers as many of them are informal workers and are poor and thus focused primarily on survival. These workers further work long hours and time spent on organising can be income lost for them. Hlatshwayo (2011) reckons the problem lies with COSATU as he argues that despite an increase in the number of immigrant workers located within the South African borders, the union movement has not been able to pledge ‘solidarity within the South Africa borders’ immigrant workers. Lehulere (2008:34) cited in Hlatshwayo (2011) further argues that there is no mention of the need to organise the workers (especially the ‘illegal ones’!) into unions, but rather a call on employers to fire ‘the illegal ones’. However I also argue that most undocumented workers are not really concerned about organising and trade unions as they are unlikely to want to risk their exposure. Moreover, as I will show, some undocumented workers prefer this clandestine form of living as they can drift in and out of jobs or industries. What undocumented workers really want are jobs and thus how they negotiate these employers – employee relations should rather become the focal point.

Chun (2014) thus argues that, organizing the ‘unorganized’ then becomes the mission of trade unions who should rather look upon people in the informal economy as *actors*, capable of various initiatives, including organizing themselves, despite the many obstacles they often face.

2.11 Conclusion

This chapter has reviewed literature and concepts that will be crucial in explaining the report's arguments and in connecting together the various components that make up this report. The chapter began by giving an account of the Zimbabwe to South Africa migration trends which have since intensified due to the economic challenges faced by the former. Migration for Zimbabweans has thus mostly been labour migration as immigrants seek economic opportunities to minimise poverty back home by sending remittances. However as explained above immigration is controlled by the receiving country's immigration laws where it is not everyone who gets authorisation due to the numerous challenges that are faced by those who seek this documentation. Those who fail to authorise their stay in South Africa are thus rendered 'illegal' subjects and they have to navigate this 'illegality' in their everyday lives and workspaces. However by focusing on workspaces and spaces of negotiability it is demonstrated in the research report that immigrants' 'illegality' is not an overriding principle.

3 CHAPTER 3: METHODOLOGY

3.1 Introduction

This chapter incorporates an exploration and discussion of how the research was carried out. The researcher had to identify, select and negotiate access into research sites before collecting research material. Due to the nature of the study which required experiences and narratives from the respondents it was best that the research make use of a qualitative methodology. Experiences and narratives and all the research data was captured through qualitative oriented methods such as unstructured in depth interviews and participant observations. The following section justifies, describes and discusses the advantages and suitability of using a qualitative methodology and its methods of collecting data on such a research project. Flexibility associated with in-depth interviews ensured the effective capturing of subjective voices in conditions that were favourable to both the researcher and the respondents. The researcher encountered numerous challenges during the process of data collection, and I discuss this under the challenges and reflexivity subheading. Ethics were also considered and observed throughout the data collection process and confidentiality and anonymity were constantly assured to respondents. Thematic and narrative analysis was exercised in analysing data. The section below discusses all these methodological issues in detail.

3.2 Research sites and access

Simultaneous with formulating the question that guides the study, the qualitative researcher needs to select a site and develop a rationale for the choice of that site (Janesick, 2000). Janesick (ibid) adds that access and entry are sensitive components in qualitative research, and the researcher must establish trust, rapport, and authentic communication patterns with participants. This research was carried out at multiple construction sites around Johannesburg suburbs of Rosebank, Braamfontein and Cresta. Over the last few years I had observed that Rosebank business centre and the area around Cresta mall had been undergoing a lot of expansion and thus construction. Johannesburg was also primarily considered due to the fact that is where this researcher studies and resides. Another influencing factor and one that is explored in the literature review is because of the aspiration and progression of Johannesburg into a global city (Murray, 2003). Therefore it attracts a variety of immigrants among them Zimbabweans who seek participation in the city's growing construction industry. Initially I moved between and loitered around construction sites seeking willing research participants,

however due to the sensitivity and trust issues revolving the research main subject (undocumented immigrants) getting participants was not as easy as I had expected. I will elaborate more of this under the reflexivity section. After experiencing helpful but limited success with acquiring research participants I turned to my Johannesburg social networks comprised of relatives and friends as these ones would trust me more.

As the subsequent chapters will reveal, social networks emanating from kinship ties feature and influence immigrant workers' attainment of jobs and workplace relations. These social networks contained in kinship ties greatly abetted this researcher in acquiring access into construction sites and to get research participants for this study. I used social networks I had established in previous years when I had a brief working stint in the small scale construction industry, working for a relative who was a small scale subcontractor from Zimbabwe. This brief experience also supports my input into this research as a participant observer. Nonetheless this is a discussion for the subsequent section on research methods choices.

3.3 The Qualitative Design

Embedded in the phenomenological model which seeks to explore, describe and explain the meaning of human experience as experienced by individuals (Marshall and Rossman 2011), this research employed a qualitative methodology approach. Janesick (2000) posits that the qualitative researcher studies a social setting to understand the meaning of participants' lives in the participants' own terms. This contrasts with the work of the quantitative researcher, who is perfectly comfortable with aggregating large numbers of people without communicating with them face to face. However this is not to deny that different insights can be obtained by the quantitative researcher. The kind of data needed for this study largely involved participants' detailed narratives which acted as my data and thus a qualitative research design was best suited to the nature of this study. In this regard the aim of using a qualitative design was to gather nuanced, intricate and 'thick' descriptions of how employees find work and how employers find them and to also explore workplace every day relationships and negotiations. The qualitative paradigm acknowledges that meanings attached to everyday experiences are highly subjective, are social constructs and are mediated in the course of human interaction.

Other common elements of the qualitative research design is that it is concerned with the personal, face-to-face, and immediate and that it requires the researcher to become the research

instrument (Janesick, 2000). Qualitative methods can also be used to understand broad structures which emerge from immediate interactions. Janesick thus points out that qualitative design requires the construction of an authentic and compelling narrative of what occurred in the study and the various stories of the participants. Therefore I used the qualitative methodology based upon the need to understand human and social interaction from the perspectives of insiders and participants (Maxwell, 1998:49). This was done through exploring study participants' unique experiences by listening to their life stories. Moreover a qualitative approach accorded the study flexibility that did not compromise the research data especially when dealing with sensitive issues that come with exploring undocumented migrant workers.

3.4 Research methods

3.4.1 In-depth Narrative Interviews

Boyce and Neale (2006, 3) describe in-depth interviewing as a qualitative research technique that involves conducting intensive individual interviews with a small number of respondents to explore their perspectives on a particular idea, program, or situation. MacDougall and Fudge (2001, 19) define in-depth interviews as “repeated face-to-face encounters between the researcher and informants directed toward understanding informants' perspectives on their lives, experiences or situations as expressed in their own words”. Boyce and Neale (2006, 3) also point out that the other primary advantage of in-depth interviews is that they provide much more detailed information than what is available through other data collection methods, such as surveys. Adams et al (2008) also concur that researchers make use of interviews when they wish to obtain more detailed and thorough information on a topic than might be gleaned from a questionnaire.

With the highly interactive traits of qualitative research design mentioned above I made use of in-depth interviews as my main research instrument. These interviews were unstructured and entailed face-to-face conversations between the researcher and the respondents. I got hold of fourteen research participants which were derived from approximately ten interviews. Within these ten interviews I conducted four separate in-depth interviews with subcontractors where I spent on average one hour per interview. I completed a total of six interviews with the workers which generated ten respondents. The explanations behind this method was the flexibility which comes with in-depth interviews which allowed these interviews to periodically evolve into discussions and informal debates where an interviewee would call his friends to also

participate in the conversations. These debates between the respondents themselves were also very useful for garnering more insights on the work processes in the construction industry. These debates also enabled respondents to recall forgotten experiences and memories when another interviewee hinted a subject matter. These interviews ranged from an hour and a half to two hours. This flexibility is another advantage of in-depth interviews alluded to Boyce and Neale (2006) and thus in-depth interviews can be presented in a number of ways and there is no specific format to follow. It is important to consider that the more structured an interview is the less likely it is for a participant to feel at ease and reveal important and relevant issues (Adams et al 2008). For semi-structured and unstructured interviews it is important that the interview structure is kept flexible so that key issues not identified before the interview are allowed to emerge through the discussion.

Therefore I strived to create a flexible approach in which the interviewees and I were able to turn interviews into natural conversation where the interviewees did most of the talking. Good rapport was essential to achieving this flexibility and the latter enabled the creation of an informal atmosphere which allowed for dialogues to flow naturally. MacDougall and Fudge (2001) note that in qualitative or action research, it is important to consider how best to maintain relationships and contact with participants. Thus being a Zimbabwean migrant like the majority of my research participants made the task of gaining trust and good rapport simpler and effective. Securing the interviewees' trust and establishing good rapport made it easier to follow up on responses that needed clarification after transcription as I would call or simply text to schedule more meetings or simply ask for clarification over the phone. By securing their trust, I was able to make the situation calm and relaxed to enable them to share more information with me.

Creating such an informal environment not only meant good rapport but also spawned more genuine and candid viewpoints from these workers and employers which were crucial for this research report. One example of such a casual atmosphere between my respondents (my main interviewee had called some of his friends to participate) was an interview which was done at one of the interviewee's home while sitting at the back of his 'bakkie' where he even offered refreshments. This dispelled any discomforts I had and made the conversations less formal and I could ask the questions that I considered to be risky.

Another instance where I used the flexibility that comes with in-depth interviews was in using both English and the Zimbabwean native language of isiNdebele in my conversations with respondents. Although isiNdebele was the main language in dialogues between the researcher and the respondents, some interviewees especially the employers included a significant amount of English. The respondents thus guided the selection of interview language, and I duly followed whatever language the respondent would have initiated. The interviews carried out in vernacular were recorded and then transcribed to English.

Taking a hint from Kvale (2008) that good interview questions should contribute thematically to knowledge production, I sought to align and design the interview questions so as to answer the main research question and the attendant sub-questions of the study. These sub questions acted as themes which guided the research. Therefore I broke down the provisional interview questions into themed sections relating to the objectives of the research. Boyce and Neale (2006) also highlight that providing quotes from respondents throughout the report adds credibility to the information. However the researcher has to exercise caution in this regard and make sure be that he does not identify the respondent or provide quotes that are easily traced back to an individual, especially where confidentiality has been promised. Quotes from transcribed material were selected and used initially in the drafting and outlining of themes and arguments that were to be explored.

Flexibility and the resultant natural dialogues, discussions and debates nonetheless meant that practically as the interview wore on I had to abandon, to various degrees, my interview guide which was based on sub questions and themes of the research. Therefore, interview schedule consistency had to be forfeited in some moments so as to keep the natural dialogues going. I had to keep on referring to the interview schedule and ‘ticking’ off tackled themes or issues. I would then go over any outstanding or unclear matters and probe for more insights.

All the interviews were recorded at the consent of the respondents. Recording facilitated the accurate capturing of the exact interview content and provided a permanent record to which I was able to constantly refer to during the analysis phase. These recorded interviews were gradually transcribed for easy access and reference at the analysis phase. I also took down some interview notes during interviews and at the earliest available opportunity after leaving the location of the interview. This guarded against the distortion and misrepresentation of data due to forgetting.

However interviews also have their disadvantages such as time intensity in the actual interviews and transcription processes. Boyce and Neale (2006) also point out that interviews can be a time-intensive evaluation activity because of the time it takes to conduct interviews, transcribe them, and analyse the results. Interviewing was time intensive as some of my interviews would encroach on the two hour mark. Transcribing, translating and capturing all the recorded voices especially those that involved debates each was also a substantial challenge. However for this type of research, advantages outweighed the disadvantages.

3.4.2 Participant Observations

Janesick (2000) observes that, qualitative design requires the researcher to become the research instrument. This means the researcher must have the ability to observe behaviour and must sharpen the skills for observation and face-to-face interview. I thus also utilised my former experiences and observations from my days as a worker in components of the informal construction industry for a few months in 2013 to substantiate in-depth interviews. I had travelled to Johannesburg in the beginning of 2013 with the intention to enrol at Wits University. However failure to secure funding forced me to abandon the whole process altogether. Instead I decided to overstay my allocated days (becoming an undocumented immigrant) and search for a job where a relative incorporated me into his workforce where we specialised in paving and painting.

I was taught the latter job for a few days and started with scrapping and preparing walls to be painted and then later on painting undercoats as a learning process until it was decided about a week later that I was ready. The atmosphere at work was usually cordial and jokes would be shared during work hours. Wages were usually paid informally in envelopes every end of each working week which was usually a Friday or Saturday. Although I was relatively new in the business I got paid the same wages as other painters. I could see that this did not please others and they would occasionally say that I was favoured because I was a close relative. Eventually such gestures did not amount to much as I discovered that the employer was also distantly related to a few other workers as well. During my tenure there we regularly did paving and painting jobs in private residential complexes where I also experienced ‘illegality’, precarity and nevertheless long lasting bonds that we shared in the work spaces.

Sarantakos (1998) cited in Benya (1999) asserts that there are many different ways of doing an ethnography. Researchers can either choose to be participants or non-participants, or to do direct or indirect observations. I became an active, direct observer since I was involved in daily construction work (painting). Therefore this allowed me to experience the work processes and employment relations and to also observe these workers in their own settings. Ongoing conversations with my workmates also allowed me to know more about the building industry and their different experiences as immigrant workers. These personal experiences and observations in a section of the construction industry helped me acquire background knowledge into the industry. I use this knowledge in the construction overview chapter where I describe components of the industry I focus on in the rest of this research report.

3.4.3 Sampling

According to Dworkin (2012) the sample size used in qualitative research methods is often smaller than that used in quantitative research methods. This is because qualitative research methods are often concerned with garnering an in-depth understanding of a phenomenon or are focused on meaning and heterogeneities in meaning. Due to the scattered nature of undocumented immigrant workers in Johannesburg non-probability sampling was used to select participants for the study in which the snowball sampling technique was particularly used. Initially I identified participants from construction companies around Johannesburg suburbs of Rosebank and Braamfontein. However this was met with limited success and I utilised my social networks comprised of relatives and friends who worked in the construction business. These kinship ties ensured good rapport with my respondents and sharing the same language made it relatively easier for me. More research participants were thus attained from these social networks.

Therefore with workers I conducted about six in-depth interviews which ranged from an hour to two hours each. These six unstructured in-depth interviews generated ten respondents from workers. I supplemented these respondents with my own observations and insights from my days I worked as an undocumented immigrant in the small scale construction industry. Interviews were conducted in places of the respondents' choosing, where they felt comfortable enough to talk and also taking into consideration that most of them were undocumented thus caution had to be observed. This was also done on the pretext of showing them how central they were to my study rather than me imposing on interview venues.

I followed the same snowball technique when selecting my research participants from the employers or managers which in this case were mostly subcontractors. Initially I interviewed my former employer from my working days. He was a distant relative and our rapport was good. From him I asked for referrals to more employers. To counter ethical issues that might affect quality of and nature of interview data I made sure that I never interviewed a worker and his direct employer. Employers in this research had no direct authority over the selected workers. Initially the plan was to have a maximum of five interviewees with employers or managers but I only managed four interviews of approximately one hour each. The employers also decided the venue for interviews and mostly it was between their residences and construction sites during lunch times.

3.5 Data analysis

Marshall and Rossman (1995, 111) point out that data analysis is “the process of bringing order, structure, and meaning to the mass of collected data”. Therefore captured narratives, opinions and experiences need to be structured, ordered and examined to ascertain if they answer questions that the researcher has sought responses to. Rubin and Rubin (2005, 202) thus contend that the purpose of qualitative data analysis is not to provide statistical summaries but to “discover variation, portray shades of meaning, and examine complexity”. For this research data analysis was based on themes emanating from data collected.

3.5.1 The Narrative Method

Accompanying thematic analysis (which I discuss below) and directly correlated with it was the engagement of the narrative method. Themes are identified and selected from respondents’ narratives or personal stories. Connelly and Clandinin (1990:25) assert that, “humans are story-telling organisms who individually and collectively lead storied lives”. The research employed the in-depth interview research method and added to their perspectives I required respondents to detail or narrate personal experiences and narratives. An example of this is when I asked respondents to detail their labour market history which included their journeys to Johannesburg and finding the first job. This methodological choice reverberates with Young’s (2007) observation that first-person narratives and experiences are valued for their power to counter and demystify totalising collective historical narratives which often subordinate and homogenise individual experiences and perspectives.

3.5.2 Thematic Analysis

After completing the transcription process I began analysing my research material by basically taking all interviews and ‘coding’ prominent themes. This coding process was steered by the phenomenological perspective in which interview transcripts and field notes were analysed under the hypothesis that meaning was created and mediated in the interview process. I was also able to identify and organise these themes into concepts and sections and their various subsections. Initially I began this theme coding process by simply ‘plugging’ in illustrative quotes from the interview transcripts and creating bullet style notes to myself in specific sections to indicate what I was going to deliberate on in each section. Apart from launching my analysis this also served as a gap identifier in the material I had which I could follow up on. After clustering together similar themed material I went through them again and searched for differences between them. This was to generate deliberations in between themed sections so as to come up with coherent concepts and arguments.

Moreover there are themes emanating from my literature review that I had already thought about focussing on. An example of this is the chapter on ‘illegality’ where I wanted to document immigrants’ experiences of traveling to and living in Johannesburg without documentation and then measuring it against existing literature. This was to act as a launching pad for my research material analysis and to give me a clearer picture of upcoming arguments. I also included as a starting place, a general overview of the construction industry to act as to equip the reader with the construction industry domain that will be explored here. This is because the industry is vast and this research only captures a component of it. Moreover not only will this prologue chapter serve to orient the reader, but it also assisted in me in navigating through my specific ‘case’ or put simply it supported me to clarify what section of ‘informal immigrant workers’ my data speaks to.

3.6 Methodological Challenges and Reflexivity: ‘Illegality’ as Access Barrier

Putting together this research report was met with numerous challenges from its commencement. I had to be reflexive so as to manoeuvre through these challenges and ensure the completion of this research report. The first challenge was presented to me via accessing my main research participants, that is, undocumented immigrants. Getting ‘illegal’ immigrants to reveal themselves and talk to me was a big hurdle that almost jeopardised the entire project. As I have hinted in the “Research sites and Access” section, my original plan saw me moving

and loitering around construction sites seeking willing research participants or put bluntly, undocumented immigrant construction workers. However this does not mean that I was not completely oblivious to the fact that this was a risky mission considering sensitivity and trust issues revolving around talking to undocumented immigrants as a total stranger.

Nevertheless I had somehow deceptively convinced myself that as a Masters student although a stranger, I could persuade these immigrants to trust and have conversations with me. I was wrong. Getting research participants was thus not as easy as I had expected. My first encounter was with a group of Zimbabwean immigrants whom I had overheard speaking in the Zimbabwean native Shona language. After approaching them and introducing myself (simultaneously revealing my student card and participant information sheet) I was immediately treated with suspicion when one of them light heartedly accused me of being a Zimbabwean “*C number*” which informally refers to the Zimbabwean state security agency, the Central Intelligence Organisation (CIO). Most Zimbabweans associate the CIO with cruelty and fear and I could understand the stranger’s reservations. This aspect also speaks to the ‘illegality’ that undocumented immigrants navigate in their everyday lives (the “illegality” chapter deliberates further). Fortunately I was able to convince one of the group members that I was indeed a student and managed to get his contact details where I arranged for a meeting and conducted an interview.

The same mistrust persisted even after changing my approach (as my initial solution). Rather than focusing on ‘illegal’ immigrants I focused on all migrant workers (without specifying immigration status) and including other nationalities as well. Although this had limited success, suspicions also emerged where this time I was accused of “*being a journalist hiding under a Wits University t-shirt and fake student card*”. I could tell that journalists were also reviled as they were perceived to be on missions of exposing a lot of unlawful ‘shortcuts’ in the construction work processes. Thus workers avoided journalists on the basis of avoiding stirring trouble with their employers. I explore some of these issues in detail in the ‘illegality’ and ‘workplace negotiations’ chapters. Suspensions of researchers was also confirmed when I turned to my relative and former employer who confirmed that indeed both employers and workers were unreceptive of researchers due to ‘unlawful’ and ‘shortcut’ tendencies in the building industry.

As the last sentence reveals, in a bid to manoeuvre through these suspicion problems I then turned to my relatives and other social networks I had established during my working days in the construction industry. Interviewing my relative in a both worker and employee capacity enabled me to get more referrals from people he recommended and trusted. It was easier when it was him who was introducing me and the terms of my research project. I built a link from him and I even managed to get more appointments from people I had been referred to.

Another approach that enabled me to get past the suspicions surrounding un-documentation of workers was approaching documented Zimbabwean construction immigrant workers. I used this approach concurrently with the one of recommendations specified above. From these work permit holding Zimbabweans I required life stories where they revealed their journeys to Johannesburg and their early days in Johannesburg before they had acquired any form of authorisation. Moreover these past narratives meant that the worker fear of discussing the workplace and employers was resolved thus simultaneously solving another challenge. This is because most of these workers had since moved on from their initial employers when they arrived in Johannesburg. Mobility and progression as later sections will reveal are important themes for Zimbabwean workers in the construction industry as most desire to become subcontractors in their own rights. Some that I conversed with had realised their dreams of being subcontractors and from these I did ‘double’ interviews, firstly their narrations from their employee days and then their roles as employers.

This research also presented another minor methodological challenge that I had to manoeuvre past. This challenge involved interviewing both workers and employers. I realised quickly before entering the research ‘field’ that it would be problematic to interview workers and their direct employers as this would for practical reasons potentially affect the nature and the quality of the responses from either side. Thus to counter this I sought employers and workers who were never in direct contact.

3.6.1 Translation and Lost Meanings

Another challenge that required reflexivity on the part of the researcher involved the transcription and translation process of the recorded interviews. Although some interviewees included English in their responses, the dominant language in these dialogues was the Zimbabwean or northern isiNdebele language. Fortunately on my part this is my mother tongue

as well and also forms part of my subjective biases of creating good rapport as a motive behind the selection of research participants. While dialogues flowed naturally, the transcription and the accompanying translation to English procedure was met with some methodological challenges. In some cases I could not find English words that provided exactly the same meaning and experiences/context as the isiNdebele concepts or experiences I intended to translate. Direct translation meant that some meanings and the descriptive command of the isiNdebele expressions was lost in the translation phase. Behar (2013) contends that such a procedure leads to a translation dilemma whereby recorded stories are reinvented by presenting them in a different language.

3.7 Ethical Considerations

Creswell (1994) points out that first and foremost, the researcher has an obligation to respect the rights, needs, values and desires of the informants. In introducing myself, I took special attention to convey the fact that the research was being conducted in partial fulfilment of a Master's degree and any other academic paper to come out of it, giving full information on the degree that I am pursuing and the institution. I also gave both sets of respondents (workers and employers) participant information sheets so that they could see and understand the reasons for conducting the study and what was required from them. However almost all of the respondents particularly the workers were not really interested in reading the information sheets as they trusted my intentions and verbal requests.

Interviews were conducted at the preferred choices of the respondents and these were mostly conducted at the respondents' homes. Some interviews with employers were done at their workplaces with their blessings that it was ideal. Another interview was conducted at a public park. Moreover, from the beginning of the interviews the confidentiality and anonymity of the interviewees were a priority and verbally I assured them of this. I also requested consent to record all interviews and the respondents were not bothered by this. Options to stop the recordings and the interviews at any time they felt uncomfortable were also extended to the interviewees and fortunately such situations did not arise.

Since I was dealing with a significant number of undocumented migrants, guaranteeing anonymity was crucial. Respondents were however not seemingly concerned by this as they trusted me to do the right thing. Nevertheless I assigned and used pseudonyms when quoting

from the transcribed material so as to protect their identities possibly from both law enforcement agencies and their employers. Hence, the names that appear in this thesis are not the real names of the respondents. Confidentiality and anonymity were also accorded to employers and managers.

Research material collected from was kept in a password protected laptop. Upon completion of the study, data will be stored as a research report in the Wits University's on-line data base as well as in Research Commons and all potentially identifying features linking the report to the participants will be removed.

4 CHAPTER 4: OVERVIEW OF THE CONSTRUCTION INDUSTRY

4.1 Introduction

This overview chapter is going to describe the layers and divisions of the South African construction industry. This section will illustrate that despite all these divisions, skill seems to cut across them, and offers ways for workers to negotiate their own relations and security. This affirms and links to the overall argument of this report, that skill gives all workers leverage and helps to mediate against exploitation of labour. The South African building industry is vast and multifarious. Though not restricted to these, the key participants in the South African construction industry are main contractors, subcontractors, labour brokers and the workforce itself. The workforce is divided between casual workers and companies' permanent employees. Subcontractors and labour brokers are responsible for providing the main contractor with the labour force and equipment on construction sites. The main contractor thus employs subcontractors and labour brokers who in turn employ and own the labour force and equipment required in the building process. There are also several levels and scales of operation regarding the contractors and subcontractors.

The building industry is riddled with numerous nuances which makes any attempt to fully describe it a colossal task. Therefore the scale and what happens in the industry cannot be fully captured by the scale of this research report. Nevertheless by focusing on the subsector of the industry made up of Zimbabwean immigrant workers and their employers I was able to get a detailed picture of how labour relations take place in the absence of recourse to the law. Getting close to capturing all activities would require more time, resources and research of vast magnitude. Thus the processes captured in this overview are my own observations and data gathered from research participants which will be frequently measured against existing literature on the construction industry.

Furthermore although I had set about expanding the scale of research participants like subcontractors, the research report is nevertheless dominated by small scale subcontractors and their employees. This was mostly due to time constraints, availability, sensitivity around such work processes and willingness to cooperate. Nonetheless as the subsequent sections will reveal subcontracting is the backbone of the building industry such that these small scale subcontractors were very familiar with most work processes and activities around the industry,

such that there was no pressing necessity for me to engage main contractors. These small scale subcontractors were mostly comprised of Zimbabweans who have spent over thirty years in the building industry and as I observed, employment patterns are largely modelled on citizenship and kinship. This means that immigrant workers are prone to seek employment from their fellow countrymen and fellow kin. However this does not mean that South African and other nationalities did not share the same workspaces as these Zimbabwean workers. This section acts as an introduction and an attempt to highlight the confines of the report. The ensuing sections will thus give an explorative account of how these constituents intersect and explore the roles each part plays in the building industry. This account will also act as the foundation and outlook into the construction industry actors that make up the rest of the research report.

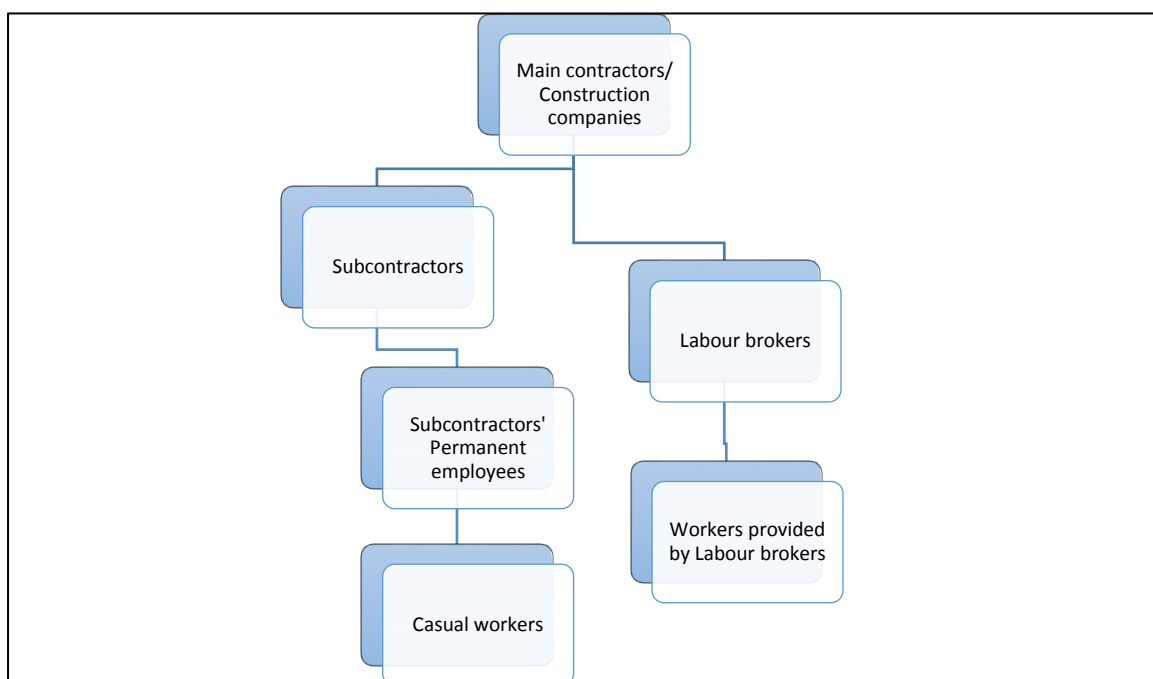


Figure 1: Overview of the Construction Industry

4.2 Main Contractors

Frequently and specifically referred to as contractors, I refer to this category as main contractors to distinguish between them and sub-contractors and to try to illustrate their top position within the construction industry hierarchy. In South Africa such contractors include big companies such as Murray and Roberts, WBHO, Aveng and Group Five (www.pwc.co.za/construction). Commonly referred to as the highest bosses, these are the owners of the building projects and the project plans are designed by them, and they ensure projects' completion. Contractors are also varied in size depending on the scale of operations

that they are involved in. The contractor bracket can involve the overseeing of projects as small and simple as one building to bigger and complex structures such as football stadiums and large shopping malls or complexes. Some contractors might frequently work with the government through the process of tender allocation to building certain projects. Others are dependent and might rely on bank loans to begin and complete projects.

However as observed by Thiel (2010, 446) most building contractors are ‘hollowed out’ and operate like knowledge brokers where they do not directly build anything or own any means of production. Instead they only possess computers, methods of administration, managers, co-ordination and regulatory knowledge to construct buildings and thus they contract-in craft skill and labour via trade specific subcontractors (ibid, 446). However in most instances main contractors provide material for subcontractors and the workforce to work with. As documented in the literature review the reasons for this are varied and range from taking precautions against numerous uncertainties and ‘unforeseens’ that occur in the building process, and high costs involved in keeping idle labour as projects might be fixed term rather than continuous (Thiel, 2010, 446; 2001, 270). As a result main contractors or project owners rarely have their own permanent labour force. Rather they rely on sub-contractors and labour brokers to provide the work force.

After giving me a tour of a Pretoria based contractor’s project one of my sub-contractor respondents, Mr Khumalo concurred that usually there would be more than fifty sub-contracted companies on similar projects sites. He further assented that main contractors usually have few of their own employees on sites and these are usually the foreman of the project and the safety and health manager. The safety and health manager’s task was initially to supervise the inductions of all employees coming into the project. Inductions involved safety procedures and regulations in the workplace. I also observed this in most large scale construction sites I visited around Johannesburg. However I was also informed that construction sites are different depending on the scale of projects. There are small open sites where you can enter anytime and work without safety gear or boots. And then there are big and multifaceted projects where sites are closed and safety gear is compulsory.

Completing the active main contractor employees and those usually found on sites were the foremen. These were responsible for steering the projects in the right direction. They were thus the bosses and contractor representatives in the workplace. According to Mr Ndlovu, a

subcontractor I interviewed, the foreman's job is to make sure that every subcontractor allocated contracts follows the plan.

“They are there to make sure that every contractor given the job follows the plan, when a contractor deviates from the plan they stop you so that material is not wasted by deviating from the plan. They check that you stick to what you were hired for”. [Mr Khumalo (subcontractor), interview]

From the description given above, it would thus seem that one does not necessarily have to be an expert on the building industry to be a main contractor. Rather as Thiel (2010, 446) has pointed out what is crucial for a main contractor is possessing administration methods, computers, managers, co-ordination and regulatory knowledge to construct buildings. The actual construction or building processes are handled by subcontractors and these together with the workforce are the biggest focus of this report. Moreover it makes sense to focus on subcontractors as employers in this report rather than main contractors as subcontractors are directly in charge of the construction workforce and are involved in the day to day actual construction work. Subcontractors would thus presumably know more about the work processes than the main contractors. Most of the descriptions of the work processes in this report were given by subcontractors. The next section explores subcontractors' role in the construction business in detail.

4.3 Sub-contractors

As explored in my literature review, the building industry is characterised by the blurry distinction between formal and informal work processes. These nuances are commonly as a result of subcontracting. Consequently the next category in the construction industry hierarchy are sub-contractors. Subcontractors are the back bone of the building industry as they administer most of the work activities and processes in the sector. These are like second tier bosses and they are responsible for employing the majority of the workforce in the industry. As explored above subcontractors are mostly employed by main contractors to provide labour, expertise and equipment in construction projects. However in some cases the description of subcontractors is not as always as clear as this and they mostly differ according to size of operations and the number of workforce. Thus this also means that construction sites are not the same. One subcontractor informed me that depending on the size of sites, there are open

and closed sites where on the latter you do not just enter without a passport with a valid permit or ID or asylum. I encountered other subcontractors who are not subcontracted for any specific tasks but build houses from the foundation to their completion. These type of subcontractors instead subcontract specialists such as plumbers and electricians. Thus it becomes a case of subcontractors subcontracting one another.

Owing to the multi-dimensionality and diverse project magnitudes, sub-contractors are varied depending on their specialties, services and size of operations. Sub-contractors' scale of operations range from big projects such as malls or residential flats and to the maintenance of private residential properties. This is in line with the rise of small scale informal construction contractors who are involved in housing projects, or maintenance while offering private clients who cannot afford expensive formal contractors a cheaper alternative (Wells, 2001, 273). Operations usually include paving, tiling, and painting, plastering and building (brick laying). In South Africa sub-contractors are commonly referred to as 'the bakkie brigade' due to their customary use of open vans or pick-up trucks as their vehicle of choice in the construction business. As observed by Mitullah and Wachira (2003, 1) some subcontractors employed in the informal construction industry double up as employees, as self-employed workers or as owners of small enterprises employing other workers.

Subcontractors have a significant stranglehold on the construction industry in South Africa, and globally they are responsible for a majority and about 85% of all construction jobs in the building industry (Mbachu, 2008, 471). There has been growth in the sector too which benefits subcontractors greatly. As such government unlisted construction enterprises who previously were only involved in the building, maintenance and repair of individual residential houses are now increasingly involved in the construction of complex and much larger commercial buildings (Wells 2001, 269). This means that registration of companies is not common for subcontractors. However there are other elements that will require one to register a company under specific industry boards but for only a particular job task. Mr Ndlovu remarked that,

“sometimes you have to register for tenders, except for tenders, like perhaps you are doing a big project you will need to pay a workman compensation in Randburg. Registration is mainly project based because I cannot register for a job that I will likely finish within a week or less. Sometimes by the time you finish registration describing

your current activity you will have moved on from that job". [Mr Ndlovu (subcontractor), interview]

Nevertheless subcontractors I engaged added that although registration is uncommon and there being no visible government tracking of this, what is important is surety and these can only be established through good references and recommendations. Registration meant little if a subcontractor had no credible references. Thus these nuances are further testament to the overwhelming informality of construction work.

Subcontractors are the biggest employers in the construction business as they recruit workers suitable for completing contracted jobs. Mr Ndlovu remarked, "*small scale subcontractors are managers and pay masters at the same time*". In the same way foremen from main contractors supervise and follow up on subcontractors and their employees, subcontractors act as supervisors to their workforce in a construction project's chain of command. Thus subcontractors also expect jobs to be done according to the way contractors want them to be. In addition to recruiting workers, subcontractors I engaged also commented that it was also the subcontractors' job to make sure that transport is provided for workers and usually they provide such transport free of charge. It is also the employer's responsibility that every employee is dressed safely as most contractors were strict on this.

Mobility by individual participants within the construction hierarchy is an important and recurring theme through out my research report. Mobility is also a constant matter as subcontracting also has many levels and every subcontractor wants to rise to the pinnacle of the industry and get to be subcontracted in bigger projects. Therefore some of the subcontractors I engaged were Zimbabwean immigrants themselves who had begun from below as casuals and rose through the construction ranks to eventually becoming subcontractors themselves. For this to happen, experience (judged by the number of years in the industry) and good references are crucial. These good references also apply for subcontractors to get involved in bigger construction projects. When I quizzed Mr Khumalo, a subcontractor on how he got contracts or jobs...

"Ahh...for me it's all about being known, word of mouth, recommendations from other contractors and good references". [Mr Khumalo (subcontractor), interview]

Another noted ongoing process is that subcontractors would instruct their keen fellow countrymen until they gain enough knowledge to become small scale subcontractors in their own right. As one subcontractor remarked,

“From there...people came like that, others came without any knowledge or skill of being artisan and because they are keen I trained them and they grow and learn the job such that others have become subcontractors in their own rights” [Mr Ndlovu (subcontractor), interview]

Thus working your way from below was the standard procedure for a worker to become a subcontractor. The other way to rise to being a subcontract as observed by subcontractors was through involvement in a family business and gaining nepotisms and assistance from them.

“Let’s say I’m already in the industry and my brother comes around I can make him jump stages, he can be a labourer and then I teach him to be a foreman and then from there teach him to drive and then from there help him to establish his own company”. [Mandla (former worker and now subcontractor), interview]

Subcontracting is the backbone of construction work processes and thus construction work cannot be explored without mentioning subcontractors who actually oversee and carry out the actual construction work. These subcontractors are however varied in scales of operations and specialisations within the broader industry. This is facilitated by a bigger construction market in Johannesburg which presents subcontractors of different sizes and operations with business opportunities. However like every industry there are challenges that face these business owners. The ensuing section examines some of these challenges that subcontractors are faced with, which further perpetuate informality and shortcuts in the construction work processes.

4.3.1 The Pleas from Subcontractors

Although mobility to better opportunities and positions is a constant feature for individuals in the construction industry, nevertheless the growth in operation size and mobility to main contractors has its own challenges. In an industry dominated by black workers the norm amongst workers and small subcontractors is to harbour aspirations of expanding operations and owning contractor projects. However some subcontractors I engaged highlighted the

difficulties especially in the form of lack of opportunities due to the industry being monopolised by big contractors who are principally white. Part of the problem underlined was that the industry is controlled by white contractors and they have influence over suppliers. Mr Khumalo, who has been a subcontractor for over three decades confirmed this,

“Another issue in this industry is that most or all workers involved in the construction industry are black but they will hardly give you a main contractor job if you are a black contractor. And most suppliers for material are white people and that’s where the problem begins...when you order supplies or need structures to begin work. The service will not be perfect compared to white contractors. Then they say black people are failing, there are few opportunities, all the money revolves around them and their companies. And they are confident when they do such things. There is too much politics at play”. [Mr Khumalo (subcontractor), interview]

Another challenge expressed by subcontractors and paradoxically which benefited most subcontractors was the ease of entry into subcontracting. One subcontractor complained that because of the easy entry into the profession the industry was becoming saturated by lawyers, doctors and even footballers who were rushing into the trade for a *“quick buck”*. These professionals were said to be entering the industry through corrupt means such as buying tenders from government officials and making it difficult to compete on a level field. The subcontractor further reasoned that these other professionals entering the industry were dropping the standards of the sector as they knew little about the industry.

“...they find someone who will run these companies while they are doing other professions. This is what is killing the construction industry...” [Mr Ndlovu (subcontractor), interview]

“It is easy to get into the industry and again you train some of them and after gaining enough skill they leave you to form their own companies, at the end of the day we are competing against each other and pricing is affected”.[Mr Ndlovu (subcontractor), interview]

“The industry is growing but the standards are dropping, its growing for big companies or contractors but where we are inadequate is that we focus more on alterations and

additions. What forces you to do this is that you will be in need of fast cash and avoiding the longer and tiresome registration processes”. [Mr Ndlovu (subcontractor), interview]

The above two sections have focused on the important roles that subcontractors play in the construction industry and their challenges. Paradoxically one challenge noted which in turn was beneficial for subcontractors was the ease of entry into the business. As Mr Ndlovu pointed out it was easy to gain entry into the industry and this meant more competition and thus affected pricing of jobs.

Subcontractors and main contractors need an adequate labour force to ensure completion of building projects. The section below thus switches to illustrate how workers are recruited and how labour brokers also come into the building scene.

4.4 Worker recruitment

According to Thiel (2010, 451) the presence of informal procedures in the construction industry also implies that there is significant informal recruitment where sub-contractors receive workers whose skill rank can be predicted, or vouched for, by the other workers. The other ways to recruit workers but which was labelled a desperate move was to recruit workers from hardware stores as workers were always said to be there. Recruitment of workers was done informally by Mr Khumalo and workers usually recruited other workers and vouched for one another. It is especially convenient if it is the most trusted workers who recruit employees. For Mr Khumalo this was crucial because,

“What happens is that if I leave the workplace, I can guarantee that the new guy is not going to be a problem to other people because that other person promised to look out for him and control him in the workplace, I don’t have to worry about it. The other thing is that you are also helping a friend of your worker to also get something to live by”. [Mr Ndlovu (subcontractor), interview]

Bukhosi gave an example of such recruitment when he narrated how he got a job through his brother who had recommended him and his skill to his employer who was a white

subcontractor. It was easy for Bukhosi to be recruited because his brother was one of the most trusted and loyal employees among the workforce.

4.4.1 Labour brokers

As illustrated above, apart from foremen, safety and health managers, main contractors rarely have a permanent labour force of distinctive construction workers. They either make use of the workforce provided by subcontractors or they can rely on labour brokers to provide them with workers when required. Labour brokers are companies or individuals that provide labourers to main contractors or construction companies on a temporary basis. These workers will thus be under the labour broker and not the client or main contractor. Mduduzi who once worked for a construction firm as an employer under a labour broker clarified the process.

“Actually there we were employed...like the firm had its own labour broker who employed the workers....so the firm only dealt with the labour broker...not the workers....so we were under our own labour broker...the firm used to pay the labour broker and the labour broker would pay us...the money went through him after all the deductions had been done and then he would pay us...He searched for all employees...he would search for the right person for the jobs” [Mduduzi (worker), interview]

The difference between labour brokers and subcontractors is that the latter not only provides labour but also equipment, expertise and supervision. Therefore labour brokers are used to address labour shortages when the labour provided by subcontractors is inadequate for completion of projects. Main contractors further make use of labour brokers to avoid worker related grievances or politics such as disputes and confrontations thereby maximising productivity and profits. In this way contractors also stay away from union confrontations as they do not own any labour. These are dilemmas and debates that unions continue to face and seek solutions to as they seek to address worker grievances. Workers are sourced by labour brokers and contractors thus do not have a direct link to workers as everything worker related issue is handled by labour brokers. Contractors pay labour brokers, who after all deductions have been resolved, pay workers recorded in their books. In other ways, as Mr Ndlovu remarked,

“These people do not want to be held accountable for things like strikes for wage increases. They then go to labour brokers and get their desired number of workers, and they also have a right to fire you when you don’t perform well because they have such agreements with labour brokers to fire someone who is not productive. So usually on sites there are workers from subcontractors and some from labour brokers hired by the main contractor. Everything that happens is between a labour broker and their employee”. [Mr Khumalo (subcontractor), interview]

The above account has shown that labour brokers are employers like subcontractors. The main difference is that added to labour, subcontractors provide equipment, expertise and supervision that labour brokers might not necessarily possess. The workforce provided by labour brokers is usually temporary and sought by main contractors to shore up any unplanned workforce deficiencies in construction projects. However subcontractors can also employ and provide construction projects with labour for momentary needs. These type of workers will for a brief period of time be under subcontractors’ supervision. These type of workers are called casual workers and the next section examines their role in the building industry.

4.4.2 Casual Workers in Construction

One description of construction work and one that is borne out of subcontracting and the nature of the industry is casualization. According to my respondents, casual workers (also referred to as labourers) are unregistered workers who are hired to provide additional workforce and support for permanent employees. Thus casual workers are workers employed on a casual or short term basis. Casuals work on a ‘as needed’ basis and their worker status must not exceed three days in a month as permitted by the South African labour law. Casual workers are exempt from the Basic Conditions for Employment Act (BCEA) of 1997. In the construction industry casual workers are at the bottom of the workforce chain and they are found in both formal and informal work settings. Most casual workers market their own job skills by moving around different construction sites, standing at traffic lights and at hardware stores sometimes carrying their own trade tools. Most literature documents that casual workers enjoy little to no protections and benefits that are afforded by the South African labour law to other groups of workers in the industry, and are thus the most precarious workers in the construction worker precarity scale. However this is not always the case as subsequent sections will reveal.

Respondents concurred that casual workers did not enjoy benefits enjoyed by permanent or company registered workers. Such benefits were mostly higher wages and bonuses, sick leave and exclusions to company social gatherings such as end of year parties. In giving clarity on the matter of casual workers one respondent had this to say;

“As a casual...you are not registered by that company that you work for, you don’t enjoy benefits that other employees enjoy like bonuses, and sick leaves, pay-outs when you lose your job, end of parties...you can have documents and still be a casual, or be a trade man as a casual”. [Dumi (worker), interview]

However, the situations described above are not conclusive for all casual workers in the building industry. Moreover, my conversations with various subcontractors reveals that there are not many benefits to be enjoyed by workers in the industry due to the nature of work which is usually project based and non-continuous. Salaries or wages are thus mostly based on profits made by subcontractors and there are less cases of fixed monthly salaries. It is thus a classic example of ‘pay as you earn’ scenario. Thus in most instances casuals do not really miss much on benefits. Moreover there are many nuances for casual workers in the building industry and their exploitation is not always a given.

Moreover other subcontractors revealed that casual workers are also workers and most contractors expect them to be treated in the same way other workers are treated. As one of my respondents stated,

“A casual is only a casual to a sub-contractor and for the main contractors casuals are human beings as well and they need to go through proper channels. On sites casuals go through safety procedure like every other worker because he is also a human being before he is a worker”. [Mr Khumalo (subcontractor), interview]

This entails that contractors do not know all these other arrangements between subcontractors and workers. Nevertheless main contractors’ obligations are to make sure that every worker is safe in the workplace. As such casual workers also go through inductions on safety procedures but might occasionally skip the medical examinations as they are not in subcontractor’s books. However there are nuances to such circumstances and in most cases these processes all depend

on subcontractors' choices and the magnitude of building projects as bigger projects will likely observe more precautions than the smaller ones.

Nonetheless casual work is not exclusive to immigrant workers with precarious citizenship as evidenced by the quote above. Workers in the building industry are dominated by immigrants from Zimbabwe, Mozambique and Lesotho. The responses indicated that documents were also not a major asset in preventing one from becoming a casual worker and thus South African workers could also become casuals. Furthermore prevalent sentiments from the conversations with respondents showed that there were no disparities in the workplace treatment of South African casuals and immigrant casuals. However the only thing that mattered for casual workers and that matters even for other categories of workers is skill sets and job experience. Dumi concurred,

“As a casual and a foreigner?...I think usually the treatment is the same but we go back to the basis of skill. We can be from different countries but our experience levels and skill will determine treatment”. [Dumi (worker), interview]

This goes to affirm the position that although immigrants find it relatively easier to enter this industry than other industries, they also compete in the same low entry jobs with local residents, documented workers and better skilled workers and that the conditions of the sector are not solely hinged on one's citizenship status. Thus it confirms that casual work is a category under more exploitative conditions. Nonetheless worker agency is also important in this regard and the subsequent chapters will greatly be informed by this worker agency. Nevertheless casualization is becoming a norm in the construction industry irrespective of nationality and the desperation for jobs forces most workers to be stuck in this situation. As Thuthukani explained,

“Other casuals are also made to work for more than three months if they don't know the law, again even if they know desperation forces them to ignore these laws...let's say I'm desperate and I am a casual worker and you keep me for more than 3 months and you still want me as a casual not a permanent then I will be happy because I need to buy food and pay rent. I will continue as a casual worker”. [Thuthukani (worker), interview]

As I remarked above, casual work in the construction industry is a category where most undocumented or ‘extra-legal’ immigrant workers are more likely to be found because of the relative ease to enter that particular job level. Part of this simplicity for undocumented immigrants is that no formal processes such as medical certificates are required (to be explored in subsequent sections). Desperation for a job by a new immigrant without proper social networks in a new country is likely to drive such workers to casualization where they will likely seek mobility to better opportunities from there. Part of this desperation by ‘extra-legal’ immigrant workers is also likely to push them to self-exploitation which is a characteristic of a precarious worker by Standing (2011). Nonetheless (and the overarching argument of this report) at the same time possession of greater skills enable these workers too better informally negotiate their conditions. Thus an interesting observation and a rare advantage that casuals sometimes enjoyed was the kind of flexibility that being a casual afforded some workers in the industry. An example given here was that sometimes if you are clever enough and possess plenty skill then you can hold casual worker positions in many jobs and thus maximise your income. From the conversations and discussions one of the responses was that;

“As a casual you can also have the freedom of being a casual in many companies at once. You see I can paint, I can focus on electricity...I can focus on many jobs. It’s (being a casual) usually people desperate for work though...” [Mduduzi (worker), interview]

4.4.3 ‘Permanent’ workforce

Since the employee category is dominated by casuals and permanent workers, in the subsequent sections I will continuously compare the two groups of workers. Commonly referred to as ‘permanents’ in the construction sector are subcontractors’ and sometimes main contractors’ registered workers. Depending on company policy and scale of operations, these are workers who sign employment contracts. Frequently they do not sign anything as contracts are agreed on verbally and the workers know their workplace obligations and terms of work. Company permanent workers share work spaces with casual workers in construction projects and thus it is worthwhile to compare the two categories.

Although permanent workers are frequently referred to as registered workers who sign contracts, the reality is that contracts are not always long term and worker security is not always

guaranteed. Depending on company policies the longest contracts would range from one to two years. These would be renewed based on necessity which will hinge on the worker's productivity and availability of jobs. One subcontractor thus pointed out that,

“Everything is done based on production and income, and if someone is not productive why would you keep them”. [Mr Khumalo (subcontractor), interview]

Although a few respondents had signed a contract before, the overwhelming response was that most agreements on terms of work had been done verbally. According to these company permanent employees the main reason for this was that usually the kind of projects that they were involved in were not long term and thus long term contracts were futile. A company employee would nevertheless know that he is a long term employee for his subcontractor and they would work as projects presented themselves.

“Ah...most of these jobs don't have contracts because the work is not there for long periods of time...it's on and off...you find a job that you have to do at that particular time, like building a house, when you finish that house without another job in sight...you can sign a five year contract but there won't be any work to do...you'd even see for yourself...it's about if the job is there or not, there is no need to sign a long contract when there is no work. You cannot sign a long contract when the job will only last for a week. Those that make you sign contracts are big companies with long term projects. So there are no contracts for small scale subcontractors...even for big companies...there are only few who do that. Even for them...not everyone signs...only those that are needed at the company are made to sign...Of course casuals don't sign anything”. [Mduduzi (worker), interview]

Other contracts were even as brief as two weeks, displaying the temporariness of permanence in the industry. For these workers 'permanent' thus means job guarantee and job security when construction projects become available. A casual worker does not have the same guarantees and securities. Thus contracts are signed on a as needed basis. It is thus fascinating how the term 'permanent worker' means someone who has benefits and other protections. Other benefits of being permanent which were noted by Mduduzi were bonuses, or rewards if work was finished on time, and arranged transports (although the latter was also extended to casuals by subcontractors I interacted with). Thus it is interesting that these terms which have time-

based meanings are used in ways that are no longer directly connected to the length of times someone is employed. So in the case below, Mduduzi was only a ‘permanent worker’ for that week in which he signed a contract. Mduduzi who had signed such a contract before had this to say....

“Yes....but they were 2 weeks contracts...we would sign every 2 weeks...if they still needed you they would then extend...But so far the people that I was employed with and left when I moved on have become permanent and have signed longer term contracts according to the law...I was only a permanent according to that week’s duration I signed a contract...If I got injured during that time then I would benefit like every other permanent employee in the workplace...” [Mduduzi (worker), interview]

Focusing on the retail sector, Kenny (2007, 482) has investigated how “both casual and contract workers formulate identities with reference to a normative notion of ‘worker’, defined as workplace citizen, but traditionally associated with full-time, permanent employment”. Therefore Kenny (2007, 482) posits that in “reclaiming their own inclusion within this abstract notion of worker, casual and contract workers exhibited strong workplace collectivities, but simultaneously reproduced divisions of labour”. Thus although I contend that skill and well-meaning intentions by employers cuts across worker status divisions to ensure that there are no clear cut differences, there are nonetheless some differences between the two categories of workers and the next section explores these. Ultimately these differences ensure that casual workers desire mobility to the permanent hood.

4.5 Differences between casual workers and ‘Permanents’

One stark difference between casual and permanent workers is wages as casuals are paid according to a daily rate. During my time as an employee of a small scale subcontractor we were paid a daily rate which ranged from R100 to R200 a day. Thus casual workers need to spend as much time in the workplace to make significant earnings and this is not usually possible due to the often limited time they spend in the workplace. Other drawbacks of being a casual involved easy dismissals from work. However nuances and contexts are also different in this industry as some employers remarked that they treated all their workers fairly regardless of status with the company. As previously alluded to earlier some employers saw their workers as human beings and treated them equally and fairly. Dumi, who had started off as a casual worker and was now a permanent had this to say when he compared the two.

“Obviously a casual has a lot of disadvantages as the money is considerably less...anytime you can be stopped from work...if you are a trade man vs a casual trade man, money will never be equal... [Dumi (worker), interview]

A further difference between the two categories of workers was the need of medical examinations for permanent workers while casual workers are not obliged to have this. The main aim of medical examinations before commencement of any project is for health and safety reasons in the workplace. While casual workers participated in other job inductions such as safety and health rules, medical certificates did not extend to them. The main reason for this was that medical examinations were mostly done prior to work commencement where subcontractors would not have foreseen any need for extra hands in the form of casual workers. It is for both the safety and health aspects of the employee and legal ramifications that might arise from incidents or accidents at the workplace. The permanent workers understood the need and did not object to these medical examinations. Respondents asserted that employers and project managers thus wanted workers who were disease free. Subcontractors I spoke to verify the importance and necessity of medicals and that in most cases it would be the responsibility of the subcontractor to ensure that his employees are medically checked before he presents all the medical certificates to the main contractor. Bukhosi illustrated that;

...there will be a safety file, all your medical certificates will be there, and having been tested if you are disease free, diseases like TB...diseases that can affect your construction work...that safety file is handed over to a main contractor. Then they will know that everyone working there is healthy... ” [Bukhosi (worker), interview]

However in some instances, apart from pay levels the differences were not very stark. Some contractors ensured other informal perks also reached casuals. Others would ensure transportation of all their workers, including casuals. One subcontractor pointed out that casual conditions were based on whatever agreements subcontractors had on place with both casual workers and permanent workers. Nevertheless ‘permanent’ status also came with job security which made it desirable to casual workers seeking mobility.

4.5.1 Mobility to ‘Permanent’ status

As alluded to above, mobility is an important and recurring theme in the building industry and thus in most circumstances construction workers who begin as casual workers aspire to be permanent registered employees. This is so that they can also get to enjoy company benefits and any perks that come with being a registered employee. Most casual workers seek stability and the need to be a permanent work force so that they circumvent uncertainties associated with being a casual worker where jobs are not always guaranteed. A subcontractor’s permanent employees are always guaranteed of jobs whenever the subcontractor obtains subcontracting jobs. These kind of arrangements are based on agreements between subcontractors and their employees. Most immigrant workers begin as casual workers and move up the ladder to becoming permanent workers, after they would have impressed employers with their job skills, hard work and discipline. Thuthukani remarked that,

“You can get an advantage when they discover that you have skill and they like your work...then you can get upgraded to permanent status”. [Thulani (worker), interview]

4.6 Relationships between casuals and permanent workers at the workplace

Besides worker and employer relationships I was also interested in investigating the nature of relationships between casual and permanent workers so as to further cross-examine the industry and workplace relations. Kenny (2007, 489) has compared such worker categories in the retail sector where “casual workers experienced exclusion and vulnerability directly and sometimes physically”. The other reason for this was to further flesh out the mobility process especially for casual workers who mostly aspired to be counted among permanent workers. Thus workers who had started off as casuals pointed out that in most cases it was challenging for casuals to be in harmony with permanent workers as permanent workers already have a bond built on trust and acquaintance. The two sets of workers were thus likely to be at odds with one another because of the competition for mobility opportunities within the trade showing that because of such nuances, some divisions actually do exist in the industry.

“...as a casual you are like a third hand and an extra...it will be hard, firstly we don’t know each other...even eating lunch we seat separately...they leave you out in the cold and discourage you...they think you might be employed permanently and one of them loses a job, if you are hardworking they’ll hate you or despise you, especially if the

employer recognises your hard work...they will hate you ,that you are too fast...that the employer's job is never finished and you want to finish....as a casual you will be seeking to impress, you can never fight them...there is a lot of back stabbing between the two sets of employees. As a casual I can tell the employer that these boys are disrespectful towards clients in sites..." [Mandla (former worker and now subcontractor), interview]

This narrative further illustrates that casuals are also considered as valuable workers and listened to by subcontractors. This also goes on to show that divisions between worker categories and treatment of workers in the workplace are not starkly distinguishable but there is an element of competition between workers.

"...It can also happen that when the casual arrives and we are already a team and we have never stolen a thing in the workplace...we can go steal something from the workplace...the very first day he's there, especially when he's hard working. He becomes a natural suspect in the eyes of the employer as the employer will recognise that he's never lost anything or anything stolen from him before....so he's a natural suspect. (At that moment sees a construction company car driving by) as you can see, what we spoke about, backstabbing... that car, I know the owner of the company and currently they are not working at Yeoville, so what I'll do is I will take a picture and send the owner of the company...ask what he is doing in Yeoville with a company car (backstabbing by a casual). Let's say I am an employee and I have hired you and send you to Rosettenvile and you are seen in Yeoville, casuals will report that the car was seen where it was not supposed to be seen". [Mandla (former worker and now subcontractor), interview]

The above narrative resonates with Kenny's (2007: 482) position of the reproduction of workplace divisions particularly in how the "surveillance of casual workers marked them as suspect, and hence not treated as rightful members of the workplace order..." Therefore although there is not too much competition (although there is an important status difference) between skilled workers, stability as a company employee is still vital. The two sets of workers were thus likely to be at odds with one another because of the competition for mobility opportunities within the trade showing that because of such nuances, some divisions actually

do exist in the industry. The last section of this chapter examines the aspect of contracts for those who sign them.

4.7 The contents of the contracts

As mentioned above, most worker contracts were sometimes as informal to the level of just basic verbal agreements. The less informal contracts had terms of work printed and signed by both employees and employers. This variation in which some have actual contracts thus further adds to the complexity of the structure of the industry, which is what this chapter is trying to describe. According to one employee these contracts...

“...stipulated the terms of the job and how many hours one was supposed to work in a day or in a week... and if you work more than those hours then it’s now over time...if you get sick then you have to receive payments but that I gain it depends on how long you were sick and if you were permanent...they follow these contracts obligation strictly...there is even a clinic at work” [Mduduzi (worker), interview]

However employee respondents seemed to not dwell or really be concerned with contracts and their contents. What mattered mostly for them was the ability to make money and send remittances back home. Therefore again this links to the overarching analysis, that while there is much differentiating in construction, what really matters is ability to informally negotiate access to jobs (and that comes down to skill). Therefore while contracts differentiated some status and guaranteed job participation and job security it was not as critical a difference as in other sectors. In contrast, construction workers were sceptical of contracts and concurred that contracts also had the potential to keep them grounded under one company when they could do more with their freedom. When I quizzed if the respondents preferred a contract or not, one had this to say...

“The problem with signing contracts at subcontractors is you can sign a contract for 3 years and the job is for 2 weeks...what happens for the rest of the year...contracts keep you grounded in one company...for people with skills...there’s no need to sign contracts”. [Mduduzi (worker), interview]

4.8 Conclusion

The building industry is very extensive and a research report of this magnitude cannot cover it all. Nevertheless as I explained in the introduction, focusing on this subsector of the construction industry made up of Zimbabwean subcontractors and their employers enables me to get a detailed picture of how labour relations take place in the absence of recourse to the law. This overview acts as a window or an outlook to the basis of the discussions to follow in later sections of the report analysis. The chapter has thus described the layers and divisions in the building sector. With this description, the chapter has illustrated that despite all these divisions, skill seems to cut across them, and offers ways for workers to negotiate their own relations and security. This links to and serves to affirm the overall argument that skill gives all workers leverage in the workplace and helps to mediate against exploitation of labour. Most of the descriptions given here are based on the experiences of Zimbabwean immigrant workers and their employers who are also mostly Zimbabwean. Most employers I engaged were subcontractors of various scales of operation. The above sections have revealed that subcontracting is the backbone of the building industry such that these small scale subcontractors were very familiar with most work processes and activities around the industry, such that there was no pressing necessity for me to engage main contractors.

Another aspect that stands out from the account above is the blurry distinction between formality and informality in the building industry. This is mostly caused by the substantial amounts of subcontracting in the industry as main contractors seek to minimise risks and any unplanned occurrences around projects. As revealed subcontractors are different in nature and size and most do not observe formal structures like the signing of contracts or the registration of companies. Moreover some of these subcontractors double up as self-employees. As revealed by one subcontractor most agreements in the business are done verbally and that also includes subcontractors and their agreements with main contractors. Simply, there are too many shortcuts in this industry and subcontractors pointed it out to be the norm.

The other observation is that construction work is precarious by nature and thus precarity will be an ongoing theme going forward. This precarity is further exacerbated by the high levels of informality around work processes. Nevertheless there are still levels to this precarity as indicated by the differences between casual workers and permanent company workers with the former being category under more exploitative conditions irrespective of citizenship, documentation. Being permanent on the other hand presents workers with more job

opportunities and job security. However that being said, mobility is a constant and a desire for most people involved in the construction trade. Casual workers aspire to be permanent workers and permanent workers aspire to be subcontractors. Therefore most subcontractors covered in this report began off as casual immigrant workers themselves and graduated to becoming subcontractors.

5 CHAPTER 5: 'ILLEGALITY'

5.1 Introduction

A part of this research report explores how undocumented immigrants experience and navigate 'illegality'. Although I contend that 'illegality' has an impact on some aspects of undocumented immigrant workers' lives, this impact is not as much as made out in the literature on the construction industry. 'Illegality' is experienced in numerous ways by workers and it ranges from difficulties in getting formal employment or any kind of employment that requires the signing of contracts. However this does not bar immigrants from accessing work and enjoying the same privileges as the other workers. Moreover I contend that Immigrants' experiences and navigation of 'illegality' does not necessarily mean that "undocumented immigrants' legal consciousness is uniformly against the law" as argued by authors like Abrego (2011, 341). This argument also fits into the larger argument of this report that undocumented immigrants' experiences are varied and are not only precarious as usually concluded by authors on labour and migration.

This research report's focus is on 'extra-legal' Zimbabwean immigrant construction workers. As explored in the literature review, immigrant workers opt to work and reside in the country clandestinely as acquiring authorisation has frequently proven to be challenging for them. Acquiring documentation to legalise stay in South Africa is very demanding for many low-skilled² Zimbabwean immigrants despite the efforts of the Department of Home Affairs (DHA). The need to migrate for work means that immigrants find cunning ways of crossing the borders and remaining in the country 'illegally'. Weak monitoring by the DHA also boosts their clandestine lives. Therefore, in accordance with the immigration law they become 'illegal' migrants where their residence and worker standing pits them against the DHA and the police. Apart from work permits, other forms of documentation that authorise an immigrant worker's entitlements to work and reside in South Africa are possession of a South African identity card and an asylum. I include South African identity card in the list because there are cases where these have been obtained through fraudulent means either from the DHA or purely fake ones.

² In this instance the register of 'skill' shifts. Whereas in the last chapter, construction skills were being portrayed as 'high skill', in the language of immigration construction workers would still be 'low skilled'.

Therefore the research participants in this study held documents under these various categories. However because of the sensitivity surrounding documentation and legitimate status, I mostly had workers who had since acquired the right to work and reside in the country. From these I required past narratives and experiences or their labour history before they had proper documentation to work and reside in the country. The passages from Zimbabwe and the first few months on arrival before workers could acquire any documentation presented the most fascinating narratives on ‘illegality’. Nonetheless this is not to say that all experiences and encounters with irregularity or indiscretion conclude here, for some it has not been easy to acquire authorisation and ‘illegality’ is navigated on a regular basis, both in the workplace and in the general public. This chapter will therefore examine immigrants’ ‘illegality’ experiences and navigations to interrogate notions regarding the simplifications of ‘illegality’ effects in the workplace. However the chapter will commence by exploring the challenges associated with obtaining legal status in South Africa which leads to immigrants resorting to clandestine migrations and existence in South Africa

5.2 The challenges associated with obtaining legal status in South Africa

As explored in the literature review most immigrant workers resort to working ‘illegally’ in South Africa as attainment of required documents is hindered by a plethora of challenges. Obtaining legitimacy to stay and work in South Africa is principally complicated for low skilled and semi-skilled immigrants regardless of the Department of Home Affairs’ (DHA) presented resolutions. It is also crucial to note to the reader that in this instance the register of ‘skill’ shifts. Whereas in the last chapter, construction skills were being portrayed as ‘high skill’, in the language of immigration, construction workers would still be ‘low skilled’. Thus as highlighted in the literature review, immigration for work exceedingly favours the highly skilled and scarce skills immigrants, and low skilled workers with temporary contracts, without contracts or asylums like those in the building industry struggle to get work permits (Landau 2010, 222). It has thus become increasingly apparent that work permits and home affairs bureaucracies make most immigrant construction workers to work ‘illegally’.

The majority of my employee research participants came from rural Matabeleland South, which is more than five hundred kilometres from the capital Harare. Unlike South Africa, Zimbabwe is centralised with all new visa applications and processing done in Harare. All the nation’s population of immigrants is expected to queue at the South African embassy in Harare for all

visa and permit related applications and collections. Employee respondents from rural settings spoke of the burdens they would go through if they were to follow the Harare route of acquiring new permits. Although there have been recent developments like the introduction of VFS³ global in Harare and Bulawayo to take up visa and permit application administration, the visa and permit administration systems in Zimbabwe have always been rigid and are still largely inaccessible to the rural population.

Most immigrant workers in this study had moved to South Africa without any form of legal documentation that authorised their stay in the country. The majority of workers would have remained undocumented if it was not for the introduction of the Zimbabwe Dispensation Permit (DZP). The Zimbabwe Dispensation Permit (DZP) is a policy that sought to legalise the stay and employability of Zimbabweans. The DZP was introduced in 2010 by the then Minister of the Department of Home Affairs to legalise the stay of undocumented migrant Zimbabweans by issuing out work visas and study visas for a period of three years (Tarryn Pokroy-Rietveld 2014). According to the Department of Home Affairs' figures, approximately only 295,000 Zimbabweans applied for this kind of permit and just over 245,000 permits were issued (Tarryn Pokroy-Rietveld 2014). According to immigrant employees in this study, a confirmation letter from an employer detailing where one is employed is crucial to the South African DHA requirements.

“There were letters we would get from employers or forge as confirmation that you are employed on a longer term basis. Employers are committed to employing us on a long term basis based on home affairs being prepared to offer us lengthy stays. What’s important on the letter is the company’s stamp”. [Dumi (worker), interview]

The DZP however did not conclusively resolve the documentation of workers as it presented the immigrants with lots of challenges. Although they were extended to the end 2017 with the roll out of the new Zimbabwe Special Dispensation Permit (ZSP), more fears and anxieties still remain among Zimbabwean immigrants because of the uncertainties about extensions beyond 2017 with the South African Home Affairs department stating that Zimbabweans will need to

³ company outsourced by the DHA to process visa and permit applications (<http://www.vfsglobal.com/>)

apply for new permits at the South African embassy in Zimbabwe. The failures of the DZP and its successor the ZSP were detailed by one employee,

“Getting the DZP was problematic...long queues and requirements. ZSP was not really a big problem and you could book online, however it presented a challenge to us construction workers as most are not very familiar with the internet. I got it in 2012 after applying in 2011. I applied on 31 December but only got it as late as August 2012. Knowledge of when to apply and how is usually spread among people by word of mouth and WhatsApp texting. Like now there’s a message I got that Gigaba will address Zimbabweans on the 31st of October. This is how messages and information spreads across the people but unfortunately some of it can be lies. For example the meeting was there but Gigaba was not there but the meeting was for permits and birth certificates”.
[Dumi (worker), interview]

The quote above also reveals that work permits take time to be processed. Thus the issue of waiting for the processing of DZP and ZSP work permits was also singled out by more than one employee as altering their employment and work conditions for the worst. This goes on to show that despite the argument presented here that ‘illegality’ is not as critical in determining workplace conditions as made out in most labour and migration literature there are nevertheless minor nuances and ‘legality’ still does matter in some instances. Dumi narrated that,

“Waiting for your visa really affects your gaining access to employment and construction sites, for example when you work for private domestic housing construction and trying to gain access into complexes. If you are waiting for your permit you cannot work as you cannot gain access into these households”. [Dumi (worker), interview]

Nevertheless the immigrant employees and employers in this study expressed hope that the ZSP permits were going to be renewed when they expire at the end of 2017. Other employers I spoke to reasoned that the non-renewal of permits stood to affect them more than it would distress workers. This list of employers contains main contractors as well, and by taking into consideration that big contractors work closely with the governments on projects through the tender structure this means that a lot is at stake for such projects. As discussed in the literature review, migrant labour features and is crucial in most parts of the work that are subcontracted.

Simply put migrant workers are an essential labour force in the construction industry. This goes on to further illuminate the importance of migrant workers in the construction industry and the value that subcontractors and main contractors place upon them. This value makes for a more interesting analysis of workplace relations which will be explored in subsequent sections of this report⁴. “*The government cannot risk it*” were the words of subcontractor Khumalo when I quizzed on his stance on ZSP permits that are expiring this year. His reasoning was that most firms can potentially close down if they lose migrant workers as a result of non-renewal of work permits.

“Haa...those will be renewed, reasons being you can’t allow someone to be in such a position where someone has accounts, and contracts with employers...when employers still need such workers and are involved in work processes. Employers will fight first on why visas are not renewed when their companies are paying tax and the employees affected are skilled and vital to the work processes, which means bigger projects become affected. What people don’t understand is that the more such companies grow then government gets money for pensioners and grants. If such companies are affected, where would the government get money to pay grants when they don’t receive tax revenues? The government cannot risk it. Firms can potentially close down if they lose workers”. [Mr Khumalo (subcontractor), interview]

The above section has documented some of the challenges that are presented by potential migrants seeking legitimacy to work and stay in South Africa. As McDonald (2000, 824) contends that despite the fact that so many Zimbabweans make the effort to get proper documentation in the face of so much costs and obstacles only serves “to reinforce the argument that clandestine border crossings are very much the exception rather than the rule”. Thus the next section explores how the interplay of both Zimbabwean and South African rigid immigration policies, inadequate administration structures and migrants’ strong desires to travel render borders permeable.

5.3 Porous borders

There are various and canny ways in which Zimbabwean immigrants trek to South Africa and remain in the country clandestinely. Documenting such processes however is not the fixation

⁴ See Chapter 6 for a detailed discussion

of this report. Several authors have documented this and the outcomes have always been that the strong desire to migrate will not be hindered by any immigration barriers. Murray (2003, 444) concurs and reasons that “whatever the official policy on immigration, the borders separating South Africa and its neighbours are extremely porous”. Murray (2003, 444) adds that there are limited barriers that can bar resolute migrants from entering South Africa and staying in the country illegitimately. Nonetheless just to provide an example of such practices, one participant who came from a rural western part of Zimbabwe and a town that borders Botswana illustrated his journey.

“As for me... I crossed the border illegally and came via Botswana...I walked to Botswana from my home town, which borders Botswana. And from Botswana to South Africa”. [Dumi (worker), interview]

The narrative is noteworthy because it highlights the immigrant’s aspiration to reach South Africa and find employment. Initially the respondent walked a significant distance from his rural home to navigate past the first barrier, that is, the Zimbabwean – Botswana border. The immigrant then had to navigate his ‘illegality’ in the first receiving country before he got to South Africa and to the workplace. Therefore this narrative is also testament to the penetrability of borders and other immigration barriers. In his journey to South Africa via Botswana Dumi got across the first border by using undetected concealed entry points and he went on to use similar tactics in going past the South Africa – Botswana border. However ‘illegality’ does not end at border posts as the immigrant continues experiencing and navigating this lack of documentation once in the receiving country. The ensuing section thus explores how immigrants live through and navigate situations presented by a precarious citizenship.

5.4 Experiencing and navigating ‘illegality’

Un-authorised immigrants experience anxiety and a fear of deportation especially outside of the workplace. Almost all of the workers I interacted with revealed how they travelled to Zimbabwe at least once a year only and this was during the Christmas holidays. They also spoke of how they sometimes failed to attend significant gatherings back home such as funerals and weddings. This was due to their ‘illegality’ status. It was very expensive to move back and forth between Zimbabwe and South Africa without legal documentation as one had to pay

bribes to border patrol officers, and thus risking getting home without any money left, having worked all year long and then only to leave it all at the border.

To get narratives and experiences I probed on the days some of the respondents worked without any legal work documentation (early days in Johannesburg). As expected the narrative was fascinating with one interviewee recalling his early days of running away from police and using imagery that equated himself to an antelope (by being very alert when he came into proximity with police authorities).

“Yes I worked without a work permit and I was a bhalabhala (antelope)...I used to run away when police used to raid the construction site...it was tough...I was a tradesman and a permanent worker...when the police came I will run away and even leave my mixed cement in a wheel barrow to dry....so that I wasn't arrested...if police spent more time at the site then you would even leave your material behind...” [Mduduzi (worker), interview]

Anxious encounters with the police and failure to go home frequently as doing so means losing more money to bribes leads many employees to try the documentation channel even though most still harbour doubts about it. As already detailed, the building industry is very dynamic and some companies offer work contracts. Some workers desire the stability offered by such contracts. However companies who observe formal procedures require that workers be in possession of work permits or other recommended documentation before signing any contracts. Another issue that make immigrant workers want to seek out documentation was the need to have bank accounts.

“And also most companies do not carry large sums of money to the work place so usually someone without a work permit does not have a bank account. When you don't have a permit, you can't have a bank account and so you get paid from hand to hand and you are already at risk of getting robbed of all your money”. [Dumi (worker), interview]

Apart from DZP permits and their successor ZSP work permits, other forms of documentation that work in the building industry are asylums and South African Identity cards. The latter document was however said to be frequently counterfeited by those seeking work and one only

had to show the employer the document. Work places did not have scanners to prove their genuineness. The heavy existence of informal processes within the workplace makes the workers get away with this sort of tactics as these workers are only registered under companies they work for and nothing further than that. One worker narrated the procedure for me...

“Apart from visas they require asylum and SA IDs and most get away with fake IDs because it’s not like construction companies have scanners at work. Some even remove photos of IDs “khipha faka”⁵. If you look at these fake IDs the photo will be very poor. Other companies only require photocopies of SA IDs and one just photocopies their face into these IDs”. [Dumi (worker), interview]

Another cunning tactic in which ‘extra-legal’ immigrant workers navigated ‘illegality’ in the everyday work place was by making use of the gaps between the various legal encounters such as the employer, the police and the traffic cops. Usually the norm is that someone without a permit or asylum usually works as a casual because they cannot recognise you. However by fully maximising on these gaps, undocumented workers become permanent work employees and stable immigrant residents as well. I came upon an interesting narrative of someone who is a permanent employee without all the necessary documents. He told me that he knew others with similar stories as his. After quizzing him on how he managed to do this and his story was as follows,

“My brother found the job first and when he was in they wanted another person, he had a permit but not a license. So I faked a drivers’ license as they wanted a driver, so I approached some guys and got a fake driver’s license. I approached the employer with my license and we had an agreement, they sought someone who would work and drive at the same time. When they were looking for someone, they were not really looking at someone with a permit but the priority was a driver’s license. The licence I used was just to show the employer that I had a licence and get the job, and from there I’d figure out for myself how to manoeuvre...I didn’t fake my name on the license but I’d use my other brother’s license whenever I ran into traffic cops... I still use it up to now... my brother has another name and uses that one here in SA. The one that I use is his Zimbabwean licence, if traffic cops want a traffic register I simply tell them I forgot

⁵ To simply cut and paste

it...If I meet cops I negotiate my own way, that doesn't involve or need the employer anymore. That's how I got in. I got in and became a permanent. I was getting paid monthly". [Bukhosi (worker), interview]

These cunning ways in which undocumented immigrants navigate through barriers presented by their lack of legal documentation coupled with the nature of the construction sector ushers in the 'invisibility' or non-regard of 'illegality' in the workplace. The following section examines this in detail.

5.5 'Illegality' becomes invisible in the workplace

Gleeson (2010, 563) deduces that "immigration status operates as a master status in the workplace". According to Gleeson (2010, 563) illegal status has the same holistic effect on life experiences in a similar way to race, class, and gender. Gleeson (2010, 563) further adds that "illegal status shapes the voice, purpose, and future that undocumented workers may believe they have a right to, irrespective of the extent of the rights offered to them". Gleeson (2010, 580) thus transfers her concept of 'illegality' as a master status (regardless of origin, race, gender, age, etc.) to the workplace as she points out that "undocumented status also has constitutive effects that can undermine the expansive instrumental effects of workplace rights". In as much as Gleeson's conception of 'illegality as a master status' on undocumented workers' daily lives is a constructive addition to understanding immigrants' precarious citizenship, I dispute that it is not as holistic as made out to be.

De Genova (2002, 422) also disputes this all-inclusive effect of 'illegality' on immigrants' lives as he reasons that the 'illegality' of immigrants "may be irrelevant to most of their activities, and only becoming an issue in certain contexts". De Genova (2002, 422) further adds that undocumented migrants' 'illegality' may become irrelevant in everyday life as undocumented immigrants are regularly engaged with citizens as well as 'legal' migrants and in most of these activities they are undifferentiated from those around them. Mr Khumalo contended that it was simple for 'extra-legal' workers to be camouflaged in the workplace especially if they were well known in construction circles or even if they presented fake documents as it was not easy to ascertain this.

“...So here, this one (contractor) will tell you that he doesn’t have workers from Zimbabwe. What happens even if people are from Zimbabwe but they are hidden amongst other workers...What happens is even if you’re from Zimbabwe, as long as they know you, those big guys don’t care about citizenship and what not, they only care about someone with documents who is going to go through an induction process so that they are registered and if anything happens they can get treatment” [Mr Khumalo (subcontractor), interview]

Furthermore my postulation is that even as un-documentation limits immigrants to what Bosniak (2010) refers to as “alien citizenship”, that is, a life with limited citizenship rights and a constant peek over the shoulder, it is not the same in workplaces. Workplaces and sites are different and not every worker is presented with such precarious lives. Thus I assert that these effects of ‘illegality’ are experienced not so much at work but outside of work, and nonetheless there it is ambiguous in many instances and negotiated. I believe that workplace arrangements are governed by more than laws and rights. Skill⁶ and experience are some of the entities that blur ‘illegality’ in the workplace. Skill and experience makes employers to place value on such workers regardless of their citizenship status and in the process making it difficult to distinguish workers according to citizenship. When I quizzed my worker participants to tell me what they generally thought about the treatment of the groups of workers (undocumented, documented and South African) in the workplace, for them the issue has always been about job skill and other advantages that you can bring forward to the subcontractor, and not documentation.

From the interviewees, the important aspects to getting a permanent job was a good recommendation from someone that the employer/subcontractor trusted, job skill and any other added advantage like a driver’s licence. Everything else including permits came second. One respondent who was now in possession of a work permit narrated how he had begun without documentation and he worked as a permanent worker without a problem because of the low levels of monitoring by home affairs and his good skills. For him and other workers this added advantage came in the form of a driver’s license. This distinguishes you above every worker and you gain the trust and the approval of your employer. The workers’ narrative was:

⁶ To be explored in detail in Chapter 6

“No one knew that I had no permit, as for me basically I was a team leader...They thought my paper work was in order. So at the end of the day even without a permit... it seemed as if I was treated better than everybody else with permits because I had a license. I had an advantage because I had a license, everyone else didn't have one. [Bukhosi (worker), interview]

“To the employer it all depends on how much you know the job...skill...you can have skill without permit or permit without skill, they'll only take someone with skill because they bring profits to the company. Paper work is rendered useless. What happens is that one day when it's not busy, someone with a permit is left out...we won't be very busy that time, ... the employer will tell others that for certain days when we are not busy, not to come, but only call drivers with an added job skill to do some work and then the driver can do both”. [Bukhosi (worker), interview]

Nonetheless, contrary to popular views that employers benefit by having un-authorised workers more than having documented workers in the workplace because the former are susceptible to exploitation, employers rather benefit from having the latter in the workplace. Subcontractors in my study pointed out that having documented workers in the workplace presents less risk and more benefits for workers than having undocumented workers. Nevertheless the risk of having undocumented immigrant workers in the workplace seems to vary with the proportions or the scale of the building projects that subcontractors would be engaged in. This is because of other external influences like insurance cover and legal aspects. Immigrant workers I spoke to also concurred that employers benefit in many others ways by having documented workers.

“Most companies check and require proper documentation because of things like UIF deductions. Companies do these things for their own benefits like insurance or accidents cover, e.g. workplace accidents like death or to avoid trouble with authorities like human rights organisations. Therefore requiring visas is not done for Home Affairs but for their own benefits and to escape crimes and incidents. Zimbabwean documented workers are however not sure how they benefit from this”. [Dumi (workers), interview]

Although weak monitoring by the DHA eases the pressure on employers and benefits employees and employers alike as will be revealed in the following section, there are other

issues at stake. One subcontractor pointed out that bigger scale projects emphasised on work documents,

“Of course... there is money involved, there are things like accidents... and if those happen what will happen when hospitals refuse to treat the undocumented employee. Companies have insurance and lawyers, if someone is employed by them, they are then covered by companies for incidents that happen in the workplace.”. [Mr Khumalo (subcontractor), interview]

“Of course others would come with fake documents, fake documents are used everywhere, people are always clever at such things and it’s difficult to ascertain because there are no scanners at work sites”. [Mr Khumalo (subcontractor), interview]

5.6 Weak monitoring by Home Affairs

Weak monitoring of workplaces and workers further boosts the invisibility of ‘illegality’ in the workplace. Simply put, immigrant workers’ choice to remain undocumented and operate under the radar is further boosted by weak monitoring of workplaces by the Home Affairs and the police. In fact employees and employers pronounced that they have no contact with any Home Affairs officials or activities. The only time they got any connection to the Home Affairs was when employers have to write reference or confirmation letters for worker permit processing and sometimes they would call to confirm an employee. This is further testament to the changes to the state immigration policies and the changing work regime as compared to the apartheid era as explained by the subcontractors I interviewed.

This (weak monitoring by the DHA) was unanimously agreed by both workers and employers I conversed with. They reasoned that monitoring by Home Affairs has gradually become non-existent. Subcontractors who have been in the construction for decades compared the level of Home Affairs monitoring and inspection of workers in construction sites presently to the days before and after apartheid. Mr Khumalo who has been a subcontractor for decades explained how monitoring and inspection by the DHA had significantly gone down compared to what used to happen during apartheid. He described how the DHA inspectors would come to construction sites and demand everyone to show their documents. Mr Khumalo was

nonetheless still cautious about such developments and somehow gave a warning tone to people in the building industry by commenting that,

“But even now...just that people take chances, if there was a massive workplace accident, monitoring would come into effect and Home Affairs would want to know who’s registered and who is not”. [Mr Khumalo (subcontractor), interview]

Another subcontractor who is in a different specific trade to that of Mr Khumalo and who gets contracted to build houses by individuals and companies seeking a cheaper alternative revealed how the DHA never gave him grief in his more than twenty five years in the business. He reasoned that the home affairs must have stopped raiding building sites back in the 1980s. He remarked that during this time;

“Parkview police station used to take my guys away when they came to raid. However it doesn’t happen anymore, it was a long time ago”. [Mr Ndlovu (subcontractor), interview]

Although he was unconcerned he remarked that the only people that came to monitor were building inspectors and these were not really after the immigration statuses of people in the workplace. Rather these inspectors are only after building plans and the actual buildings to see that;

“...whether they are approved or not, that you haven’t deviated from the plan and you are working according to plan. They were inspectors from the building council head offices, they come to check even at foundation level to check perhaps the strength of the concrete”. [Mr Ndlovu (subcontractor), interview]

Nevertheless one subcontractor insisted that although inspection and raiding incidents were not that frequent, some police officers still raided small construction sites they took too lightly. According to workers police would raid such construction sites for their own corrupt needs and not by the mandate of Home Affairs. They were doing such raids merely to solicit bribes from undocumented immigrant workers and some of these immigrants would never even be deported or taken to Lindela detention centre. When I queried if police still raided construction sites one subcontractor responded that,

“These days its better...it’s a bit quiet...but they still raid...usually if they get to the construction site and undermine it then they come in and raid for illegal immigrants...but usually it’s for corruption because they want to be bribed...” [Mr Khumalo (subcontractor), interview)

Another subcontractor also described how police bent on soliciting bribes even harassed workers and employers with adequate documentation. The employer thus reasoned that the difficulties lay with the corrupt police in this regard as the Home Affairs never sent any inspectors to conduct such activities. The subcontractor also mentioned how he felt that police in roadblocks would even frequently unfairly target ‘bakkies’ (pickup trucks) as they knew that these type of vehicles were common transport for subcontractors and their employees.

“On another issue, there are roadblock that happen and sometimes police will deny the legitimacy of your employees’ papers and then police will detain you until home affairs intervene. Police usually target bakkies because they know they might be illegal immigrants in the car. I remember I once went as far as Lindela and I had to wait for home affairs to verify my status in the country”. [Mandla (former worker and now subcontractor), interview]

Nevertheless even as the DHA monitoring of workplaces and workers is insubstantial there are other various privatised and mundane ways in which surveillance actually is implemented. Access into gated communities presents such surveillance challenges for undocumented workers and the next section explores such practices.

5.7 Access into gated communities

One complication of not having suitable documentation in the building industry workspace concerns access to different workstations or spaces. A recurring issue that stood out in my conversations with employees was about access into gated communities. This was one of the many ways they faced the downside of irregularity as immigrant workers, and which eventually compelled them to seek documentation. As detailed in my literature review, small-scale informal subcontractors are on the rise and are principally involved in housing projects, or maintenance as they offer private clients who cannot afford expensive formal contractors a cheaper alternative (Wells 2001, 273). In my study these small-scale informal subcontractors

were also frequently involved in building projects and maintenance and offered cheaper alternatives in jobs like paving, paving and tiling. One employee detailed that,

“Ah...when you work in complexes...gaining access is always an issue...” [Dumi (worker), interview]

It would also seem that most private gated communities are doing more monitoring of immigrant workers than the South African Home Affairs. Some employees contended that even though Home Affairs monitoring was indeed weak as has been noted by many, security systems put in place by gated communities acted as an indirect Home Affairs and even police inspectors. This was perceived as an effective counter measure against irregularity by the ‘extra-legal’ workers. Workers noted how it was difficult to gain access and work in these private gated communities because of the rigorous and effective security systems that included document scanners such as the ones used by the home affairs, put in place by such communities.

“Even drivers can’t get in when they don’t have valid driver’s licenses because such complexes scan documents. This is one of the ways Home Affairs can get to monitor. Most complexes are introducing such systems. If they catch you, they can hold you up and call the police or Home Affairs people. Security can detain you until police take you to Lindela detention centre. It’s done for their own safety” [Mandla (former worker and now subcontractor), interview]

Therefore a worker can be on a subcontractor’s payroll as an active employee regardless of illegitimate immigration status, but be faced with challenges such as this one.

“...it affects you because there can be jobs from complexes, you find that someone has skill but they can’t access these places. It puts you behind as an employer if your best workers can’t get access to these sites and your timetable is affected”. [Mandla (former worker and now subcontractor), interview]

The issue of security guards and restricting access (those who do not possess valid permits) to resident complexes also became complicated for undocumented workers when these gated complexes also housed employer/subcontractors’ offices (home offices) and an employee needed to go to see his employer. However what is unusual here is that such treatment does not

come from the employer or the workplace but by security guards and instead demonstrates how surveillance is carried by out other low wage workers.

“Whilst you are still there...treatment can only be a disadvantage when there are security guards to a complex and not your employer per se, and then they deny you access without a visa, valid passport, permit, driver’s license, but not the employer...security only...besides access...let’s say I’m working and my employer stays at Kyalami estates, I cannot enter Kyalami estates without proper papers. My employer and his offices will be inside and I won’t be able to enter...” [Dumi (worker), interview]

However such complications did not seem to deter these undocumented workers much as they still found ways of navigating past them and sometimes even with the understanding of their employers (subcontractors) who knew of their non-possession of work documents but required them for their skill. So navigating situations like this required specific arrangements and Bukhosi detailed an example.

“...Others will enter and finish the job and I will wait to go to other sites. Another arrangement can be...its either I’ll make an arrangement with the office that we don’t meet, when I get there I stand outside the gates... even my story as team leader is briefly suspended....someone with proper papers takes over, only for that moment though....this person will surrender jobs (report back) because I have no access. When we get out, the boss will call me and update...the boss will know of our arrangement. In this industry as a team leader, I’m the most skilled and they get me a spanner boy and in that moment he will take over the job of accessing gates to submit the day’s job cards as I don’t have access to the gates. So spanner boy does all that for me, he will come and report back to me about where we are going next...Sometimes they call them labourers or assistants...They are not doing labour per se. Just to hand over job cards. This is a situation where you need access to the work offices. We’ll all be permanents in that system”. [Bukhosi (worker), interview]

Although this report asserts that to a greater extent ‘illegality’ is indeed largely invisible in the workplace as contrary to what most authors on labour and migration have claimed, it nevertheless does show that there are complications that are presented by ‘illegal’ statuses.

Thus this study does not deny that ‘legality’ matters for these immigrant workers. Some of these issues have been explored under this section of “access into gated communities” and also under the section on how undocumented experience and navigate ‘illegality’. Moreover similar cases might have also been mentioned by this researcher without bringing focus onto their contradictions. However as has been explained in this section there are instances and nuances where ‘legality’ does matter. The following section gives another opportunity that is presented by having a legal status in the workplace.

5.8 Legality and Promotion/Mobility Opportunities

Although the majority of the evidence presented so far suggests that a worker’s legal status is of no pronounced significance in the construction workplace. Nevertheless ‘legality’ does matter in some circumstances such as presenting good opportunities for promotion at the workplace. Such legal statuses benefit casual workers who seek mobility into permanent employee status the most. Apart from skill, hard work and discipline, other dynamics that can lead to mobility to permanent status are if a company is under sustained pressure to meet targets and thus need stable employees then they can promote casual workers. A scenario might involve a casual worker with the right documentation being an advantage to gaining promotion. Small construction firms sometimes work on private residential complexes where residential security might require valid identity and work documents before granting access. Thus a casual worker with valid documents can be promoted quicker because of this advantage when it comes to access. When I asked Thuthukani on how a casual worker moved to permanent status he stated that

“...if the company keeps on getting jobs in strict places (access) yet the casual has the right papers, they can promote that person as he has an advantage. Let’s say I know the job and I’m a permanent but my papers are not adequate and you find that there’s a casual who usually comes...you find that if it’s a serious company...there are places that I can’t get access...” [Thuthukani (worker), interview]

Promotion to a permanent employee status represents mobility for workers in the construction industry and for most it also means one step closer to being a subcontractor which as I have already stated is a big ambition for most. Thus having legal documentation presents most casual workers with better chances of becoming permanent employees and these openings can emerge

when access into gated communities becomes a barrier for ‘illegal’ permanent employees. The next section explores immigrants’ common sense understanding of the law and how they relate to it.

5.9 The legal consciousness framework

Abrego (2011, 362) utilises the legal consciousness framework to instigate the assessment of how ‘illegality’ traverses “with and is experienced differently across social positions and how this plays out in their (undocumented immigrants) integration experiences”. Abrego (2011, 340) asserts that legal consciousness refers to common-sense understandings of the law. In this legal consciousness I include undocumented workers’ thoughts and feelings towards the law. For Abrego (p. 341) undocumented workers “constitute a vulnerable group, and their legal consciousness should presumably place them unvaryingly "against the law" within national boundaries”. Abrego (341) goes on to question immigration laws in their flawed role of placing undocumented migrants “against the law” as immigration laws are meant to control immigration rather than control the immigrant. Therefore, although Abrego (2011, 362) cautions against perceiving all undocumented immigrants’ experiences as the same as legal status traverses with other factors to shape opportunities, interpretations and behaviours, she nevertheless presents a flawed conclusion. Abrego (2011, 341) concludes that “undocumented immigrants' legal consciousness is uniformly “against the law”.

While Abrego is precise when it comes to the flawed nature of most immigration policies with regard to focussing on the immigrant rather than immigration, she is not vindicated when it comes to claims that “undocumented immigrants’ legal consciousness is uniformly against the law”. The immigrant workers and subcontractors in my study presented positive opinions towards home affairs policies. Most workers consented that despite the usual heckling by the police they thought the home affairs was progressive because of its efforts to authorise the stay of most undocumented workers and the rationed or non-monitoring of workplaces, thus giving them an opportunity to make a living. One worker remarked that,

“Besides delaying, home affairs has tried to make situations better as employees can work with asylums now...they are fair enough. They have to monitor and take precautions”. [Dumi (worker), interview]

Undocumented immigrant workers I engaged with also demonstrated their common sense understanding of the law in a peculiar way as they actively understood their ‘illegal’ standing in South Africa and in the job market. However they did not harbour any resentment against the law as they did not expect any rights or sympathies. The next section explores this in detail.

5.9.1 “No right to rights”

The group of workers I had a conversation with and in recalling their early days of undocumented or ‘illegality’ had a different legal consciousness and did not uniformly harbour any resentment against the law as espoused by Abrego (2011). These workers understood that they were against the law by being in the country without proper documents and expected their hide and seek situation with the police as normal. Moreover this is testament to the fact that their precariousness is the norm where they thus expect antagonistic police behaviour.

Such views have to do with ambiguity when it comes to the rights of undocumented immigrants in the workplace. The intention of labour law is to grant immigrant employees with certain rights as employees in South Africa but an ‘illegal’ stay in the country makes such rights seem out of reach as undocumented immigrants have no right being in the country. Gleeson (2010, 580) also reasons that it is understandable for workers who know their workplace rights to assume that rights do not extend to them. Motomura (2010, 1729) concurs that “unauthorised migrants remain at the law’s margins with rights that are indirect and oblique”. Gleeson (2010, 592) also deduces that undocumented immigrants are in a cognitive dilemma regarding their labour rights because despite being told that they have a right to be protected “they are not legally permitted to reside here, regardless of the rights and protections”. Thus they are left wondering if, indeed, they have the right to have rights. Rights are thus only on paper as immigration policy seems to override any *de jure* rights that ‘illegal’ migrant workers stand to enjoy.

This ambiguity was thus revealed by some workers who knew that they had rights as workers, but how could they speak of such rights when they had no rights to be in the country in the first place? When I quizzed if undocumented workers knew anything about legal channels if they were ever presented with workplaces abuses or exploitative situations the responses showed that they did but their precarious citizenship statuses meant that such rights awareness counted for little if you are undocumented.

“You know what...people know but they are afraid of their immigration status. Lack of IDs or your forged documents will be found out, and you are not supposed to be working or you are in the country illegally. I can’t cry of rights because I also don’t have a right to work, and I’ve also duped my employers so I have no right. People have no rights to work because of that...workers will be working illegally, you are not allowed to work....so you can’t cry of rights”. [Sibusiso (worker), interview]

The above quote also speaks to the works of Freeman (1978) who contends that immigrant workers are not free to take part in labour disputes since they are vulnerable to deportation if they run afoul of the law or risk losing their jobs (p, 26).

5.10 Breaking the law to Survive

Still on the aspect of the law, undocumented immigrants demonstrated that they understood the terms of the law but they had to go against it in order to survive. This is particularly the case since they know that ‘proper papers’ is a bit of a fantasy, which many do not have, or have bought, and/or they are there to merely survive. I interviewed Sizwe, an undocumented immigrant labourer in the domestic household construction industry under the management of Mandla who in turn was the holder of the contracts that they worked on. Sizwe was also Mandla’s brother in law. Sizwe told me that bothering with legal paperwork was a waste of time as you would never get legal status. One respondent had this to say when I quizzed on how they are expected to work and evade the police simultaneously?

“Ahhh....it’s not often...but you also know that you are wrong in the eyes of the law...it’s like if I go rob a house, if I see a police man follow me I make sure I’m not arrested....so if I jumped the border illegally I broke the law, the law says I must have proper papers and I don’t...I would know that I’m running away from my crime status...police have to arrest me because I have no right to be in the country..”
[Mduduzi (worker), interview]

5.11 Self-marginalisation as a survival strategy

The literature review on the nature of the construction industry establishes that the building industry is a typical example of precarious forms of work regardless of citizenship. This is because of the nature of the jobs in the industry and the presence of informal processes.

Furthermore there is no denying that precarity is now a very wide spread phenomenon among workers as workers continue to find themselves in insecure forms of work, long irregular working hours and low wages among many other subordinate positions. However the exception is that a precarious citizenship only increases the likelihood of profounder precarious work and life experiences for immigrant workers. Precarious legal status, in turn, goes hand-in-hand with precarious employment and livelihood. Lack of citizenship and vulnerability to deportation, for example, commonly push migrant workers into grey areas of the economy where wages are low, benefits are non-existent, and basic workplace protections have limited penetration (Paret 2015, 282)). Research indeed suggests that, on the whole, immigrant and especially undocumented workers, are both more likely to be victims of workplace abuse, as well as less likely to contest workplace violations (Bernhardt et al. 2009). My contention is that precarity is more than work for undocumented immigrant workers.

Undocumented workers are actively aware of their precarious lifestyles which largely have no respite because of and exacerbated by an ‘illegal’ migrant status. Kim (2009, 498) reasons that un-documented immigrants are marginalized on multiple levels and pushed to society's peripheries. In harmony with the above views undocumented workers thus have limited access to social services and little redress when their basic human rights are violated. The helplessness of undocumented workers is accelerated in substantial amounts by their contradictory legal position and they thus tend to fear state authority, together with authority that might provide them with support (Gleeson (2010, 562; Bosniak 1991, 748). Nonetheless since my study seeks to explore undocumented workers’ positions as non-victim but as active agents of their lives, I thus mostly dispute these authors’ stance of victimhood. Instead I concur with Murray (2003, 458) and propose that in perilous work situations immigrant workers use numerous survival strategies to shape their life-chances and these “range from a degree of social insertion to marginalisation.”

5.12 Conclusion

This section has explored how the resilient need to migrate for work will render borders porous despite the efforts of immigration control mechanisms to curb such trends. Immigrants are cunning in this regard and will use tactics that range from but not limited to illegally ‘jumping borders’ to entering the country legally and then overstaying their allocated days in South Africa. Immigration policies and control measures however do not cease at borders for these

Zimbabwean immigrants as they are labelled ‘illegal’ migrants once they are inside South Africa or they have overstayed their allocated days. There has been progress regarding immigration policies and the Department of Home Affairs has put in place policies to try and authorise the stay and work of Zimbabwean immigrants in South Africa. These have however not solved the issue of un-documentation conclusively as they among other many encounters, present challenges to the low-skilled worker as the ones that are in the construction industry and in this report. Therefore the low-skilled have continued to work in the less formal industry without documentation as the industry presents easy access into employment.

‘Illegality’ is experienced in numerous ways by workers and it ranges from difficulties in getting formal employment or any kind of employment that requires the signing of contracts. However this does not bar immigrants from accessing work and enjoying the same privileges as the other workers. They are aided in these endeavours by weak monitoring of workplaces by the DHA which presents significant developments from the apartheid era where monitoring was significant. Nonetheless they are indirect and secondary ways in which the DHA gets to monitor or inspect ‘illegality’. These ways are through the police who however have been noted to engage in corrupt ways much to the detriment and in lesser ways to their benefit. Exclusive gated communities also act as secondary home affairs inspectors as immigrant workers cannot access these without proper documentation.

Immigrant workers use numerous navigation and survival strategies to counter ‘illegality’ in around the workplace. One of these strategies discussed above is self-marginalisation. The key word here is self and this counters many notions of immigrants’ victimhood demonstrated in various migration literature. For example, Kim (2009, 498) reasons that un-documented immigrants are marginalized on multiple levels and pushed to society's peripheries. The helplessness of undocumented workers is accelerated in substantial amounts by their contradictory legal position and they thus tend to fear state authority, together with authority that might provide them with support (Gleeson (2010, 562; Bosniak 1991, 748). I thus mostly dispute these authors’ stance of victimhood. Not to deny the validity of the authors’ claims I conversely identify this marginalisation as mostly self-imposed as a distinctive survival strategy. Immigrant workers thus often make nuanced decisions about when to call out employer abuse, and when to persevere, even in the face of egregious violations. These survival strategies represent a form of constrained agency, even if it is ultimately not emancipatory (Paret, 2015, 282).

Immigrants' workers self-marginalisation is linked to their legal consciousness as by being undocumented they do not expect worker rights to favour them. This means that they fully expect the precariousness that comes with being 'illegal'. This consciousness is further linked to their 'dual frame of reference' when evaluating their migrant experience. Gleeson points out that immigrant workers are always referring back to their reasons for migrating in the first instance. In doing so they thus refer back to the work conditions in their home countries so as to access their current position (as precarious workers) and look to their return home when considering their aspirations for mobility (Gleeson, 2010, 566).

The above discussion has also interrogated Gleeson's deduction that "immigration status operates as a master status at the workplace". I have argued that contrary 'illegality' becomes blurred in the workplace. Skill and experience are some of the entities that blur 'illegality' in the workplace. Skill and experience makes employers to place value on such workers regardless of their citizenship status and in the process making it difficult to distinguish workers according to citizenship. Therefore I contend that workplace arrangements are governed by more than laws and rights. Further aspects that govern employment relationships outside of laws and rights will now be explored in the next chapter that delves into workplace negotiations.

6 CHAPTER 6: WORKPLACE NEGOTIATIONS

6.1 Introduction

This chapter is going to explore undocumented workers' workplace experiences. By delving into these work experiences this segment of the report will in the process attempt to show that these workers are not in 'unfree' labour relations as most migrant and labour literature has generalised all immigrant workers especially the undocumented ones (ILO, 2008; Lewis et al. 2014). I argue that these relations are more harmonious than antagonistic. In supporting this argument the chapter will show that the construction industry is predominantly a seller's market and as such the issue of skill as a form of bargaining power in wage negotiations will be examined. This again links to the overall argument of the report which has been hinted on previous chapters - that skill gives these undocumented immigrant workers leverage and not all undocumented immigrant workers are in precarious working conditions.

Workers' kinship ties are also crucial in interrogating claims about workers being in 'unfree' or contemporary slavery labour relations. The chapter will thus also demonstrate that kinship ties make up social networks which are crucial for immigrant workers new to Johannesburg to get that first job. These kinship ties also have significant impact in workplace relations as they ensure that workplace relations are not always antagonistic as kin are normally well meaning towards each other. The character and mistrust of Johannesburg also offers an interesting case of a regulator of workplace relations that ensures that employers meet their commitments to employees. Nevertheless concluding that undocumented immigrant workers and their employees' workplace relations are purely cordial also risks the same universalising tendencies or claims that this chapter seeks to interrogate. As such, work place disputes and worker resistance will also be explored in the chapter. This however is carried out with the intentions to show that undocumented workers are still not hopeless victims without agency. The agency of undocumented workers and their bargaining power or any other advantage they might have in such relationships is downplayed by the literature on the subject.

6.2 "New Slaves"? A Focus on spaces of negotiations

Rogaly (2008, 1435) points to a report published by the UK's Joseph Rowntree Foundation on contemporary slavery in British which suggests that "migrant workers ... are most at risk of slavery or slavery-like working conditions". The report referred to by Rogaly (2008) can be

vindicated as it only refers to greater ‘risks’ for migrants to be involved in ‘slavery-like working conditions’. Nevertheless it represents the tendencies of some recent labour and migration literature to misleadingly universalise and portray all migrant workers as hopeless victims of hyper exploitative working conditions. Lewis et al. (2014, 14) particularly argue and conceptualise migrants’ working lives as hyper-precarious rather than ‘merely’ precarious. Thus my argument is that the terms of employment relations that some undocumented immigrant workers find themselves in are not as fiercely exploitative or unfree as commonly claimed. In putting forward such an argument I concur with Rogaly (2008, 1432) who critiques the International Labour Organisation’s (ILO) “Global Alliance against Forced Labour” Report and its failure to “see and understand recruitment or workplace bargaining, co-operation or conflict from the perspective of individual workers”.

The erroneous tendencies of portraying all immigrant workers as mere casualties without any sort of agency over their lives in the receiving countries largely emanates from literature’s lack of attention to spaces of negotiation or workplace bargaining. The downplaying of immigrant ‘extra-legal’ workers’ agency and their presupposed contemporary slave like conditions or ‘unfree labour’ and the need to focus more on spaces of negotiation in the workplace is further espoused by Peck (1996) cited in Thiel (2010, 444) who draws on Polanyi’s notion of ‘fictive commodity’. Thus this chapter argues that there are ‘rules’ of interaction to govern the employment relationships.

6.3 ‘Affective’ employer - employee relationships

In Chapter 5, I explored how immigrants’ ‘illegality’ status became invisible in the workplace. I followed that up with exploring if there were any differences in the treatment of undocumented workers and other workers in the workplace by employers and supervisors. For both workers and employers in my study, workplace negotiations and relations were embedded in significant well-meaning contexts and arrangements. Actual workplace relationships between undocumented workers and their employers are complex but harmony prevails mostly due to aspects surrounding value placed on workers, kinship ties, workers’ self-management and the character and mistrust of Johannesburg as I will explore below. In demonstrating these well-meaning and cordial employer-employee relations, Bukhosi narrated how when leaving his first job in Johannesburg he told his brother to lie to his former employer that he was done with construction and had gone back to Zimbabwe to be a farmer. Although Bukhosi wanted

to keep his options open if he struggled with finding jobs in the future I believe the other thing is because he had a good relationship with his employer. He could not bear facing him and lie to him and thus required his brother to do so. Moreover he could not bear seeing the disappointment in his former employer that a trusted and hardworking employee was leaving him.

Subcontractor Khumalo also pointed out that to him it did not matter what immigration laws said because when it comes to respect, a human being is a human being, and someone has to earn their worth if agreements are in place. To Mr Khumalo, a worker including casual workers were human beings first before they were workers. Thus he pointed out that on sites casuals also go through safety procedures like every other worker because he is also a human being before he is a worker. Mr Khumalo further transported all his workers including casual workers to their homes every day after work free of charge to show his well-meaning intentions. In the mornings his workers all met at a central point where he picked them up on their way to work. He thus reasoned that he did not see any reason why a worker should not be valued. All the subcontractors I interacted with concurred that ultimately what was important in the workplace was a happy labour force. Mduduzi pointed out that in most cases there were no big differences as workers and managers become very close like a family in the workplace simply because,

“So you would not stay and work with a person everyday if you didn’t like them...most workplaces have policies where people are not even allowed to curse at work...there are no fights at the workplace...” [Mduduzi (worker), interview]

6.4 Skill and Construction. A predominantly seller’s market

This report does not totally reject claims linking the risks of workplace hyper exploitation and undocumented immigrants. However I contend that it is important to distinguish such levels of aggressive exploitation by industries or types of jobs that immigrants are engaged in. Exploring and comparing employment sectors and their levels or chances of exploitation are beyond the scope of this report and neither is its objective. Nonetheless my contention is that there are more chances of worker agency in industries that rely on a worker’s skill. The building industry is an example of such an industry. Therefore its (construction industry) labour market is a seller’s market where skill and the ability to multi-task translates to worker value which means more bargaining power in labour relations such as wage negotiations. Therefore good skills

and multi-tasking are not only advantageous for immigrants when seeking jobs but they are very important and recurring attributes in everyday work processes. They influence issues like pay, contracts (where available) and the treatment of workers in the everyday workspaces. Therefore I will begin by highlighting the importance of skill in the construction labour market before I move to wage negotiations and worker autonomy.

6.4.1 Advantages of Skill in the Labour Market

Immigrants searching for jobs commonly refer to it as ‘marketing’. Thus someone who is searching for a job is marketing themselves and their skills or experiences. Most workers market their own job skills by moving around different construction sites, standing at traffic lights and at hardware stores sometimes carrying their own trade tools (Harmse et al., 2009; Theodore et al., 2015). As already highlighted in the previous chapters workers who market for jobs this way likely end up as casual workers and then seek mobility to better job positions from within construction companies. Other noted ways of ‘job marketing’ involved the internet for those who with computer and internet literacy. Labour brokers recruited workers by advertising on the internet. Applicant workers would then compile and upload their CVs and profiles on such platforms. A worker I had a conversation described that,

“...Some people check on the internet and that’s where they market...there are agencies on the internet that people use to network for work in construction. Sometimes these people have offices in town and they require that you come with your CV... even casuals are now doing this sort of thing” [Dumi (worker), interview]

The combination of skill, multi –tasking and good recommendations are also an important aspect that give immigrant workers a good opportunity in getting employed. A combination of skill and recommendation works in instances where a job candidate can be vouched for by subcontractors’ trusted senior workers verbally. Thus there is no need for documentation such as certificates of professions in the workplace. This aspect also illustrates the high levels of informality within the building industry work processes. Recommendations from trusted senior employees allow subcontractors to employ these undocumented immigrants usually on a casual basis and sometimes as permanent employees. A driver’s license is a crucial added skill that enables one to get employed in the building industry. Bukhosi narrated how he had found his

first job with the aid of a good recommendation from his brother and a driver's license as his employer sought both an artisan and driver.

A worker who had worked in the Johannesburg construction scene for more than ten years attributed trust placed on him to his skills and abilities, which he argued was very crucial and better than any paper or certificate. He described himself as a *"jack of all trades"* when it came to construction as he specialised on the core activities such as brick laying, painting and paving.

"Plus what you asked earlier...as in how someone trusts you that you can do the job...let's say you've been recommended to become a brick layer and suddenly a plaster or painter is needed and then you can jump in and say you can do it...paving...same thing...until you are trusted that you can do a variety of things at the work place".

[Mduduzi (worker), interview]

6.4.2 Skill as bargaining power

A worker's renowned good skills and ability to multi-task also acts as an advantage on the negotiation of wages between workers and subcontractors. Subcontractor Khumalo illustrated how he had standard pay based on incomes garnered from the jobs that he worked on. In these arrangements he paid the lowest amount of wages to the unproven beginners and casuals were included in this bracket. Mr Ndlovu pointed out that a worker's proven enthusiasm and skill would then lead to that worker being categorised into the next level of improved earners. Therefore good skill becomes a prominent feature in a worker's influence on the workplace and their earnings. Good skills and being a *"jack of all trades"* further place added value on workers and they use this value placed upon them as a convenient tactic in the negotiation of wages.

These worker attributes become a bargaining power that enable employers to honour verbal wage agreements and even get employees wage raises. Workers I conversed with referred to these tactics as minor threats. These workers mentioned how they could compel or persuade an employer to add to wages by threatening to move to a different employer or sub-contractor. Fearing losing his best workforce the employer would then be forced to heed the demands of his employees or even negotiate and meet them half way. Nonetheless it was agreed that this tactic was only effective for those with labour market power in the form of skill and being

highly valued by employers. Intriguingly these workers refused to acknowledge this form of coercion as threats but simply referred to as ‘negotiating’. However workers I interacted with also noted that they hardly resort to such outcomes as there has been no need to due to cordial working relations with their employers. Therefore in practise there were fewer examples of such tactics. The issue of skill as a form of bargaining power in wage negotiations is illustrated by the narratives below.

“Also on the negotiation of salaries add this...since if no contracts are signed, if I work for a sub-contractor I can move away any time. So sometimes we use subtle threats to negotiate salaries...like I will say the little money that you pay me...I can move to a different employer and perhaps get R10 more to what you offer me...so since there are many sub-contractors without paper work it’s easy to move around...and that’s how we negotiate”. [Mduduzi (worker), interview]

“It depends on how much the subcontractor needs you...skill is crucial...if you threaten an employer who doesn’t really need you then they can let you go... Sometimes a subcontractor can find someone secretly and then let you go easily, if your skill is critical they’ll improve your conditions...” [Mduduzi (worker), interview]

Due to subcontracting in the construction business, subcontractors are also employees as they are hired by private contractors or by the government to provide labour, skill and expertise on construction projects. Van der Linden (2014) contends that today, “the relationship between a self-employed individual and his major customer is often hard to distinguish from the relationship between a wage earner and his employer”. Some subcontractors act as part of the workforce itself while others only use their connections to get contracts and provide the work force. Thus Mr Ndlovu who built houses also negotiated job wages with his own clients in a relationship where he was the employee. He pointed out how he had to be creative in his bargaining tactics. He did this by buying his own material and included it in the invoice because he reasoned that building a house and charging labour only did not leave you with much profit to also pay workers underneath him. He thus specified everything including the work process and the material used everything in his quotations to his employers.

Negotiating in this way is further testament to the informality of the building industry and it benefits both employees and employers. One subcontractor concurred that mostly nothing

really goes according to the law in their industry when it came to money issues and if such things were to be based on the law, contractors, subcontractors and workers would lose out greatly. As one subcontractor pointed out most work processes in the building industry are all about improvisation.

“Otherwise there are no fixed salaries. It depends on the job and certain parts of the industry, like on paving there would be a known starting price. It’s how you negotiate and decide with the people coz what you also get as a sub-contractor is not fixed and it’s not based on law. There are no fixed incomes”. [Mr Khumalo (subcontractor), interview]

6.4.3 Skill and worker autonomy

Another benefit of possessing skill, experience and a good track record in the building industry is trust placed on workers which produces worker autonomy in the workplace. Workers I conversed with concurred that their bosses comprising subcontractors and foremen or supervisors from main contractors were very fair and did not follow workers around apart from the normal delivery of instructions. In talking about general working conditions and treatment from bosses Mduduzi narrated that everything went well if you were trusted.

“Treatment? ...bosses only came to give instructions and orders and didn’t follow us around ...whatever we wanted we would go to the office or store room and get from there”. [Mduduzi (worker), interview]

This worker autonomy leads to more self-management which coupled with self-discipline maintains cordial relations in the workplace.

6.4.4 ‘Excessive’ worker value. Skill impacting leave days.

It is evident from the above views that skill and being a “jack of all trades” ultimately adds value to a building company. However for some workers this value affected them undesirably when it affected them getting leave days. According to workers in my study, bigger building companies who observe some degree of formality in work processes accord leave days to permanent workers who have signed long term contracts. These long term contracts must exceed one year and which also means the projects that the company is involved in must be

larger or companies already have ensuing projects lined up. Otherwise long term contracts are usually only based on the availability of jobs. Permanent workers qualify for sick leave, bonuses and company benefits. Nevertheless most workers in my study concurred that leave depended on company policies and in most companies it is difficult to get leave. They pointed out that it was even worse for registered workers and valued workers because it meant that the higher the demand of their skill, the harder it becomes for them to be absent from the workplace. Normally work days in the construction industry are Monday to Saturday with at least forty two hours of work. Nonetheless emergencies are considered but it is difficult because according to Mandla, most people in construction are specialists and they cannot find replacements immediately. An example of a truck driver was given, in that he simply cannot leave his truck unless if it is a big company with lots of drivers. Thus a worker's skill also becomes their burden which is rather surprising as this ought to give them higher bargaining power.

“As for me...we don't have leave days, leave is only in December for Christmas”.

[Mduduzi (worker), interview]

Nevertheless, Mr Ndlovu pointed out that he was a small scale subcontractor and he was very strict on his leave day's policy. In allocating leave days he kept and checked his records to make sure that workers did not make a habit of it or as he pointed out *“you can't get sick leave every day”*. From his experiences, people fabricate doctor's letters as a sick leave request has to have a doctor's letter. However funerals are exempted from any proof requirement. He reasoned that most people lied and faked documents to get leave days and gave an example of a worker that he knew who took leave from a registered company and went on to work somewhere for a small subcontractor, getting double wages in the process. From such experiences he was thus cautious of such occurrences and he remarked that he will not pay a worker who absconded work because his son was sick.

Immigrant workers in my study were nevertheless fine with working on holidays. The only holidays that they cared about is the December holidays and to a lesser extent the Easter holidays because they had families in Zimbabwe to think about. They thus often travelled home during the December holidays. Nonetheless despite these minor cases where skill places too much value on workers' ability to get leave days, having skill still impacts workers positively in the workplace. As has been illustrated above skill increases employment opportunities

regardless of citizenship status. Possession of skill and the ability to multi-task places also places value on workers which employers do not want to lose. This value helps workers with workplace bargaining such as wage negotiations. However, skill is not the only factor that works in immigrants' favour in distorting the myths of hyper exploitation of undocumented immigrant workers in the workplace. Job opportunities and harmonious workplace relations are also influenced by ethnic and kinship ties which were a solid foundation to what most employer-employee relations were based on. These ethnic and kinship ties act as crucial safety nets for undocumented workers, both at workplaces and outside of it. The subsequent sections explore this issue in detail. Like the section on skill did, the next section will open by showing the advantages of kinship ties in the construction labour market before moving on to explore kinship ties and its link to cordial or well-meaning relations in the workplace. Before moving to this discussion, the role of self-management and self-discipline in the workplace will be discussed.

6.5 Self-Management and Self-Discipline

For workers placed under minimum supervision this means that self-management and self-discipline are essential elements in the workplace. It is also imperative to understand that this self-discipline and self-management is not a form of victimhood but a survival tactic for these workers. Precarious workers would thus perceive this precarity in a different approach to the one that constantly identifies them as hopeless victims. These workers are therefore consciously willing to accept more precarious conditions if it means they can send remittances back home. The respondents seemed to blame most workplace mishaps and ineffectiveness on themselves as employees and not their employers. Therefore they concurred that self-discipline and awareness was crucial in the workplace for one to be effective and make an earning. Bukhosi narrated that as an employee one has to know whatever they will be would be working with the next day as you could not just surprise your boss to tell him that the firm is out of material and thus fail to work because of that. Workers I interacted with concurred that workplace things were supposed to be in order, workers were always supposed to be alert and the boss had to be alerted two to three days in advance when more material will be needed.

“...you have to let the boss know when to expect that the material will be finished...”

[Mduduzi (worker), interview]

“You can’t forget about the material that you work with...which means you don’t know your job [chuckles] ...and also if you forget...the problem that arises is...remember that you are working to make money or profit...if you forget to speak...and there is no material...it affects your self because it takes you backwards and now you have to work half a day...so it affects you...you are not moving forward...you are no longer making the money you should be making...” [Mduduzi (worker), interview]

Therefore making mistakes and forgetting things or any other thing that puts a worker at loggerheads with an employer is quickly dismissed as recklessness and amateurism which has no place in a responsible worker’s life – a worker who has to think about sending money home. This self-discipline also included staying away from strikes if by any chance they happened. When I queried subcontractor Mr Khumalo on what he saw as the reason for immigrants’ non participation in strikes his explanation was as follows,

“Everyone cares about and wants money...because strikes are about money. Someone will be looking at his background, so if they rouble raise they know they’ll be throwing away a good opportunity to send remittances back home. You think about children. At the end of the day they think of the term that half a loaf is better than nothing”. [Mr Khumalo (subcontractor), interview]

6.6 Kinship ties and the labour market

Another approach by which Zimbabwean immigrants get jobs in the building industry is through social networks of friends, relatives and family. This is line with Sibanda’s (2010, 47) assertion that Johannesburg is an appealing destination for Zimbabwean immigrants and that most Zimbabwean migrants “have many social networks in the city of Johannesburg in the form of relatives, family and friends upon whom they rely to achieve their dreams in the ‘city of gold’”. One respondent in particular narrated how he got his first job from a fellow Zimbabwean subcontractor who knew him and his skills prior to their meeting in South Africa. He described the whole process of acquiring this job as being easy. This means that workers with strong kinship social networks in Johannesburg migrate with already an idea of a job in their destination city. Most workers I interviewed had a rural background and anyone in Johannesburg who originated from around the same rural area was considered family or kin.

When I asked one employee with such a rural background to narrate how he got his job he referred his position to nepotism,

“Mine was nepotism...most construction workers from where I am from access work via family networks, these are our social networks, and I found the job waiting for me”.

[Dumi (worker), interview]

These kinship and ethnic ties also illuminate the element of trust among kinfolk. Recruitment of workers was done informally by Mr Ndlovu (a subcontractor) and workers usually recruited other workers and vouched for one another. In this procedure, workers are responsible for the recruitment of fellow workers, and they likely recruit their own friends and from a circle of relatives. For employers this is crucial because it ensures that recruiting workers are responsible for disciplining and managing new arrivals in the workplace to prove to their employers that their recruitment choices are worthy choices. It is especially convenient if it is the most trusted workers who recruit employees. From the interviewees, the important aspects to getting a permanent job was a good recommendation from someone that the employer/subcontractor knew and trusted well and not from new employees. This also implies that chances of these trusted workers recruiting from their own kinship ties were higher. Moreover for the subcontractor to place trust on a worker and task them with bringing in other workers means that the relationship and the trust is also more likely to be based on kinship ties among other factors. One subcontractor confirmed this to be true when he pointed out that,

“The other thing is that you are also helping a friend of your worker to also get something to live by”. [Mr Khumalo (subcontractor), interview]

Although not every worker in my study found jobs through this kind of arrangement, as good recommendations even exist and are useful outside similar ethnic and kinship ties. Nonetheless social networks built on kinship ties enable that undocumented immigrant workers likely end up with Zimbabwean subcontractors as their employers. Such outcomes have also led to fears of indebtedness which according to Rogaly (2008, 1436) is often a key characteristic of ‘unfree labour relations’. However the next sections dispels any such fears and highlights that well-meaning intentions do not only stop at worker recruitment but also continue into employer-employee relations.

6.6.1 Kinship ties and benevolence in employee relations

From my conversations with both workers and subcontractors coupled with observations of the workplaces I grasped that kinship and ethnic ties were a solid presence in the workplace. An example of this was a similar language which workers and subcontractors shared. Workers and subcontractors only communicated in English when the conversations included the foremen/supervisors and the safety managers who represented and acted as the main contractor in the workplace, and they were mostly white men. Other than that, the common language was a mixture of Zulu and northern Ndebele which is a common language in Zimbabwe's Matabeleland region.

Mr Ndlovu who was more involved in the building side of construction pointed out how he skipped the issue of conducting worker medical examinations before embarking on projects. For him there was no need because as he narrated most of his workers were from back home in Zimbabwe and he was familiar with their backgrounds and families. Thus if by any chance a disaster ever occurred in the workplace he will talk to the families and they would understand as they trusted him. As a further example of this Mr Ndlovu narrated how he had a worker who was once deported from South Africa and in filing his deportation papers lied that he was from Mozambique thinking that would mean a quick return to Johannesburg. However the worker became stranded in Mozambique and Mr Ndlovu had to use his money to get him back as he was now destitute there. Upon his arrival in Johannesburg, Mr Ndlovu took him to a doctor and then took him to Zimbabwe. Unfortunately Mr Ndlovu's former employee died of HIV related complications a few months later in Zimbabwe. Mr Ndlovu explained that he had to help buy baby food and groceries for the HIV positive wife and her infant. Such kinship ties and good relations between workers and their employers might also explain why these workers rarely engage in strikes or other forms of open resistance as they do not see themselves as victims or contemporary slaves as usually espoused by migration and labour literature. Such well-meaning intentions fill up other voids left by small wages and other workplace deficiencies.

Nevertheless harmonious workplace relations do not mean there is no mistrust, disputes and forms of worker resistances in these workspaces. At the same time we cannot negate the authority an employer has in such employer – employee relations in the workplace. Thus Thiel (2010, 453) chooses to use the term “quasi-reciprocity” because (in classic Marxist terms) he reasons that in capitalist economies labour is seldom equally reciprocated as extra profit is

produced through obligatory wage labour whereby wage labour has little choice but to accept only inadequate compensation. As workers in my study highlighted, employers meeting wage agreements was usually the utmost concern in these employer-employee relations.

Moreover workplace trust and harmony is not always the case. Sibusiso explained that by his own observations and few experiences, treatment between South African workers and undocumented workers was never the same. His position was that casual workers had the toughest experience from both workers and employers due to their positions at the bottom of the workforce. He related a story of verbal abuse and being looked down upon as a Zimbabwean where his white employer paid him insufficient wages accompanied with the words that the amount was enough to make him a billionaire in Zimbabwe. He also remarked how his employers crudely called him Mugabe in the workplace while his fellow South African workers avidly gave themselves trade tool names such as “hammer” and “spikiri” (a hammer and nail respectively) which carried some respect in the workplace. However he also pointed out that with time you get used to it and it becomes less offensive. Mandla also narrated how he once had problems with a client who was reluctant to pay for a painting job done at his residential place and he felt that he was taking advantage of the fact that he was a new subcontractor who had taken over the business from his father. However Mandla was not overly worried as he expressed hope that the client was going to pay as apart from the client having fewer cheaper alternatives for future jobs, the client knew paying was the moral thing to do. Immigrant workers also counted on the character and mistrust of Johannesburg city as an indirect regulator of employer-employee relations.

6.7 The character of the city and mistrust

Despite most workers indicating that there was more harmony than conflicts in the workplace, feelings of mistrusts still existed between workers and their employers. Nevertheless workers also perceived the character of Johannesburg and the mistrust surrounding it as imperative to their experiences and negotiations with their employers. As I alluded to earlier one of the main reasons of why I chose Johannesburg as a location of my study is because of its ability to attract different kinds of immigrants and migrants I interviewed felt it was a city where opportunities were endless for someone to rise up, become something in life and provide for their families. This can be expressed of the city because according to Murray (2003, 441), Johannesburg is an aspiring global city, which “after apartheid has sought to find an exalted place for itself in the

world economy”. Murray (2003, 441) also adds that “the influx of capital, commodities, and ideas from around the world has gone hand in hand with the movement of people”.

Johannesburg’s heterogeneity is thus what seemed to give immunity against workplace abuse and exploitation (especially concerning wages) to my respondents. Although the city’s heterogeneity and vast population also means that there are lots of people available for construction jobs, Johannesburg was considered a dangerous place because of its diversity and the influx of different people with different backgrounds. My respondents also reasoned that these outlooks of Johannesburg as a dangerous city because of its influx of a diverse people are also shared by their employers. Therefore, for the workers this meant that employers could not easily cheat people of their wages because Johannesburg people were thought to be capable of anything, and as employees they felt safe under such attitudes about Johannesburg. Mr Ndlovu even included some superstitious karma in his reasoning that if one is unnecessarily rough with people, workers could be rough with you in many ways and this includes things like bad luck. Johannesburg was seen as a city that keeps people in line or the consequences were greater. When I queried if they had ever come across a subcontractor or employer who had taken advantage of their un-documented status and deprived them of their earnings, one had this account to say...

“You see...even if it’s there...a person is a person...you can never trust them...especially here in Johannesburg....it’s a dangerous city...if you don’t want to pay me or pay little I’ll use that same money to hire people to kill you...with that same little money that I got paid with...I will remain leaving and you will be dead...so here in Johannesburg don’t trust a person regardless how small or his status is...give him his dues and be done with it so you can understand each other...don’t treat someone bad because they don’t have papers...he will kill you without those legal papers...whose going to come to your rescue? So Johannesburg is a dangerous place and an employer cannot just base his decisions on what will an immigrant worker do to me if I don’t pay him his money or treat him right because he’s very desperate and vulnerable...pay someone his money” [Mduduzi (worker), interview]

Mduduzi also pointed out to the desperation and the desire to get to Johannesburg and earn a living and remittances as another reason why they should not be trusted if agreements in the workplace were not met. They banked on their experiences of suffering in getting to

Johannesburg as something that showed that they were capable of anything when exploited by employers.

“...You’d never know what us people from Zimbabwe are capable of [chuckles] ...we’ve been through a lot...we jumped crocodile infested rivers to get here [chuckles] so If I went through a crocodile with large teeth you don’t know what I’m capable of...I’m capable of something...with that small amount you pay me. So I think employers and subcontractors also have these kind of thoughts as well. Pay someone his money and treat him right...” [Mduduzi (worker), interview]

6.8 Disputes between Employers and Workers

6.8.1 Passivity, hard work and Non-Citizenship. A distorted nexus

Before exploring cases of worker – employer disputes and worker resistance this section will briefly examine worker behaviour in the workplace through subcontractors’ assessments of workers. This is to interrogate literature and perspectives such as the ones that declare that immigrant ‘illegal’ workers are passive and submissive and this is what makes them more attractive workers vis-à-vis their ‘troublesome’ South African counterparts (Griffin, 2011). Frankel (2013, 99) also extends such claims to conclude that undocumented migrants work in fear of dismissal and are ‘persuaded’ to enter “hazardous areas where permanent workers will not go ... and do not have to go under existing legislation”. However as I highlighted in the literature review I dispute this contention on the basis that workers’ backgrounds regardless of citizenship plays a part. From my conversations with subcontractors it was made clear that in most cases immigrants with a rural background are likely to be more subdued than their urban counterparts and this citizenship aspect becomes blurred out by backgrounds. Regardless of citizenship, urban workers were more likely to band with other workers with urban upbringings to cause trouble for employers in the workplace. South African internal migrants with rural backgrounds are also seen to be less troublesome than their urban counterparts as they also have to think about sending remittances back home. Mr Khumalo and Mandla gave the following narratives when I queried the link between workplace behaviours and citizenship or status:

“It’s never the same...not all Zimbabwean workers are well behaved. You cannot compare someone with a rural background and someone with an urban one. Their

behaviours are totally different regardless of what town or rural they from. Urban people are the ones that are usually troublesome. They get together regardless from which country and easily connect because they are the same type. As I say a human being is a human being, they are some good people though from urban areas". [Mr Khumalo (subcontractor), interview]

"The other thing, as South Africans they are also different and from different backgrounds, they are those from rural areas and those from urban areas. They are all South Africans but those from rural areas will sacrifice and work coz they have families to send remittances to so they know why they are in Johannesburg. These ones from urban areas will even forge documents not to come to work. There are Zulu boys from the rural areas I know, even on holidays they'll be at work but these ones from Soweto will say "uyabheda" [you are out of your mind] and not come to work. [Mandla (former worker and now subcontractor), interview]

The 'dual reference framework' and workers' precarious citizenship also necessitates the beliefs that immigrant workers are more focussed and hard workers than their South African counterparts. As explored above the usual perceptions are that these hard worker tendencies coupled with passivity and submissiveness make immigrant workers an attractive choice for employers and at the same time susceptible to exploitation which is believed to be the norm in sectors like the building industry. While there is insignificant weight to such conceptions much of it is generalised. Subcontractor Mandla narrated how he sometimes had minor issues with South African workers who refused to work (for overtime wages) on holidays when they were under pressure to meet deadlines while Zimbabwean and other non-South African workers complied. Mandla even joked how the country's biggest football game between Orlando Pirates and Kaizer Chiefs was never played on a Sunday so as to curb worker absenteeism on Mondays as workers would be too tired to work. Mandla teased that,

[Laughing] "Can you imagine if Pirates and Chiefs played on a Sunday? No one would go to work". [Mandla (former worker and now subcontractor), interview]

However despite this narrative of the lack of desire to work on holidays or weekends with overtime added, the main opinions were that it was not as simple to compare the workers. Mr Khumalo, narrated how at the time of our interview he had South African workers who were

more hard working than Zimbabweans and that not all Zimbabweans are hard workers. Moreover for him measuring hard work was also subject to the nature of jobs and workers' bodies and suitability to these jobs. He pointed out that people were from different backgrounds and thus their bodies were wired differently where others were not suited for these kind of jobs. Yet again the issue of people's backgrounds stood out for him and he pointed out that whether someone was from Zimbabwe or South Africa the issue of pre-exposure to such kind of rigorous jobs was critical and rural areas had the kind of lifestyles to make people more suited or used to hard work.

“Most people work certain jobs because of desperation...Someone will have never been to the rural areas and only gets exposed to such jobs in here in Johannesburg”.

6.8.2 Workers and Resistance

Disagreements and tensions are part of everyday work spaces. In this section I turn my attention to cases of disputes between employers (subcontractors) and their work force. Although both workers and subcontractors assented that there were relatively fewer outstanding or big scale workplace disputes, there were still other cases that caught the eye. Overt forms of resistance in the workplace such as strikes are infrequent in the building trade. This is due to a number of factors which mostly revolve around the lack of significant and visible union organising in the sector. Some of the known unions that organise in the construction sector are the Building, Construction & Allied Workers Union, (BCAWU), Building Allied Mining and Construction Workers Union (BAMCWU). Mr Khumalo confirmed that he had never seen any union representatives visit workers at their workplaces. This lack of union influence is further exacerbated by 'extra-illegal' immigrants' lack of desire to be organised as they keenly choose clandestine lifestyles. The workers in my study did not belong to any union or worker organisation. They were not particularly keen on joining any as they associated these with strikes and thus wasting time they could be using to earn money. Strikes are thus seen as trouble seeking that do not really benefits any worker. Nevertheless the workers pointed out that they engaged in other subtle forms of expressing grievances. One of these forms of demonstrations was to work slowly. The impact of such actions also speaks not only to their 'real' skill but to their understanding of the value of that skill in leverage. However these were not a frequent occurrence as already stated. One employee stated that,

“We don’t really strike but the solution is ‘go slows’. We don’t really march to these streets....but others resort to tools down here and there if the money is not paid, and this only works if there’s few or none people who can complete the task you would have begun...if you are irreplaceable, it’s like art and the white man has no choice but to resolve the issue and pay the money.....it is like art where a painter cannot leave the job half done and the person who takes over won’t make it perfect. Unless if you are tiler or painter then there they replace you real quick and you lose”. [Mduduzi (worker), interview]

For these immigrant workers almost all disputes involve money as this is what matters the most for them. Subcontractors I engaged pointed out that they had never encountered any strikes in their workplaces neither had they ever had any encounters with unions. One subcontractor pointed out that unions hardly came into contact with subcontractors and main contractors ducked them by going to labour brokers. When I quizzed one subcontractor on his opinions of unions, he remarked that...

“Maybe unions do go to bigger companies than this one. Such companies can win tenders as big as 150 million and get many contractors under his tender. But unions are also at fault and most people don’t realise this, in most of union cases, they don’t visit sites to see how their workers/members work. They only listen when their members report and don’t verify by coming to sites. They only listen or take stories from one side. They should follow their clients and see their work places. What I see is that people are never fully at work every day, someone is always sick or something but that worker gets paid and even doctors are benefiting from such scams by writing fake letters”. [Mr Khumalo (subcontractor), interview]

Subcontractor Mr Khumalo, pointed out that although less frequent, disputes with workers were usually involved non-payment of wages or disgruntlement over wage amounts and workers usually responded on these by embarking on a tools down and sometimes though less frequently by wanting to demolish a building. Mandla, a small scale subcontractor who was in his sixth year in the business also narrated that sometimes they had difficulties with private clients and narrated how his fellow small scale subcontractor friend had a gun pulled out by a client on him when they had disputes over money. Another graphic narrative also involved a subcontractor and although I doubted the story they convinced me of its actuality.

“There is a white man who got his fingers chopped off by his workers over a dispute, he was a foreman I think. We call him “Sandlana” [“small hand”] now as he doesn’t have a hand” [Mduduzi (worker), interview]

Another example given was a tools down by a group of registered tilers and this incident shows the power behind numbers even if the workers are assumed not to be in control of any influence. It was a subcontract scenario, where the money came straight from Murray and Roberts. By downing tools they had an advantage because the employers had food and transport provided and workers were many, almost 500 workers. The subcontractors and main contractors thus could not simply and swiftly replace such huge numbers of people

“...Tools down... we once worked as registered tilers. It was a subcontract scenario, the money came straight from Murray and Roberts. By tools down we had an advantage because we had food and transport provided and we were many, almost 500 workers and they couldn’t simple replace such huge numbers of people...so it worked...as soon as the money came through we resumed working. [Dumi (worker), interview]

Despite the above examples of worker resistance that acts as illustrations of the agency of workers in the construction industry that exists despite precarious citizenship and unstable working conditions open forms of resistance were still difficult to carry out. Workers narrated how sometimes it was impossible to carry out strike action as the narrative below illustrates.

“Yes there are many cases like that.....sometimes even the employer runs away when its towards month end...and you hear that he has gone overseas without paying people’s wages. There is nothing that you can do (resistance, strike action) because even his property is closed off (complex), you can’t get access when he is not there and not being invited in. There has to be appointments. Even the security will know you from your working days there but when it’s time to go in they pretend as if they don’t know you. Some complexes use a code for you to gain entry and the only person who can give you that code will be that employer who ran away. At the end of the day you realise that you’ll be wasting your time and money if you can’t gain access to an employer’s residence and instead it’s better to use that time wisely marketing for new jobs...even transport money that you spend is a waste”. [Dumi (worker), interview]

“I also know a story of a white man who was a sub-contractor and the workers (about 10) discovered where he stayed, so they went there but they were refused entry. However they refused to leave until their employer called the police to chase them away...the police came but they refused to budge...until the police gave up...Finally he sold off his house at that complex to escape his employees. But they were South African employees. But there are relatives of the white man that remained and up to now they have private security guarding them and their children to school”. [Mduduzi (worker), interview]

The above examples show the agency of workers in the construction industry that exists despite precarious citizenships and unstable working conditions. It also links to the overall argument in this report which is that skill gives these workers leverage.

Labour broking also makes it difficult for workers to engage in open forms of resistance as they are employed by labour brokers and their connection to employers are cut down by labour brokers. Rather, labour brokers are their employers in this kind of set up. According to respondents this was because employees under a labour broker arrangement do not sign contracts with subcontractors or employers but with labour brokers. The arrangement also renders strike action useless in that when workers strike and do not report for work, construction companies will ask for more workers from labour brokers. The other reasons as given by my respondents were that companies do this so as to avoid unions. This was also another reason as to why most workers under labour brokers do not to join labour unions. Therefore employees are required to go strike at their own labour broker (where they signed a contract). I spoke to some employees who were directly under a labour broker and the firm that employed them only spoke to their labour broker in regards to any worker grievances.

Moreover other respondents concurred that it is very difficult for casuals to strike as most casuals are desperate and their end target is usually to become permanent workers, so it becomes difficult to seek both impressions and then strike at the same time. But other workers who had been casuals before also noted how strikes by permanent workers (if they were to happen) would instead only benefit casual workers. This is because if by any chance of strikes occurring, casuals would be brought on to work and keep the job going. Therefore in this same process casuals would further seek to become permanent workers at the expense of striking

permanent workers. However respondents also noted that this was another potential cause of conflicts between permanent registered employees and casuals. This is because during budding strike manifestations, permanent workers will come to perceive casuals as “sell outs” for working and rendering their protest action or tools down useless.

Kalleberg, (1989) cited in Kalleberg and Hewison (2012) contends that studying the employment relationship forces us to consider explicitly the interplay between structure and agency. Thus we need to understand how workers exercise agency both individually and collectively. Resistance is often more intricate than it is generally made out to be, and less obvious than commonly understood (Amoore 2005). It can be ambiguous since resistance itself is constitutive and reflective of, as well as embedded in, socio-cultural life (ibid). Amoore (2005) also observes that there is a tendency to emphasize more overt forms of resistance while overlooking others. It is thus important to note that resistance is not always clear-cut, and may blur into what can even appear as compliance. Thus most forms of resistance that immigrant workers in my study documented involved compliance and just being precautionary so as to avoid these sticky scenarios. When I quizzed them on other forms of disputes in the workplace Dumi stated that the only solution was to be cautious.

“Things like language...other employers especially white men are rough and they kick employees around. Employees noted that there was no immediate solution but the only way out was to avoid these things and to be very careful and precautionary”. [Dumi (worker), interview]

Although some immigrant workers I conversed with highlighted cases of threats and abuse in the workplace for example in the form of claps and abusive language their position was that they would never make use of legal recourse such as the CCMA or lawyers. The impressions given here was that CCMA and similar “court things” waste time for employees where they end up spending more productive time away from work and then losing money in the process. Workers thus avoid these things. Similarly workers avoided unions or worker organisations as a form of self-marginalisation. Instead the sentiment was that they would join labour organisations if only they assisted them in getting work rather than causing trouble in the workplace. When I interrogated if workers would actively choose to belong to any labour union or worker organisation so as to receive assistance with legal recourse the interest was only based on assistance with marketing for jobs.

“It’s very scarce....people don’t really do that sort of thing...Some people check on the internet and that’s where they market...there are agencies on the internet that people use to network for work in construction. These people have offices in town and they require that you come with your CV...it’s the same thing used by call centre people...even casuals are doing this sort of thing...I once called into career 24 and they have many categories and I checked into construction work...but it’s something that you join..” [Dumi (worker), interview]

6.9 Conclusion

Labour and migration accounts such as the one by the ILO have documented extensively on the links between undocumented immigration trends and ‘unfree’ labour arrangements sometimes even crudely referred to as contemporary forms of slavery. This study does not object these occurrences and arrangements and their prominence in exposing these unfair practices. However what guided this chapter and more of this research is that this kind of literature has generalised migration trends and the forms of employment relations that workers and their employers find themselves in. This section has thus attempted to show that migration trends are different for undocumented immigrants and individual cases and spaces of negotiability need to be explored more. According to Rogaly (2008, 1432) the damage of such let-downs with understanding ‘extra-legal’ workers, their workplaces and spaces of negotiability is on policy prescriptions “which do not reflect or give space to the interests migrant workers may have in keeping hold of a short-term tie to a particular employer, nor to the apparently small but often meaningful ways in which workplace arrangements may be subject to continual (re)negotiation by workers”. The harmonious relations highlighted above thus go against the norm when measured against other labour migration accounts.

The construction industry’s uniqueness to other industries must be noted. The industry is dominated by subcontracting and thus various scopes of sub-contractors where small scale informal unregistered ones exist and work alongside the big ones that observe some formality in the work processes. This means that the industry is also relatively easy to penetrate and become a subcontractor and thus an employer compared to other sectors. Zimbabwean immigrant subcontractors thus have a strong foothold in the sector where they readily give opportunities to their kin and fellow countrymen. Weak monitoring by the DHA encourages

subcontractors to maintain this trend. Workers and employers connected by kinship ties and country of birth are thus likely to observe more harmonious relationships in the workplace where low wages are covered up for by other forms of incentives. Even in arrangements where workspaces are not dominated by kinship ties, negotiations are critical. In these spaces of negotiation skill has also demonstrated to be a crucial aspect of leverage.

7 CHAPTER 7: CONCLUSION

7.1 Introduction

This concluding section of the report seeks to restate the main argument and the significance of the study. This argument is evaluated against the research question and the objectives that the report has sought to achieve. The report sought to explore how undocumented workers in the construction industry and their employers manage the employer – employee relationship in the absence of citizenship and (de facto if not de jure) labour rights for employees. As a path to address this, the research first described the main layers and divisions of the South African construction industry to set it apart from other employment sectors and set the tone for migrant worker experiences and narratives that guides the conclusions of this research. The next objective was exploring how undocumented immigrants experienced and navigated ‘illegality’ in the workplace. This objective links to the one that considers undocumented workers’ spaces of negotiation in the workplace. Thus after tying all the chapters together, my argument is that while ‘illegality’ is an issue in the literature, it is less of one in a sector where ‘skilled’ work is important. Thus this report argues against the tendency to associate migrant workers with precarity and hyper-exploitation and I have also illustrated the mechanism by which workers’ experiences vary, which are skill and kinship networks.

The research found a more complex picture of undocumented immigrants’ experiences which was nonetheless dominated by cordial and cooperative employer-employee relations. Skill gave undocumented workers more leverage and bargaining power to mediate against the divisions of labour and as a shield against excessive precariousness. Therefore by focusing on a subsector of the construction industry made up of Zimbabwean subcontractors and their employers enabled me to get a detailed picture of how labour relations take place in the absence of recourse to the law. Nevertheless so as to avoid the same trap of reproducing generalized undocumented immigrants’ worker experiences the conclusions drawn here cannot be applied to all contexts. However this research report is not simply adding nuances to the literature on migration, labour and precarity. Thus it is simply not that hyper-exploitation exists in some places, but I found a case where it does not. This study also illustrates something about exploitation and precarity as concepts. It points out that they are produced and mitigated through a range of processes and they are not categories that can be read off of any single factor

or even set of factors. Instead they are relational positions that are shaped by factors such as skill, kinship networks (and likely other factors) in addition to citizenship status, etc.

7.2 Research Conclusions

My initial plan for this study was to focus on undocumented immigrants' precarity, as this is highlighted by the literature on the subject. I expected to document narratives on victimhood, cases of hyper-exploitation in workplaces and antagonistic employer-employee relations. However as I started having conversations with my participants I realized that victimhood was the last thing on their minds. Their narratives and experiences revealed that their agency was very active and it seemed I was the one on a mission to label them as excessively precarious because of their 'illegality' statuses. I went through literature again, especially on contemporary migration trends and the terms 'slavery' and 'hyper exploitative' featured prominently (ILO, 2008; Lewis et al. 2014; Gleeson, 2010). Although I do not deny contexts, nuances and the existence of such 'slavery' forms of labour induced by occurrences like human trafficking, however the literature seemed to dwell less on nuances and different contexts that undocumented immigrants are involved in. I could not ignore such a research gap and my research objectives went through a significant revision. Instead of focusing and looking to extend on the already extensive literature and juxtaposition on 'illegal' migration, precarity and victimhood I decided to mostly focus and explore undocumented immigrants' spaces of negotiability at workplaces.

In conveying the main argument of this study, the research findings section had 3 interlinked chapters which were building up the argument which was fully expressed in the final chapter (chapter 6) on "spaces of negotiation". The first chapter in the findings (chapter 4) acted as a descriptor of the construction industry in South Africa. This construction overview chapter established the links to the overall argument of this report which is that skill gives all workers leverage and helps to mediate against exploitative labour relationships. It illustrated that despite all divisions within the construction labour hierarchy, skill seems to cut across them, and offers ways for workers to negotiate their own relations and security. The second chapter under findings (Chapter 5) focused on the ways in which 'illegal' immigrant workers experienced and navigated 'illegality'. The conclusion of this chapter which is that although 'illegality' has an impact on some aspects of undocumented immigrant workers' lives, this impact is not as much as made out in the literature.

I have argued that on the contrary and because of ‘skill’ and experience ‘illegality’ become blurred in the workplace and that this research report does more than just adding nuances to the literature on migration, labour and precarity. Therefore it is simply not a case of hyper-exploitation existing in some places, but I found a case where it does not. Chapter 6 explored in detail these spaces of negotiability, and revealed that skill and workplace kinship ties enable more harmonious than antagonistic workplace arrangements. Ethnic and kinship ties are an important overlooked aspect in the workplace and Thiel (2010) examines UK construction subcontractors and employment trends based on such ties that have significant impacts on creating cordial employer-employee workplace relations. Social networks based on kinship ties also enabled this researcher to be trusted enough to be welcomed in the world of undocumented immigrants and subcontractors where sensitivity around of ‘illegality’ makes such kind of research challenging to carry out. This buttresses the main argument that skill (and kinship ties in this instance) gives these undocumented immigrant workers leverage and not all undocumented immigrant workers are in precarious working conditions.

Rogaly (2008, 1432) has pointed out how failure to understand workplaces and spaces of negotiation is ultimately felt on policy prescriptions “which do not reflect or give space to the interests migrant workers may have in keeping hold of a short-term tie to a particular employer, nor to the apparently small but often meaningful ways in which workplace arrangements may be subject to continual (re)negotiation by workers”. Thus in light of the arguments made for the construction industry it is not always or necessarily cases where employers in the construction industry are operating on an ‘informal policy’ of hire and fire’ as espoused by Goldman (2003, 1; 12). The redundant ‘politics of sympathy’ (Rogaly, 2008) by well-meaning analysts and observers have also done more harm than good for undocumented immigrant workers. Bosniak (1991, 749) reasons that such biases with undocumented workers have indirectly yielded undocumented immigrant workers as real casualties up to the point where “support for enhanced restriction and enforcement is also expressed by some proponents of rights for undocumented immigrants, who view stringent border control measures as an indispensable part of any human rights program” Bosniak (1991, 749). Bosniak contends that “the theory is that to the extent that undocumented migrants are prevented from illegal entry or employment, they are protected from the forms of exploitation which characterise their status”.

Labour migration from Zimbabwe to South Africa is a constant feature and the DHA is not in a position to legalise each and every immigrant’s stay in South Africa. Immigrants’ reasons

for migrating (lack of jobs, hyperinflation, poverty, etc.) will not deter undocumented immigrants from accessing the labour market. As this study has shown, construction is one sector that presents such job opportunities for undocumented immigrants. Knowing the population statistics of undocumented workers in the construction is methodologically impossible but it is a significant population nevertheless. This significant population of undocumented workers cannot continue being overlooked by formal trade unions. Absence of recourse to the law is why many observers have concluded that undocumented immigrant workers are involved in hyper-precarious working arrangements and workplaces. Unions can find ways to fill this gap and mitigate such hyper-precarious and exploitative workplace situations for undocumented workers without threatening their livelihoods and existence in South Africa. Moreover it would seem that unions are irrelevant to undocumented workers because they do nothing about 'getting a job' as the study has shown. Thus if unions understood how to better engage with undocumented immigrants perhaps they would see that 'illegality' mattered less but skill offered workers more and so perhaps they could offer a 'service' whereby they strengthened workers of all categories to find work and move between jobs.

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APPENDICES

APPENDIX I:

Consent Form for Participation in Study

I, _____ am willing to participate in Thabiso Moyo's research study. I understand that there will be no direct benefit for me in participating in this study and that there are not likely to be any risks involved. I understand that participation is voluntary, there will be no benefits for participation, and I am free to withdraw from the study at any time.

I have been given sufficient information about this research project. The purpose of my participation as an interviewee in this project has been explained to me and is clear.

I have been guaranteed that the researcher will not identify me by name.

I have read and understood the Participant Information Sheet, my questions about participation in this study have been answered satisfactorily, and I am aware of the risks and benefits of participating in the study.

Signed: _____ Date: _____

Consent for Audio Taping of the Interview

(Anonymity will be ensured with recordings)

I _____ hereby give the researcher Thabiso Moyo permission to tape-record the interview.

Signed: _____ Date: _____

APPENDIX II:

Information Sheet for Participants.

Participant Information Sheet (Employee)



Thabiso Moyo
Private Bag X
WITS, 2050
754847@students.wits.ac.za
078 175 5941

Dear Participant,

I am a student at Wits University and for my Masters research I am conducting a study on how Zimbabwean migrant workers and their employers negotiate labour relations in the workplace. I am interested in understanding your workplace experiences and how you negotiate for better working conditions and solve disputes in the work place as part of my research.

Participation involves making yourself available at a time and place of your preference for an in-depth face to face interview that I expect will last approximately 45 minutes to an hour. If you are interested and available, a further one to two interviews of similar duration would be helpful to me, but only if you are available and would like to.

I would like, with your consent, to record the interview. This is for no other purpose but ensuring that I would be able to more accurately capture all the information. I will ensure that I send you an electronic link to my research report once it is deposited in the Wits university library and made public. I cannot guarantee that you will agree with my representation of you.

Participation is entirely voluntary. You are free to decline to participate in the study without any consequences. Participation will not be beneficial to you in any way. There will be no compensation, nor can I guarantee control of the rest of the activities. You can refuse to answer any questions, and to end the interview and your participation at any time, without any consequences. If you choose to participate, you will be assisting me, and I really appreciate it.

If you are willing to participate, I will be most grateful. You are welcome to contact me at the number listed above, and/or to contact my academic supervisors at the university at any time about this research: Dr. Ben Scully, tel: 0117179999, ben.scully@wits.ac.za and Prof. Bridget Kenny, tel: 011-717-4445, Bridget.Kenny@wits.ac.za

Yours sincerely,
Thabiso Moyo

Participant Information Sheet (Employer)

UNIVERSITY OF THE
WITWATERSRAND,
JOHANNESBURG



Thabiso Moyo
Private Bag X
WITS, 2050
754847@students.wits.ac.za
078 175 5941

Dear Participant,

I am a student at Wits University and for my Masters research I am conducting a study on how Zimbabwean migrant workers and their employers negotiate labour relations in the workplace. I am interested in understanding your workplace experiences and how you and your employees negotiate for better working conditions and solve disputes in the work place as part of my research.

Participation involves making yourself available at a time and place of your preference for an in-depth face to face interview that I expect will last approximately 45 minutes to an hour. If you are interested and available, a further one to two interviews of similar duration would be helpful to me, but only if you are available and would like to.

I would like, with your consent, to record the interview. This is for no other purpose but ensuring that I would be able to more accurately capture information. Your participation will be kept confidential. You will therefore not be identifiable in any way. I will ensure that I send you an electronic link to my research report once it is deposited in the Wits university library and made public. I cannot guarantee that you will agree with my representation of you.

Participation is entirely voluntary. You are free to decline to participate in the study without any consequences. Participation will not be beneficial to you in any way. There will be no compensation, nor can I guarantee control of the rest of the activities. You can refuse to answer any questions, and to end the interview and your participation at any time, without any consequences. If you choose to participate, you will be assisting me, and I really appreciate it.

If you are willing to participate, I will be most grateful. You are welcome to contact me at the number listed above, and/or to contact my academic supervisors at the university at any time about this research: Dr. Ben Scully, tel: 0117179999, ben.scully@wits.ac.za and Prof. Bridget Kenny, tel: 011-717-4445, Bridget.Kenny@wits.ac.za

Yours sincerely,
Thabiso Moyo

Appendix III

Participant information

Interviewee (Pseudonym)	Position/s	Place	Date of Interview
Dumi	- Casual Worker - Skilled Permanent worker	Johannesburg	23 October 2016
Mduduzi	- Labour broker worker - Skilled Permanent worker	Johannesburg	18 December 2016
Bukhosi	- Skilled Permanent Worker	Johannesburg	24 November 2016
Thuthukani	- Skilled Permanent Worker	Johannesburg	August 2013
Dalumuzi	- Skilled Permanent Worker	Johannesburg	August 2013
Sibusiso	- Skilled Permanent Worker	Johannesburg	26 November 2016
Sizwe	- Skilled Permanent Worker	Johannesburg	August 2013
Mandla	- Skilled Permanent Worker - Subcontractor	Johannesburg	24 October 2016
Mr Khumalo	- Subcontractor	Johannesburg	19 January 2017
Mr Ndlovu	- Subcontractor	Johannesburg	28 January 2017

Appendix IV

Interview schedule

FOR EMPLOYEES

The interviews will get past the formality of the questions to having a conversation where examples and the informal processes can be accessed. I am going to ask people to tell me things like...

1. How long have you been in South Africa?
2. Can you tell me how you found / got this job?
3. Who gives you your job each day—who instructs you, or supervises you?
4. How do you know what to do each day?
5. What happens if you make a mistake, have you ever had a problem?
6. What can you say about the conditions at your workplace?
7. What can you say about your employer's traits?
8. How is the relationship between your employer and yourself?
9. Do you know about your rights as a worker in South Africa?
10. Do you know about any Unions, Bargaining Councils?
11. Have there been any strikes or disputes at your workplaces?
12. How do you solve disputes between yourself and employer in the workplace?
13. Are these solutions enough in solving disputes and what if you do not get what you want?
14. Will it be ok with you to conduct another follow up interview if I have more questions or need clarification?
15. Any question, clarification or enquiry that you have for me?

FOR EMPLOYERS

1. Can you describe your job and responsibilities?
2. Can you map out the work process?
3. Which parts in this process might be subcontracted?
4. How do you get contracts?
5. How and where do you find workers?
6. Are there any undocumented workers in your field of work?
7. How does (if it does) a worker's illegality status affect your job environment?
8. Do you employ any casuals?

9. How do you determine pay, work hours, sick leave days etc in the workplace?
10. How do you handle disputes if they arise?
11. What do you expect from employees in the workplace?
12. How do you compare South African workers and non- South Africans in the workplace?
13. Do you know of any labour laws or the CCMA in South Africa?
14. What do you think about these legal frameworks and the department of home affairs?
15. Would you agree to do another follow up interview if the need arises?
16. Any questions or enquiries for me?