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Title: *Emerging political subjectivities in a post migrant labour regime: Mobilisation, participation and representation of foreign workers in South Africa (1980-2013)*

By: Janet Munakamwe

A THESIS submitted to the **FACULTY OF HUMANITIES**, at the **UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG,** in fulfilment of the requirements for the degree of **DOCTOR OF PHILOSOPHY** i**n Migration & Displacement Studies**

Supervisor: Professor Aurelia Segatti

Co- Supervisor: Professor Jo Vearey

Johannesburg: May, 2018

DECLARATION

I, Janet Munakamwe, declare that this is my own unaided work submitted to the Faculty of Humanities, University of the Witwatersrand for the Doctor of Philosophy degree (Migration and Displacement). It has not been submitted before for examination in any other university. However, part of my thesis appears in my previous publications on 'ZamaZama'; the most recent one being a book chapter published in 2017 entitled:

1. Munakamwe, J. (2017). "ZamaZama livelihood strategies, mobilisation and resistance in Johannesburg, South Africa" in Wakarindwa, T. and Nhemachena, A. (Eds) (2017). *Mining Africa: A Critical Multidisciplinary Interrogation of Theories and Practices.* Bamenda: Langa Publishers (Langaa RPCIG). Pages 104 -132. ISBN-10: 9956-764-32-9 ISBN-13: 978-9956-764-32-7©
2. Munakamwe, J. (2015): Review of Costello, C. and Freedland, M. (eds.) (2014) Migrants at Work: Immigration and Vulnerability in Labour Laws by Global Labour Journal: https://escarpmentpress.org/globallabour/issue/view/246
3. Munakamwe, J. (2015). "The interface between the legal and illegal mining processes: unpacking the value chain of illegally mined gold" "Sharing the Gains – Containing Corporate Power." *10th Annual Global Labour University Conference,* FL-CIO Washington, D.C. headquarters. 30 September to 2 October 2015.
4. Munakamwe, J. (2015). ZamaZama Livelihood Strategies and Resistance to policy brutality in Westrand, Johannesburg. 22 Annual SASA Congress. Contours of Violence. 28June -1July 2015. Johannesburg: University of Johannesburg.
5. Munakamwe, J. 2014. Foreign ZamaZama: Not everything glitters in Egoli. South African Labour Bulletin. Vol. 38, No. 1
6. Wilderman, J.R., L, Lenka, G.L., Morris, Munakamwe, J, and Riabuchuk, A. (2016). Worker Advice Offices in South Africa: Exploring Approaches to Organising and Empowering Vulnerable Workers. Johannesburg: Chris Hani Institute (CHI) and NALEDI. [N.B. I specifically contributed a section on migrant workers and worker advice offices, which I also draw from in my thesis]

Signed… … …… ……

May 2018

Abstract

The study aimed to examine the key factors shaping political subjectivities amongst foreign workers in South Africa between the period 1980-2013. It builds on the 1970s studies of the migrant labour system (Wolpe, 1972, First et al, 1972, Arrighi, 1973, Legassick, 1975; Burawoy, 1976) and raises new theoretical debates on how political prejudices have shaped mobilisation, participation and representation of foreign workers today. In particular, the thesis interrogates trade union responses to foreign labour, including foreign workers' position and receptivity to unions and how state crafted laws and policies shape political subjectivities among foreign workers. Two unions; the South African Commercial & catering Workers Union (SACCAWU) and National Union of Mineworkers (NUM) were chosen because of the high density of foreign workers in their sectors and again, the sectors have a historical trajectory in attracting foreign labour to South Africa. While unions' responses are not homogenous, the study revealed that the two aforementioned unions somehow elicit a more optimistic approach towards organising foreign labour. Through a critical analysis of the class content of workers, migrancy and mobilisation, the study interrogated two grand theories propounded by Marx and Gramsci. The findings revealed that the Marxist theory is fixated on class and thus, views this variable as a mutually uniting force and as underpinning solidarity among the subaltern. In contrast, Gramsci's (1971) concept of hegemony, in which he argues that it reproduces domination juxtaposed with the theory of intellectuals, further divide the proletarian. In his theory, Gramsci (1971) elevates the conversation beyond class to include the concepts of power and hegemony as essential to explain workers' struggles - as he also postulates that civil society stands as an alternative voice to workers outside of organised labour, which has since abandoned their socialist agenda. Furthermore, Gramsci acknowledges the role played by employers in creating passivity among workers and this is reflected in this study in which the prerogative to monitor foreign workers in the country solely rests on employers. This policy framework emasculates foreign workers' agency with the ultimate result of weakening bargaining power while promoting patronage. In essence, Marxist theory fails to acknowledge that the working class as a social category is not homogeneous and as such, our analysis needs to rethink other factors that shape political subjectivities and mobilisation in contemporary society. In a way, Gramsci's theory persuades us to appreciate the fact that economic needs are not the only stimulant to mobilisation of workers as there exist other factors such as ideology, political, social, gender, culture and race. In light of this, my study shows that besides 'bread and butter' issues, at the

core of foreign workers struggles is the issue of documentation. Following, Fine (2014), the study found out that trade union prefer the Universalist approach to organising foreign workers thus neglecting the particularistic view which advances the notion that immigrant workers have their own particular needs. Furthermore, as the study shows, unions are still ambivalent about including and organising foreign workers, drawing more on state crafted laws and policies that emphasise 'legality' in relation to documentation and permission to work in the country. Yet, foreign workers are keen and ready to join unions although some (in particular highly skilled foreign workers in the hospitality sector) are caught up within the liminal phase (see Underthun, 2015) as a result of job mismatches, such that they believe they could only join unions once they secure employment in the sectors that are in synergy with the skills they possess. Drawing from unions' rhetoric of a Universalist approach to organising foreign workers, there is however, overwhelming evidence from the study to suggest that restrictive immigration laws and policies in their current form point to lack of commitment by unions in influencing development of immigration policies which are favourable towards equal full participation of all workers. Here, we witness a new consensus and a continuation of the politics of draconian exclusionary immigration laws and policies - tracing back to the contract labour system into the post migrant labour regime. Thus, I argue here that failure to address the 'special' needs of foreign workers in accordance with the particularistic view undermines all unions' efforts and strategy to mobilise all workers falling outside of standard employment relations. Instead, this further point to hypocrisy as unions seek legitimacy in terms of compliance to the principles of international solidarity with the ultimate goal to discourage self-organising among foreign workers and alternative modes of representation. Emerging forms of worker representation are associated with the leftist socialist agenda which has since been abandoned by traditional unions since the introduction of neoliberal policies which have resulted in workplace restructuring, retrenchments and shrinking employment opportunities. Nevertheless, against all these challenges, as the study revealed, foreign including local casual workers (Dickinson, 2017), still exercise their agency and have begun to self-organise and seek other alternative models of mobilisation and participation in the workplace to fill-in the representation gaps left by unions. This has been facilitated at large by social networks and emerging social media platforms, migrant rights organisations including other civil society collectives, which in a way, have forged new forms of solidarity among local and foreign workers based on identity.

Key words: foreign labour, migrancy, political subjectivities, agency, mobilisation, participation, representation, solidarity, liminality, Universalist and particularistic approach to worker organising.

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First and foremost, I would like to thank the Almighty God for protecting me over the years and for making it possible to produce this work.

I am indebted to many people who made it possible as I battled through the various and often difficult stages of my academic life. In my culture, there is an adage that says: "When a child is born, they belong to the entire village!" indeed, my academic achievement would be extended to all those people who contributed in various ways towards my success.

I wish to express my uttermost gratitude and appreciation to my supervisor, Prof Aurelia Segatti, for her invaluable constructive criticism and academic advice and for relentlessly encouraging me to 'think outside of the box". Indeed, when we began this doctoral work, I was more of a 'tabula rasa' after spending some time away from academia. She constantly reminded me to 'tone' down from normative activism to academic writing!

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My ambition to pursue doctoral studies began with the Global Labour Masters Programme (GLU) – Labour & Development Course and inspired in particular by the writings of Prof Ruth Milkman through her popular book*: L.A. Story: Immigrant Workers and the Future of the U.S. Labor Movement.* This was further reinforced by the candid response by Prof Webster to Prof Milkman's influential book and the inspiring seminar on labour migration delivered through the GLU programme by both Prof Webster and Prof Noor Nieftagodien.

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Dedication

To all fallen ZamaZama who perished underground toiling to earn a living, I say may your dear souls rest in eternal peace. This thesis took long to complete yet some of my respondents have already departed from this world and thus will not be able to see the fruits of their contributions. I promise to further your struggles by ensuring that part of my findings find space and ultimately influence the policy development process aimed at economic justice including immigration policy reforms!

To **Bra Hugh Masekela**, thank you very much for appreciating the role of migrant labour in South Africa through your seminal song: ***Stimela***. May your dear soul rest in eternal peace!

The Soviet had to develop out of an organisation that bound workers together, regardless of their union, regardless of whether they were even in unions, around the point of production, an organisation that united their struggles with those other workers linked to them in the productive process, an organisation that could express their growing awareness of their unity, strength and ability to control production ***(Gramsci cited in Harman, 2006:5)***

ACRONYMS/ ABBREVIATIONS

ACMS	African Centre for Migration & Society (ACMS)
ACTRAV	ILO Bureau for Workers' Activities
ADF	African Diaspora Forum
ADWN	Africa Diaspora Workers Network
AMWU	African Mine Workers Union
ANC	African National Congress
BAJI	Black Alliance for Just Immigration
CCMA	Commission for Conciliation, Mediation and Arbitration
CHI	Chris Hani Institute
CoM	Chamber of Mines
CoRMSA	Consortium for Refugees and Migrants in South Africa
COSATU	Congress of South African Trade Unions
CGIL	Italian General Confederation of Labour
CGT	Confederation Generale du Travail Unitaire
CFDT	Confederation Fracaise Democratique du Travail
DHA	Department of Home Affairs
DITSELA	Development Institute for Training, Support and Education for Labour
DOL	Department of Labour
DRC	Democratic Republic of Congo
ESA	Employment Services Act
FEDUSA	Federation of Unions of South Africa
FRELIMO	Frente de Libertação de Moçambique (Mozambique Liberation Front)

GEAR	Growth, Empowerment and Redistribution Plan
ILO	International Labour Organisation
ILS	International Labour Standards
IOM	International Organisation for Migration
ICU	Industrial and Commercial Union
JIPSA	Joint Initiative on Priority Skills Acquisition
LHR	Lawyers for Human Rights (LHR)
LRA	Labour Relations Act
MDA	Mineworkers Development Agency
MNR	Migrants' Rights Network
MPRDA	Mineral and Petroleum Resources Development Act
MROs	Migrant Rights Organisations
MWASA	Migrant Workers Association in South Africa
NACTU	National Council of Trade Unions
NALEDI	National Labour, Economic and Development Institute
NUM	National Union of Mineworkers
PAC	Pan Africanist Congress
RDP	Redistribution and Development Programme
SADC	Southern Africa Development Council
SAMA	Southern Africa Miners Association
SAQA	South African Qualifications Authority
SACOLA	South African Committee on Labour Affairs
SADC	Southern African Development Community
SAT	Southern African Trust

SWAMMIWA	Swaziland Migrant Mineworkers Association
TEBA	The Employment Bureau of Africa
UNHCR	United Nations High Commission for Refugees
VWTT	Vulnerable Workers Task Team
WAOs	Worker Advice Offices
ZAPU	Zimbabwe African People's Union
ZANU	Zimbabwe African National Union
ZIWUSA	Zimbabwe Isolated Women in South Africa (ZIWUSA)

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Chapter 1

1.0 Introduction to the study

This study represents a starting point for contributing towards academic gaps in literature on the nexus between labour and migration from a standpoint of political subjectivities. Drawing on structuralist migration theory as well as on some aspects of transnational theory, the study's ambition was to document the factors contributing to the shaping of foreign workers' political subjectivities within the context of workplace restructuring and labour's deregulation. While the study focused on understanding the making of mobilization, participation and representation from a historical perspective, it also examined the more contemporary issues related to the manner in which work-related identities challenge nationalist definitions of citizenship thus shaping political subjectivities. Most importantly, the study demonstrates foreign workers' agency in spite of inhibitory state crafted policies in particular, the disjuncture between immigration and labour laws and policies.

Furthermore, the study also revealed how the changing migration and recruitment trends have somehow displaced the class struggle from the factory gates where the mass of workers were organised collectively (Seidman, 1995), towards precarious employment contracts which promote competition while dividing worker solidarity. In other words, workers have become individualistic as a result of a high wave of job insecurity and competition brought about by globalisation and this has deleteriously impacted on mobilisation. Workers are fighting each other as they compete for jobs resulting in xenophobic attacks and at times discrimination based on nationality, citizenship or employment contracts as discussed in later chapters. Yet, we understand that during apartheid Black workers forged unity regardless of nationality as they fought hard to dismantle the system (see Von Holdt, 2002). In her book, *Gold and Workers: A People's History of South Africa (1886 -1924)* Callinicos (2014), demonstrates how the history of mobilisation trajectories among African miners (regardless of nationality) could be traced back to African Mineworkers Union (AMWU) which was formed in the 1940s and "heroically managed to organise 80, 000 Black miners, closed in compounds, to go on strike in 1946" (2014:iv). It is within this context that this study attempted to understand the role of migrant labour and mobilisation trajectories of foreign workers in South Africa from the contract migrant labour regime to the post-migrant labour regime (1980 -2013).

Numerous studies have been conducted by geographers, historians, economists, and sociologists in the field of migration in South Africa in the 20th century. In the 1970s, Wolpe (1972), Arrighi (1973), Legassick (1974), Burawoy (1976) provided seminal analyses of the

role of migrant labour in sustaining capitalism through unpaid social reproduction borne by countries of origin (Arrighi, 1973; Burawoy, 1976). In their analyses, all posited that mining is labour intensive such that business had to hire cheap migrant labour from neighbouring countries in order to meet the demand by mining companies. However, little or no attention has been given to how labour migration relates to the construction of political subjectivities among foreign workers although aspects of mobilisation and participation of mine workers in general were somehow documented. Whilst mostly invisible and poorly documented, foreign workers, especially Basotho miners, have played a very significant role in the struggles for miners' rights in the 1980s and 1990s. Yet, far less is known of how this happened or how the political subjectivities of foreign workers have developed over the years.

The study takes 1970s studies of the migrant labour system as its point of departure and provides a fresh analysis of the transformation of the system and the impact of this on contemporary power relations and political subjectivities in the workplace. In particular, it presents ambitions to analyse how the unregulated post-migrant labour regime has impacted on mobilisation, participation and representation of foreign workers in post-apartheid South Africa which is currently marred with xenophobia discourse. Understanding the migrant labour system as documented in the 1970s and its transformation and reshaping in the past two decades helps us understand the mobilisation trajectory pursued by foreign workers and their variations over time. The analysis was done through case studies of two sectors namely mining and hospitality with a combination of documentary analysis and ethnography, involving shadowing and prolonged participant observation and underpinned by life histories and key informant interviews. The aim was to produce detailed and rich data on the analysis of mobilisation, participation and representation of foreign workers in South Africa in a post migrant labour regime.

Existing studies maintain that labour migration is gradually increasing in a more complex manner albeit complexities associated with a decline in recruitment patterns (Taylor, 1981; Allen 1993; Crush, 1995) in traditional sectors like mining over the years. While recruitment of foreign workers in the mining sector has dwindled, still nationals of several countries within the region are over dependent on remittances such that unlike during the contract migrant labour system, which was often facilitated by countries of origin during apartheid, informal, individualistic and clandestine migration has become rampant. Further, sending countries have not addressed the issue of job creation and are also still very dependent on remittances and this contributes to the centrifugal discourse.

South Africa, as a key hub for immigrants on the continent, has developed and benefitted immensely from foreign labour in various ways (See de Vletter, 1998; Sachikonye, 1998). While foreign workers contribute profoundly towards South Africa's economy, they are however deprived of their labour rights by state crafted policies; and at the same time, the discourse of vulnerability and acquiescence in a contradictory manner guide trade union responses and attitudes towards foreign workers. On the one hand, unions sincerely acknowledge that foreign workers are vulnerable and on the other hand, they stereotype them as being passive and submissive to the dictates of capitalism by undercutting wages yet all this is because of a representation gap (see Webster et al, (2009). However, when analysing trade union responses to migrant labour, it is important to consider country dynamics such as migration and labour laws. South Africa has a relatively long history of hosting immigrant communities amongst African countries, although few studies explicit to mobilisation of immigrant workers have been conducted. Much of the literature on immigrant worker organising is largely based on Western experiences such as case studies based on the contexts of United States (see Milkman, 2006; Milkman et al, 2010) and Britain (Bogg and Novitz 2014; Alberti, 2015). This study interrogated these dynamics from a global south perspective in an attempt to understand the various alternative models of mobilisation, participation and representation available to foreign workers as the majority find themselves outside of unions.

Various studies on migration, as argued by Fakier (2009) tend to overlook the class location of foreign workers. In contrast, they associate migrants with the discourse of vulnerability and docility and by so doing, undermine their agency and power (see Ochs, (2006). Stereotyping and labelling immigrants as passive, overshadows the various underlying factors which emasculate them such as restrictive immigration laws and capitalist society in which they are subordinated to, in the same manner as their local counterparts. In a way, such perceptions somehow have the potential to divide solidarity as workers do not have unity of purpose based on class and tend to pave way for divisions emanating from citizenship, which pave way for xenophobia. Thus, as the study demonstrates, the working class is not homogenous but comprises of various segments along gender, race, ethnicity, nationality and most recently employment contracts like casual, outsourcing and temporary (see Munakamwe and Jinnah, 2015) making it difficult to find common ground and interests (see Fakier, 2009) to mobilise them as subaltern in struggles against the ruthless capitalist system in which they are entangled. In South Africa, such divisions have manifested themselves in the form of xenophobia where the locals blame migrants for taking away their jobs and also

for not joining them in their everyday workplace and community struggles. In light of this, Gramsci's Theory of Hegemony stands out as the most appropriate framework for analysing the contemporary workforce. This is because it takes into account the complementary role which civil society plays in its attempt to ensure a level playing field for immigrants in as far as labour rights are concerned. In addition, Gramsci provides a critical analysis of the class character of workers from an international perspective as he emphasised that:

> To be sure, the line of development is towards internationalism, but the point of departure is "national" – and it is from this point of departure that one must begin. Yet the perspective is international and cannot be otherwise. Consequently, it is necessary to study accurately the combination of national forces which the international class [the proletariat] will have to lead and develop, in accordance with the international perspective and directives [that is of the Comintern]. The leading class is in fact only such that it interprets this combination – of which it is a component and precisely as such is able to give the movement a certain direction, within certain perspective (Prison Notebooks/ Gramsci: 240).

From the statement above, it is discernible that international solidarity of the working class is central to struggles of workers as a social group although this needs to begin at national level. This point is reflected in my study whereby trade unions would rather prioritise rendering solidarity outside of the borders (see Hlatshwayo, 2017) yet they ignore foreign workers who are already within the country. Very often as we shall see in Chapter 7, trade union solidarity work is donor driven or underpinned by global union federations (GUFs) which encourage union-to union-solidarity while paying little attention to worker-to worker solidarity or union –to foreign worker solidarity. As a result, traditional unions still perceive immigrants as being unorganisable without reflecting on themselves and other underlying structural factors which deter mobilisation.

1.1 Background / Context

Labour migration is not a new phenomenon in South Africa and the southern African region; and such history of labour migration in a way shapes today's movement of workers across borders. To fully understand the key question under investigation in this study, it is important to interrogate the concept of migrant labour system in its historical and contemporary context. According to Jooste (1970):

> The need for foreign labour to sustain a rapidly growing agricultural economy was experienced in Natal during the latter half of the 19th century. Migrant labour could not be recruited in the Zulu territories, and a scheme whereby contract workers could be recruited in India was rejected by the Legislative Council in 1858. However, by 1859 the Legislative Council agreed to the plan to obtain workers from India. The first group of 341 contract workers arrived the following year (1970:57)

It is clear from the above statement that the first sector to attract foreign labour into South Africa was agriculture which attracted labour from India. This decision could have been prompted by the fact that the SADC region's economy was grounded on agriculture which is labour intensive such that workers from other countries were fully employed in their own countries by the British settlers. Again, this period also coincided with the discovery of minerals such as diamond in Kimberly and gold in the Witwatersrand such that migrant labour rushed to the mines where there were lucrative wages compared to working on the farms (see Allen 1993). In support of this, Nel and Rooney (1993) document that during industrialisation in the 19th century, South Africa first hired skilled migrant labourers from Europe especially the United Kingdom who worked in the mines as artisans. As Jooste (1970) puts it:

The gold mines, for example were initially developed by foreign White labour, and subsequently by Afrikaner workers, but by the end of 19th century, the industry was confronted with the problem of vanishing profits which resulted in a search for cheap labour and indentured labour from China was hired, and by 1905 there were 50, 000 of them (970:58)

The discovery and opening of more gold mines meant that more labour, especially low-skilled from within the region especially territories north of the Limpopo were recruited through agencies - as gold mining proved to be labour intensive. In response to the demand for migrant labour, the apartheid government ensured the construction of road and rail infrastructure which were meant to support mobility of mineworkers, equipment and produce within the region. Accordingly, for instance, the Witwatersrand Native Recruiting Agency (WNLA) fleet of airplanes was used as the main mode of transport to ferry low skilled foreign workers from villages in Malawi to South Africa (Pirie 1993). Labour migration within Southern Africa is a key feature in the region and has increased due to the inevitable forces of globalisation (see Sachikonye, 1998). Migrant skilled labour was also hired from

Asian countries like India and China, though such workers were paid at a rate of unskilled migrant labourers (Nel and Rooney, 1993). Such practices of different pay for the same amount of work were some of the defining characteristics of the migrant labour system.

The migrant labour regime was a system established by the apartheid government to control and manage cross border labour migration through government-to-government agreements in South Africa during apartheid (see Crush 1997). It was characterised by closed contracts, deferred pay, corruption, racial double-standards and special privileges for certain employers, such as for example, commercial farmers and mine owners (Reitzes, 1998, 1995a; Dolan, 1995; Sinclair, 1996; Crush, 1998 a, b). In his analysis, Arrighi (1973) asserts that the migrant labour system and particularly the disjuncture between maintenance and reproduction costs (see Burawoy, 1976) allowed the enormous gains of the South African mining sector, and that in fact the homelands and neighbouring countries subsistence farming subsidised the sector by allowing for workers' unpaid reproduction over generations. The segregationist apartheid state administration and policies played a critical role in ensuring "the sophistication and reproduction of this system over time" (Segatti & Jinnah, 2013; see also Burawoy, 1976). The reproduction of the system was thus ensured at a fraction of the costs that reproduction would have entailed had it taken place on production site (see Fakier, 2012). Social reproduction which subsidised capital and the apartheid state was sustained through subsistence farming undertaken by migrant miners' families in the Bantustans or countries of origin (Wolpe 1972; Arrighi 1973; Arrighi et al. 2010; Burawoy, 1976; Fakier, 2012). Indeed, the legacy of the migrant labour regime has contributed to the proletarianisation and underdevelopment including structural inequalities experienced in the Southern African region today (see Arrighi et al. 2010; Crush 1997).

On a different but related note, Simelane and Modisha (2008) argue that:

> labour migration in Southern Africa was a class project aimed at proletarianisation of Africans which was never completed since the established modes of livelihood, such as subsistence farming were never completely destroyed (2008: 3).

As mentioned earlier, the contract migrant labour system was inhumane in numerous ways such that the Mandela government in collaboration with the National Union of Mineworkers (NUM) was the first to attempt to "humanize an inhumane and unjust labour system" by offering amnesty in the form of permanent residence to those mineworkers who had worked on contract for 10 years or more and had become undocumented as a result of unemployment

due to retrenchments (SAMP 1997:11). The first amnesty offer was made from November 1995 to March 1996 for those miners who had worked for 10 years and the 2nd was made in June 1996 and later extended to the end of November 1996 for those who had worked for at least five years (see De Vletter, 1998).

While Mozambique has been the key labour-sending country to South African gold mines from inception of the migrant labour to the mines until the 1970s (de Vletter, 1998), current statistical data shows that the numbers have plummeted over the years. However, such policies tend to overlook the fact that some ex-foreign miners would have acquired loans or accumulated debts in their countries of origin still hoping to continue with their contract jobs as revealed by some respondents in the study. In support of this, Crush and James, (1995) posited that some foreign miners were keen to settle permanently in South Africa although the majority still preferred to retain their home base in their country of origin (Crush and James, 1995:220).

The 'post migrant labour regime' is the type of unregulated migration flows that have come with the democratisation of South Africa (see Crush 1997; Simelane and Modisha 2008). Data shows clearly that recruitment of formal foreign migrant labour has declined in a post-apartheid South Africa (Allen, 1992; Crush & Williams, 2010; Budlender 2013: Forrest 2013). The post migrant labour system is characterised by the co-existence of the continuation of the old contract system (albeit under more precarious conditions) alongside employment in all the other sectors under a variety of conditions (Jinnah and Segatti, 2013). This is exacerbated by workplace restructuring resulting in flexible, precarious employment relations (casual, subcontracting, temporary and labour broking), proliferation of the informal economy, which present new challenges to unions. Furthermore, the post migrant labour regime is characterised by remarkable shifts in recruitment of foreign labour in the mining sector. Exiting data reveals a decline in foreign labour in contemporary South Africa (Crush & Williams, 2010; Budlender 2013: Forrest 2013). For example, new policies aimed at redressing historical inequalities in the mining sector such as the Mining Charter emphasise the hiring of local labour (see Forrest, 2013: Mujere 2015). As such, incentives were introduced to encourage mining companies to recruit locally and at the same time recruitment fees for locals were lowered as part of the process to eradicate migrant labour thus creating a new social order (Crush, 1995:14). Accordingly, de Vletter (1998) notes significant changes among the contemporary workforce in terms of age, work experience and career orientation. At the same time, informal labour migration continues to take place and could very well have

become a much larger share of all labour migration to South Africa. This major shift necessarily has an impact on the mobilization of foreign workers.

This brief background on the history of migrant labour system in general and the post migrant labour regime in particular, is critically significant as it assists us to situate our understanding of migrant labour and how it relates to mobilisation, participation and representation of foreign workers at different political and economic stages of workers' struggles in South Africa today. As empirical data gathered shows, there is evidence that the manner in which this system has developed makes it difficult to mobilise workers, whose job security is threatened by global competition and in most cases by short-term fixed contracts. Not only have contract jobs dwindle for foreign workers and these contracts become more precarious than before, but the vast majority of other migrant workers outside of the mining and hospitality sector, are employed outside of any specific protection framework, other than South African legislation such as the national Constitution, Labour Relations Act (LRA) and Basic Conditions of Employment Act (BCEA).1.3 Research Topic and Questions.

The broader question examined in this study was to determine the key factors shaping political subjectivities among foreign workers (or its lack / failure) through an analysis of mobilisation, participation and representation. Further, the dissertation investigated effects of the shift in migrant labour regime on the political subjectivity of foreign workers in South Africa in the period 1980-2013.

1.1.1 Sub-questions

Deriving from the central question stated above, a set of sub-questions reinforced our understanding of the role played by foreign workers in workers struggles and how this relates to citizenship. Andrijasevic and Anderson (2009) argue that:

> Key to our understanding of contemporary migration is the broadening of scholarly analysis to theorise the making of new migrant political subjectivities and in coming to understand the role migration plays in current conflicts around transformation of borders, labour and citizenship inclusion and exclusion of migrants particularly interested in the transformation from subject to citizen through the act of claiming rights (2009:1).

The concept of citizenship is therefore fundamental to our understanding and analysis of the link between labour migrancy and political subjectivities. To elucidate this point, Barchiesi (2011) revealed that in a survey conducted in Pretoria in 2009, the majority of respondents

favoured the deportation of all immigrants, legal and illegal, and one–third recommended that even South Africans without productive employment be stripped of their citizenship and expelled from the country (2011:249). Central to this study is the need to attempt to understand how foreign workers' experiences are constituted along citizenship lines and how this has (re) produced political subjectivities (see Barchiesi 2011; Hayem, 2013). In particular the study aims to answer the following questions:

- What is the **relationship between migrancy and political subjectivity** particularly in relation to ethnic, national and political identification? How **do foreign workers perceive themselves in relation to local workers** and vice versa and how does this shape their mobilisation, participation and representation?

The study also interrogated questions related to the state, unions and business and how they have responded to foreign labour. The subsequent questions were posed:

- How have **historical shifts in labour supply, recruitment strategies and production processes** of South Africa influenced foreign workers' identities over time?
- In particular, how have the **South African state policies / legislation** categorized and conceptualized foreign labour and how has this shaped policy development and class – based representation?
- What have been the **patterns of mobilisation and representation** of foreign workers by **trade unions in South Africa** in the period 1980-2013?
- What **strategies have been developed by business** in its use of foreign labour and how has this produced the kind of political subjectivities that have developed amongst foreign workers?

Finally, literature has revealed that solidarity amongst the oppressed is necessary for mobilisation purposes. Therefore, one key question posed was:

- What **factors promote or inhibit local / foreign workers collective action** and how does this influence mobilisation and representation of foreign workers?

1.1.2 Justification of the period 1980-2013

The choice of the period 1980-2013 was reached drawing on an analysis of the history of South Africa's industrial relations. The period begins with the proliferation of African trade unions in the early 80's, followed by the repeal of racial criterion in immigration legislation

in 1986. The mid 1980's experienced an upsurge in African workers' militancy; most notably leading to the popular National Union of Mineworkers (NUM) strike of 1987 (see Bezeduinhout and Buhlungu, 2009). In the transition period (1990-1993), African workers' strikes increased for a brief period and thereafter a period of dormancy was experienced.

According to von Holdt (2000), the majority of the population assumed that the new post-apartheid government understood their grievances and the reasons why they were fighting against apartheid. The rhetoric of "comradeship" was to some extent a deterrent to mobilisation, protest and revolt against the poor economic situation workers found themselves in again. Most of the leaders and former shop stewards who led the mobilisations and protests during apartheid had occupied top government positions (see von Holdt, 2002). Ironically, like the previous apartheid government, the African National Congress (ANC) government encouraged citizens not to be passive but to contribute economically to the country's development by participating in waged work as Barchiesi shows:

> Cecil Rhodes, representing the mining imperialists of his time, was among the first to associate wage labour to dignity and civility for indolent natives …same with the democratic government which also emphasised employment as a condition of real citizenship, the basis of family life, the norm of participation in national development, and the care for the laxitude and moral corruption generated by redistributive claims and the "culture of entitlement (2011:250).

Fine, (2014), summarise some of the major changes that characterised the 1990's as:

> huge rise in casualization, fixed term contracts, part-timing, subcontracting, temporary (24%), precarious employment and informal sector (31%), (between 1995-2001 full-time employment declined by 20%)**;** sharp decline in private sector unionization and rise in public sector privatization, high rates of unemployment and poverty coupled with increased migration flows; huge rise of irregular temporary labor migration post-apartheid, estimates vary between half a million to 9 m undocumented in country (Fine, 2014 slide presentation[1]).

Furthermore, she attributes political and economic instability in South Africa's neighbour, Zimbabwe, as having contributed to mass migration as legal migration also declined between

[1] Fine, J. (2014). Why Not Particularism? Explaining Labor Movement Convergence on Immigrant Inclusion in the US, UK, France, Dominican Republic and South Africa. Rutgers University. International Sociological Conference. Yokohama: 13-19 July, 2014.

1990 and 2000 from 14, 500 to as low as 3, 000; while over three million were deported between 1990 and 2011 (Fine, 2014:). Between 1995 and 2001, the new democratic government awarded amnesties for foreign workers who had completed at least five years of service in South Africa. The NUM played an instrumental role in influencing the processes. Most Mozambican and Basotho migrant mineworkers took up the offer. Some scholars consider that amnesty was a means to reciprocate the support that the country received from other African states during the struggle against apartheid (see de Vletter, 1998; Crush 1997).

Contrary to the above view, some claim that the majority of NUM membership was composed of foreign workers. Amnesty was therefore a means to legitimise all foreign workers as citizens of the country creating a good opportunity for the union to organise foreign workers (see de Vletter, 1998). In the spirit of Pan-Africanism, most immigrants feel that South Africa has a moral obligation to the African countries that took up positions against apartheid, and should therefore embrace and welcome foreign migrants (see Crush 1997).

Thabo Mbeki's time as a President witnessed few protests and strikes. However, Barchiesi argues that "frustrations and resentment in the world of work have greatly contributed to close the Mbeki era, tarnished by its association with neoliberal globalisation and casualisation of jobs" (2011:250). The last five years under Zuma's leadership have experienced a progression of mass protests and workers strikes culminating in the 2012 Marikana tragedy, the worst record of strike violence and state retaliation since the 1930s.

The 2000s witnessed a decline in recruitment of foreign labour migration to the South African gold mines signifying an end to the migrant labour regime. The numbers of foreign workers, according to TEBA's records, fell from 196 068 in 1985 to 192 044 in 1990 (DoL, Labour Market Review, 2007). Accordingly, Harington, et al, (2004), documented that total labour recruitment in South Africa's gold mines reached a peak of 480 000 employees in 1998 and experienced a sharp decline, down to a total of 180 000 employees only in 2005. To be precise, the year 2002 marked the beginning of systematic decrease in foreign miners. The dramatic fall signifies a crisis considering the fact that the gold mining sector in South Africa is known to be a key magnet of foreign labour historically and even today because of its nature of being labour intensive (see Phakathi, 2013). Various factors have influenced and contributed to the decline in demand for foreign labour in contemporary South Africa. Political, sociological, historical and economic reasons like restructuring, sub-contraction

(see Kenny and bezuidenhout, 1999), have been attributed to the changing trends of foreign labour demands as mentioned in the earlier statistics provided (Harington, et al, 2004; see also MiWORC Report 2).

In 2012, mining and agriculture sectors experienced wild cat strikes whereby workers self organised and mobilised among themselves outside the union signifying a turning point in the history of trade unionism. This phase of workers' history is very critical for this study as it helps to understand the mobilisation and representation patterns of unions over time and particularly, in the post migrant labour regime. The period under study ends in 2013 because a significant phenomenon, which is the aftermath of the Marikana tragedy occurred at the beginning of 2013. In February 2013, the major mining conglomerate, Anglo-American retrenched about 14, 000 workers. This observation is important in this study, as it provides an analysis of foreign workers' mobilisation, participation and representation in strike action.

However, because of the protracted period taken to finalise this thesis, I have decided to take into account some of the developments relevant to my study. For instance, in March 2017, the Cabinet of South Africa adopted a White Paper on International Migration. This development in policy is relevant to my study in particular Chapter 4, which provides an analysis of South Africa's state policies and legislative framework in relation to mobilisation, participation and representation of foreign workers. The question of citizenship is central in as far as political subjectivity of foreign workers is concerned and it is important to interrogate if the aforementioned development has any influence on foreign workers positioning in the labour market.

While we need to acknowledge nuances and particularities, the two case studies of the mining and hospitality provided an opportunity to explore and make an analysis of how historically the migrant system and how it shapes the post migrant labour regime today. In particular, the case of mining illuminates on mobilisation trajectories of foreign workers under apartheid and the strong sense of belonging amongst foreign workers in comparison with the contemporary migration trends in the hospitality sector which are today more individualistic and clandestine. While this does not mean a celebration or vindication of the migrant labour system, the thesis however, argues that under apartheid, a strong sense of solidarity existed among both local and foreign workers as their main enemy was apartheid and the capitalist system. Indeed, foreign and local workers forged strong collectives as a united force which culminated into the formation of the first black unions – Clements Kadalie and NUM

(Interview with George Mahlangu former COSATU National Organiser). The two case studies allow for an in-depth analysis of how we should rethink migration today and again demonstrate how political subjectivities among both local and foreign workers change over time. For instance, under apartheid, foreign workers were perceived as equal partners in the struggle against apartheid, irrespective of their nationality yet in contemporary South Africa, they are viewed as economic threats as always manifested in xenophobic attacks where they are blamed for 'stealing local' jobs [see Landau, 2011; Misago, 2011].

Historically, the migrant labour system was a cornerstone of capital accumulation under colonial and apartheid rules in South and Southern Africa (Crush 1996; Crush 1997, Crush and James 1995; Cooper 1995; Jeeves 1985; Sachikonye 1998; Wilson 1972). Migrant labourers from within the Southern African region, Mozambique, Malawi, Lesotho and Botswana were driven in hundreds and thousands to work on the South African and Rhodesian mines and farms for about a century (see Crush 1997). The major destination countries in the SADC region which attracted mine labourers were Botswana, South Africa, Zambia and Zimbabwe; whilst colonial Malawi, Mozambique, Swaziland and South Africa enticed foreign labour to work on the countries' commercial farms. Crush (1997) argues that "virtually every country in the SADC region has at one time or another sent migrants to work in the mines" (1997:3).

However, whilst contract migrant labour continues, the vast majority of migrants to South Africa are now outside of the historical migrant labour regime. In the post- apartheid era, South Africa has become the main destination and has so far received a huge volume of immigrants and asylum seekers from many parts of the globe, though regional immigrants from within SADC countries constitute the largest number (see DoL Report of 2007). Similarly, Crush and Williams (2010) cited in Budlender (2013), documented that the share of foreign workers in South Africa by region in 2008 was as follows: 34% African, 25% European, 21% Asian and 5% North America. Four regions namely Central and South America, Australia and Middle East constituted a share of 1% of the total foreign workers in South Africa. A recent report published by The Employment Bureau of Africa (TEBA) in January 2013 as cited in Budlender (2013) revealed that the 2012 recruitment trends in the mining sector reflect a sharp increase in the share of South Africans from 57% in 2005 to 78% in 2012 (Budlender, 2013:32; Crush and Williams 2010:11; TEBA 2013).

While the subject of much controversy, mine migrancy has until today resulted in immense dependency on remittances among sending countries (Arrighi, 2010). Mozambican miners, a majority of them working in the gold fields in South Africa, play an important role in the development of their country through the foreign exchange earnings of their deferred pay (processed through TEBA) and through productive investment in rural Southern Mozambique (see Van Onselen, 1960). On a different but related note, De Vletter (1998) asserts that "despite the poor education levels and low skills of most miners, they are the wage elite of Mozambique; averaging a monthly wage five times that of industrial workers" (1998:37). In terms of migrant labour supply to South African mines, Lesotho and Mozambique historically have been key suppliers of migrant labour in the gold mines as de Vletter (1998) asserts that:

> Mozambique from the inception of migrant labour to the mines until the 1970s has been the main supplier of foreign labour to the gold mines ... and since the mid-1980s, despite cutbacks from all other sources, Mozambique has gradually edged upwards with a trend line suggesting that Mozambique may soon surpass Lesotho as the largest supplier of labour to the mines (1998:1).

The statement above points to the central role played by Mozambique in supplying migrant labour to the mines under the migrant labour system and still continues to do so in contemporary South Africa. Similarly, Lesotho has been a key labour supplier to South African gold and platinum mines over the years. Accordingly, recent data has confirmed the significant role that Mozambique and Lesotho contribute towards foreign labour supply in particular to gold mines in South Africa (see Budlender 2013; MiWORC Report 2, 2013)

In spite of the critical function foreign mine labour has played in the development of the South African economy, it is important to note that in recent years the recruitment of foreign labour to the mines has declined. Forrest (2013) notes that the recruitment of foreign labour has dwindled over the years (from 50% under apartheid down to 30% in the post-apartheid period) and that more local labour (70%) has been recruited in the South African mines. The decline in migrant labour demand has been attributed to a shift in recruitment policies by mines and changes in national legislation mostly influenced by the Mining Charter of 2003 and the Immigration Act of 2002 (ibid).

Despite a decrease in foreign labour recruitment in South African mines, regional labour migration is still a common feature and continues to serve regional capitalist accumulation

(see Arrighi 1973; Crush 1997; De Vletter 1998; Sachikonye 1998; Burawoy 1976). Nevertheless, the form in which the migrant labour system occurs today has somehow changed and has provided way (not entirely though) to a much more unregulated system (see Crush 1997; Segatti & Jinnah, 2013 (forthcoming). At the same time, empirical evidence as presented by (Rogerson 1999; Peberdy 2010; FMSP African Cities Survey 2007; SWOP Survey on Security Sector 2012) demonstrates that new arrangements in the form of informal foreign labour have emerged since the early 1990s even though very little is known of the implications of these structural changes on conditions of employment and relations of production, particularly at sector or local level (Segatti & Jinnah, 2013). There is a need to better understand the consequences of this profound shift on the mobilisation, participation and representation of foreign workers and how this shapes subjectivities. This study therefore intends to answer the question: **What have been the key factors shaping political subjectivities amongst foreign workers in South Africa between the period 1980-2013?**

Theoretically, the aim of this study was to build on the 1970s studies of the migrant labour system (Wolpe, 1972, First et al, 1972, Arrighi, 1973, Legassick, 1975). The aforementioned studies however, failed to take into account analyses of how foreign workers are mobilised, participate and are represented in the workplace but rather analysed workers' mobilisation as a homogenous class and failed to take into account nuances associated with migrancy. This study therefore aims to raise new theoretical debates on how the post migrant labour regime has shaped political subjectivities in terms of mobilisation, participation and representation of foreign workers in South Africa in the period 1980-2013.

Two case studies of mining and hospitality were used to answer the questions. It is important to provide a historical and contemporary background of the two sectors under study in terms of the recruitment patterns of foreign labour over the years. Today, a democratic South Africa experiences a notable reduction of foreign labour in part as a result of the introduction of recruitment policies that promote the prioritisation of local labour (see Forrest 2013; Mining Charter 2004) and economic restructuring. At the same time, job opportunities have also declined in agriculture and mining sectors but have escalated in the hospitality sector. The table below shows employment data by industry

Table 1: Employment by industry, Jan -March 2012

Sector	Total number (in thousands)
Agriculture	603
Mining	313
Hospitality	1 011[2]
Community and social services	2 828
Private households	1 118

Source: StatsSA, 1st Quarterly Labour Force Survey, Quarter 1, 2012

The table shows that agriculture still employs almost twice the mining sector. It reveals the community and service sector employs the highest number of workers, which confirms the earlier claim that the service industry has expanded and has become the chief employer in South Africa today. Accordingly, the hospitality sector which falls within the community and service employs a large number of workers.

1.1.3 Rationale

The study builds and contributes towards scholarship on migration and labour (industrial sociology). It begins on the premise that South Africa has a relatively long history of hosting immigrant communities amongst African countries, although few studies explicitly interrogate aspects of mobilisation, participation and representation of foreign workers guided by trade union rhetoric which involves a 'blanket' analysis that seem to treat workers as homogenous. As mentioned before, much of the literature on immigrant worker organising is largely based on Western experiences such as United States (see Milkman, 2006; Milkman et al, 2010) and Britain (see Boggs and Novitz, 2014; Alberti, 2015). This study interrogated these dynamics from a global south perspective in an attempt to understand the various alternative models of representation available to foreign workers as the majority find themselves outside of unions' protection and non-standard employment.

[2] The figures for the hospitality industry have been derived from a report entitled "Organising in the hospitality industry in South Africa": *A report on the context, challenges and strategies of organising hotel workers in South Africa.* The report was published by the Labour Research Services in South Africa in November, 2012. See www.lrs.org.za

Amongst studies conducted by geographers, historians and sociologists in the field of migration there is little attention given to the particular class location of migrants (Fakier, 2012) including migrant workers agency. Most of the studies tend to focus more on vulnerabilities and exploitation of immigrants as opposed to their agency. Yet historically, as revealed in the case of mining, foreign miners manifested their agency through the formidable role they played in the establishment of the first Black trade unions and also in the struggle against apartheid. The bulk of research studies conducted amongst immigrant communities (other than those by Jinnah and Holladay, 2010; Polzer and Segatti, 2012) focusing on immigrant mobilisation in South Africa) focused mostly on socio-economic aspects, citizenship, health lives such as the "deleterious health consequences of sustained mine work" (de Vletter, 1998), documentation, xenophobia, migration & policy issues, location of immigrant workers in the general production chain of the economy, migrants experiences and perceptions, access to education, general employment trends, reasons for migrating, rights of migrants, migrants coping mechanisms, mal treatment of immigrant workers by unscrupulous employers, unfair dismissals, arrests and deportation; stereotypes like crime but none has specifically focused on the key aspect of foreign workers mobilisation, participation and representation in the labour market in general and workplace in particular. In fact, most scholars working in the field of migration perceive migrants from a 'victim' point of view other than agents of change. In this regard, Ochs (2006:357) argues that the discourse of victimhood "conceals the agency of those classified as victims" (2006:357).

While numerous studies exist on migration, an imbalance has been noted in terms of studies related to migrant labour in particular in the global South. Drawing on Vic (1992), it is clear that seminal work on migrant labour was undertaken by Sheila van der Horst in 1942 as part of her works; *Native Labour in South Afr*ica, although it failed to provide insights and analysis of the "underground social relations because of the impossibility of conducting field research within the mines" (Vic, 1992:24)

According to Vic (1993):

> Other work that had been done before –focused on processes of recruitment, employment and migrant labour through broad historical analyses; process of industrialisation, the insatiable demand of the mining companies for cheap and easily controlled labour, the establishment of recruiting organisations, the support which the

> state has given to the mining employers through laws and administrative regulations to create and maintain reservoirs of cheap labour (1992:1).

All this work was conducted in the mining sector. Thus, this study brings in a new and fresh insight of hospitality; a sector which attracts a large number of foreign workers in the post migrant labour regime and contributes fresh ideas to the debates and theories on labour and migration.

A few exceptions which I came across while reading through literature focus mainly on broad themes like push-pull factors, access to services like education and health with sweeping statements related to access to the labour market usually embedded within the discourse of xenophobia. Seminal works that speak close to my study are that of Allen Vic (1993), Khayaat Fakier (2012) and Sizwe Phakathi (2012). Vic's work provides in-depth insight of Black miners in general and in a subtle way assisted in shaping the case study of mining as it provided the historical background to demonstrate foreign workers' trajectories in the South Africa economy since industrialisation into the post-migrant labour regime. Fakier's work focuses more on internal migrancy as it relates to class and social reproduction borne by women in the areas or countries of origin and finally Phakathi 's work was of interest to my study as it examined mineworkers' agency and concluded that they are "not passive acceptors of racial and coercive forms of labour control" (2012:1). Similarly, while my study was not only confined to mining, findings from the two case studies point to profound degree of agency among foreign workers in South Africa manifested through at times, subtle forms of resistance. Of these three, none of them exclusively interrogates aspects of mobilisation, participation and representation and how the state apparatus shapes foreign workers' political subjectivities.

Drawing from the case study of the hospitality sector, the study evidently challenges the Marxist framework of class as demonstrated by binaries which have been constructed along migrancy, gender and employment contracts. The study evidently reveals an understudied area; that of union responses to workers falling outside of standard employment and shows how these workers' rights are gradually diminishing along the decent work continuum. While foreign workers contribute positives towards South Africa's economy, they are however deprived of their labour rights by state crafted policies while the discourse of vulnerability and acquiescence in a contradictory manner guide trade union responses and attitudes towards foreign workers. On the one hand, unions sincerely acknowledge that foreign

workers are vulnerable and on the other hand, they stereotype them as being passive and submissive to the dictates of capitalism by undercutting wages yet all this is because the representation gap (see Webster et al, (2009). However, when analysing trade union responses to migrant labour, it is important to consider country dynamics such as migration and labour laws and how these define the trajectories and responses of the former.

A further gap in the literature relates to alternative models of mobilisation, participation and representation in the workplace. Historically, both locals and migrants were disenfranchised from enjoying their labour as the state through its state crafted laws and policies constructed political subjectivities among workers in its collusion with business to expand and maximise profits (see Nel and van Rooyen, 1993). Both apartheid and the democratic state of South Africa designed and constructed political subjectivities amongst both local and foreign workers in order to suppress the rights of workers and in a way paved way for capital to expand and maximize its profits at the expense of the working class. This study aimed to address the shortfalls of current academic literature by interrogating how the state and business have categorized and constructed political subjectivities among both local and foreign workers between the periods 1980-2013. Also, the study examined union responses to foreign workers from a global south perspective bearing in mind that existing studies on the subject are very often centered on the Western context. While covered by the law, foreign workers in South Africa remain largely outside the protection of trade unions. Through case studies of the mining and hospitality sectors, the study has begun to explore emerging forms of organising approaches including new sources of power.

1.2 Key Concepts

The study took the form of an interdisciplinary approach drawing on various theories and concepts from migration studies, industrial sociology, and political economy with a historical materialist approach. Below are some of the concepts which the study used as key units of analysis.

1.2. 1 Why the use of foreign as opposed to migrant worker?

During apartheid, a thin line existed between a foreign migrant and local worker who were both recruited through The Employment Bureau of Africa (TEBA) to work in the mines but in post-apartheid South Africa, migrancy increasingly becomes complex. By then, unity and solidarity were forged based on class as the proletarian and also race; as Black Mineworkers

(see Vic, 1992) and so were the employment contracts which forced them to rely on subsistence agriculture borne by women in the areas or countries of origin (Burawoy, 1976; Crush 1995; Segatti and Jinnah, 2013; Fakier, 2009). During apartheid, both locals and foreign Black workers were controlled in terms of mobility and this point is supported by Crush (1995) when he says:

> Influx controls and pass laws (in the case of South Africans) and the Aliens Control Act (in the case of foreigners) meant that neither could seek other forms of employment in the urban areas. The only significance difference was that foreign migrants tended to have to travel further and cross international boundaries in their journey to the mines (Crush 1995:16)

While existing literature makes reference to migrant as opposed to foreign, in my study I prefer to adopt the terminology used in the Immigration Act of South Africa in order to illustrate the dichotomy between internal and cross-border migrants. This is because during apartheid, all Black workers, from former homelands to cross-border migrants were labelled as migrants. As Callinicos (2014) asserts:

> In less than 20years, Johannesburg was transformed from bare veld into a rich mining city. In this time, Black South Africans –either rich or regarded as citizens –came to work on the mines –and in Egoli (2014: xii)

In her review of the author's doctoral proposal, Ally (2014) posited that:

> The apartheid cheap labour migrant system (most theoretically developed by Wolpe) worked through a dual system in which migrant labour was drawn from two sources; the southern African region and the former homelands. In the case of the latter, they were "converted into a migrant labour population through legal apparatus which denied them citizenship in the ethically divided Bantustans and working in South Africa 'temporarily' as 'foreign natives' through an elaborate system of passes (work permits), limited residential rights, "influx control" and a partial system of industrial relations that accorded limited rights of workplace –based political participation" (Ally, 2014:1).

Given this historical context, it is important to adopt the use of the term 'foreign', to underscore the difference between the old migrant labour systems which also referred to those coming from former homelands as migrants and also to distinguish between internal

migrants in contemporary South Africa and those from outside the country's borders. Furthermore, the word 'foreign' is the operational term adopted and used in immigration laws and policies of South Africa. The study preferred to use the term 'foreign' as opposed to 'migrant' as presented in the Immigration Act of 2002 as amended in 2014, which makes reference to foreigner as opposed to migrant. Accordingly, the Act defines a foreigner as any person who is not a citizen of the Republic. Nonetheless, in the study, I make interchanges between foreign and migrant in particular where I borrow literature from scholarly work on migration. That said, it is important to provide the definition of migrant labourer in its historical and contemporary contexts.

Mohlabi (1970) defines a migrant labourer as "a person who oscillates between his home and his work" (1970:73) while Mayer (1961) views a migrant labourer as someone working in town but still feeling himself linked with his rural home and ceases to be a migrant labourer if he "no longer feels the pull of the home country, because all of his important personal ties are bounded by the town in which he lives". According to Moller, 1970: 83) a migrant labourer refers to "a person temporarily in town "ka *mereko feela"* meaning because of work only (Moller, 1970: 83). The study adopts the definition by Mayer as the description transcends borders. However, in my study, I prefer to use the term foreigner in accordance with the contemporary national immigration laws and policies of South Africa and also to clearly make a distinction between internal and cross border migrants. This is because during apartheid all Black workers hailing from within (homelands) and from outside were referred to as migrants. However, one important dimension semantically is that labourer, as opposed to worker which is more general, designates a worker involved in manual work. Thus considering the current workforce which comprises of highly skilled workers and service workers such as for example; clerks, lectures, accountants, the most appropriate term to use is 'migrant worker' although other characteristics of 'migrant labourer' are still relevant.

1.2.2 Problematizing the migrant labour system

Prior to the discovery of minerals - diamonds in 1867 and gold in 1884, in the late 19th century, a large population of Blacks and Whites lived in rural areas and relied on subsistence farming and semi-nomadic pastoralism (Watts, 1970). The discovery of minerals such as diamonds (Kimberly), gold (Witwatersrand) and coal (Natal) stimulated industrial development resulting in a dual economy (Allen, 1992). The majority of the White population abandoned subsistence farming opting for mining opportunities and thus how the

migrant labour system began. Africans did not exclusively abandon subsistence farming as this was part of their way of life but were only compelled to engage in migrant labour as a means to earn wages upon the introduction of the hut taxes. So, in a way the migrant labour system "appeared to be the only way of bridging the gap between subsistence and modern economies" (Jooste, 1970:59). Various scholars (Allen, 1992; Jooste, 1970) describe the migrant labour system as inhumane and that it "operates on a different level from that of capitalist societies but it is not qualitatively different" (Allen, 1992:5). According to Wilson (1970), the system "creates a differential wage structure in the economy and perpetuation of poverty" (1970: 198). In his description of the migrant labour system, Bodenstein (1970:9) contends that:

> …hardly anybody could imagine the human significance, tragic disruption of life which this "system" inflicts on a large portion of a society which is in the throes of a revolutionary social upheaval. Individual s, associations and churches have spoken out strongly against the inhumanity of this system, and have made various attempts to alleviate the lot of the suffering. And yet the means suggested to bring about change, and ways in which these means and the ways in which these means are to be achieved often vary so radically, that groups moving towards the same goal sometimes question the integrity of one another (1970:9).

The above statement undoubtedly exposes how the migrant labour system was inhumane and its deleterious effect on the social lives of those who were either directly or indirectly involved. For instance, it contributed to the diminishing of the family and community social fabric (Mohlabi, 1970) as it promoted individualism as opposed to communalism and ultimately resulted in underdevelopment. Its effects continue to be felt in the post migrant labour regime where families are separated and migration has become more individualistic and clandestine. Some of the negative effects include:

> …loss of identity and touch on the tribal expectations; polygamy, alcoholism, female –single headed families, absent fathers which affect parental-child relationship; escape from parental discipline; those who lost jobs –involved in smuggling, robbery and individualism in urban spaces (Mohlabi, 1970: 81)

However, the then South African National Party Government viewed the system in a positive way as it maintained:

> That the system of migratory labour inevitably entails social sacrifices stands beyond doubt. But it is Respondent's contention that negative facts of the system are outweighed by its advantages in the process of developing a modern economy in an under-developed territory… The presence of foreign labour in a country has socio-political implications which compel the governments of giving and receiving countries to intervene, and to regulate the recruitment, accommodation, and working conditions of migrant workers. This has given rise to legislation and intergovernmental agreements to facilitate the orderly and mutually satisfactory movement of workers across national boundaries, and especially to overcome the disadvantages of the system as far as possible (Jooste, 1970:61)

It is very clear from the statement above that despite all brutalities associated with the migrant labour system; it benefited mining corporates in the main, including the South African minority government and the sending governments at the expense of the migrant worker. Furthermore, emphasis is placed on crafting restrictive laws that bound the migrant labourer in a very negative manner and here we witness the genesis of draconian immigration laws which persist up to this day.

During the contract labour migration system, workers were prohibited from bringing their families, partly because of the hostel system which only accommodated male migrants in single sex accommodation but also because the social reproduction obligation which was borne by women and children in their places of origin (see Burawoy, 1976). The system according to (Bodenstein, 1970:10), "reflects a colonial power conquering, subduing and developing a people living under a patriarchal system of subsistence economy" (1970:10). This means the capitalist system under apartheid strived and sustained itself on patriarchy. In contemporary South Africa, while foreign migrants are free to migrate together with their families, restrictive immigration laws and policies very often pose as barriers. Further, the system was very divisive among workers who were divided along ethnic and racial dichotomies thus a dearth in solidarity between White and Black miners as manifested in the 1922 miners' strike. Ironically, Black workers were united irrespective of their nationality in their struggles for better working conditions and fair wages although this sense of solidarity has diminished in the post-apartheid period as xenophobia has become pervasive.

1.2.3 Conceptualising the post migrant labour regime

The post migrant labour regime somehow witnessed the eradication of some of the inhumane practices, like for example, internal migrants are now privileged to stay close to the mines with their families albeit poor living conditions as revealed in Marikana (see Forrest, 2012; Chinguno, 2014; Mujere, 2014; Benya, 2014). In contrast, foreign miners are still subjected to the controls and constraints of the past as they are limited from bringing their families and are still accommodated in hostels[3]. I had the opportunity to view some of the hostels in which these miners are accommodated although they are undergoing renovation to transform them into modern housing but still miners' wives are granted a few days to visit and their stay is sanctioned and monitored by *iNduna.* Yet, foreign miners cannot own property near the mines and must return home for leave at the end of their contracts. Moreover, they have to remit a high proportion of their wages to their home countries (Crush 1995:16 -17) and breaching such rules would amount to arrest and prosecution as reported by participants of the same FGD. Thus, while the migrant labour system is claimed to have been eradicated, some of its features are still perpetuated and practiced today which are somehow detrimental to foreign miners despite belonging to unions. However, all miners are universally confronted with challenges such as retrenchments as a result of technological advancement, computerisation and mechanisation. Labour flexibility has escalated and employers rely on labour brokers and out-sourcing while recruitment of foreign miners has dwindled over the years.

While labour migration to the mines has subsided, the hospitality sector has become the dominant recruiter of foreign labour in the post migrant labour regime. A new phenomenon associated with this era is the intensive use of temporary transnational migrant labour across the globe (Valiani, 2012). Whilst not so much different to the contract migrant labour system, the current system is characterised by independent, clandestine and sometimes undocumented migrants who are very often hired as casuals and whose wages are not guaranteed thus workers are exploited in many ways by employers at the same time undermining the power of unions. According to Valiani (2012):

> The increased use of temporary migrant labour may be viewed as a more recent strategy of employers and states to shift power away from workers and unions following from the successes of worker and union power in both the global North and South circa 1950 to 1980. (Valiani: 2012; Valiani: 2013b)

[3] Focus Group Discussion with foreign miners. Mine A. 15.07.2016. South West, Johannesburg

Thus, while the post migrant labour regime was expected to bring in a very positive dispensation brought about by promulgated post-apartheid laws which are hailed to be very progressive, the struggle against capitalism has taken a new form. A reconfiguration of the migrant labour phenomenon is continuously taking place in response to the current realities and as business continues to maximise on profits through exploitation of cheap labour. So, while it is a progressive move that other sectors are ready to absorb foreign labour in contemporary South Africa, the recruitment process and employment relations are flawed and detrimental to workers' labour rights.

All combined, (definitions, characteristics and effects), this dissertation defines the post migrant labour regime as a system superseding the old migrant labour system in an abstract way and associated with immigration and labour law reforms although in practice it still appropriates copiously from the old system and could be described as more detrimental to workers in its current form as embracing flexible contracts marred with a lot of exploitation including clandestine informal migration which renders workers as undocumented thus vulnerable to exploitation (Jinnah and Segatti, 2013; Munakamwe and Jinnah, 2015). This conceptualisation has influenced the literature, methods and outcomes of the research.

1.3 Unpacking concepts of political subjectivities, worker mobilisation, participation, representation, liminality, Universalist and particularistic approaches to union organising

The study examined factors shaping political subjectivities of foreign workers in a post migrant labour regime through an analysis of the concepts of mobilisation, participation, representation, liminality, universalist and particularistic approach to organising workers. It is therefore important to explore the meanings of these concepts within the body of knowledge in order to situate them accordingly in the study.

1.3.1 Political subjectivities

The aim of the study was to examine the key factors shaping political subjectivities amongst foreign workers in South Africa in the period 1980-2013. Political subjectivities is used here to refer to the cognitive judgments or mode in which foreign workers conceive of their environment from a power perspective and how they assert their own identity within it (see Grunenburg, 2007; Krause and Schramm, 2011; Solomon 2005). Frequently used in literature, the term subjectivity refers to an inherently social phenomenon that comes about through innumerable interactions within society (Solomon, 2005) while political deals with

the aspect of power. Subjectivity is to some extent shaped by political institutions, culture, the natural world or communities where one lives.

The dissertation used political subjectivity as an essential theoretical concept to help us understand the dynamics of power, domination and agency as they relate to mobilisation, participation and representation of foreign workers in South Africa. However, the major weakness of the concept is that to some extent it is abstract and based on individual biases in relation to the social interactions and is also subject to interpretation. Such interpretation is based on the interactions between an "individual's lived experience with macro-level institutionalized forces that regulate, represent, and produce subjects" (see Cupo, 2010:1).

Taking into account migrancy as a spatial concept, I argue here that political subjectivity is somehow influenced by one's geographical location. My study demonstrates that political subjectivities among foreign workers are subordinated to the intersectionality of class, race, gender, geographical location and power. Such variables influence and at the same time play a facilitating or inhibitory role and in a way negate any basis for political mobilization of foreign workers. Further, this is compounded by traditional trade unionism which in a subtle way is defined around citizenship thus discriminating against foreign nationals. In this way, political subjectivities are thus constructed on the politics of citizenship and could be the genesis of structural xenophobia in migration and labour laws which further shape union responses.

1.3.2 Mobilisation

According to Weber (1978), *mobilisation* is a political project aimed at the development of a social relationship between two groups of actors, the individuals and the parties in an attempt to influence the existing distribution of power (see Tilly, 1978). According to Tilly (1978), mobilisation exists in two forms. First is vertical mobilisation which includes the following models: historical, grassroots or populist and ideal-democratic models of mobilisation. The second is known as horizontal mobilisation which incorporates the possibility of internal processes of mobilisation taking place among the two groups of actors (Nedelmann, 1987). While there is no definite definition of the concept, it is however very critical and is defined in this study as referring to how the individual migrant influences or is influenced by trade unions or other worker organisations in their political decisions in the workplace.

1.3.3 Worker representation

This occurs when individual workers, in addition to their operational roles in the enterprise, undertake to represent the needs of employees in formal structures such as management boards, boards of directors, supervisory boards, management councils, or any other similar managerial body (Nel and Rooney, 1993). Workers may also join organisations external to the enterprise and elect representatives, who will then interact with management. Bendix, (2010) contends that there exist two common forms of representation, namely representation from within the enterprise (through workers committees) whereby individual workers undertake the responsibility to represent their fellows in labour disputes and representation from outside the enterprise (through trade unions or other workers organisations). Representation from within the enterprise takes place at the workplace, where worker representatives deal directly with management on issues which explicitly affect them. Negotiations usually take place through works councils, and particularly, through recognition agreements in South Africa. According to Hickley (2012), where trade union representation is involved, workers first have to join trade unions and thereafter elect representatives (shop stewards) to undertake activities on their behalf and in their interest. This means that representation takes place across enterprises and on an industry-wide basis. Interrogating the concept of representation in this study assisted with understanding patterns and models of taking up issues related to labour disputes or workers grievances related to working conditions, wages including migrant specific issues like documentation and xenophobia.

In addition, the concept assisted in analyzing various models through which foreign workers seek interventions outside of trade unions. Further, it assisted us to understand the mode in which state or labour policies have been designed and how this plays a role in including or excluding foreign workers within the scope of the Labour Relations Act (LRA). Finally, the idea was to provide an analysis of the two models of representation (from within or from outside) and examine their relevance to foreign workers.

1.3.4 Participation

In simple terms, *participation* means the involvement in any type of activity to ensure that individuals have the power to influence decisions, at all levels that affect their lives (see Claridge 2013: Lane 1995). In a way, participation is intricately associated with political subjectivities and involves influence, interaction and information –sharing (Nel and van Rooyen (1993). Tilly (1978) also advances the notion of participation and collective action through the lens of social movement theory as the subaltern respond to capitalism in what

Polanyi (1944) in his book, the *The Great Transformation: The Political and Economic Origins of Our Time* refers to as a counter movement. This concept is very critical to the study as political and workplace democracy is meaningless without worker participation and struggles against capitalism According to Nel and van Rooyen (1993):

> The concept of participation therefore means that workers functioning within and affected by the activities of a particular enterprise should have a say in any decisions regarding those activities. It is also assumed that mutuality between workers and employers should exist –for example to communicate, consult and advise each other as a matter of course – for participation to be genuinely practiced (1993:34 -5)

Further, the same authors identified three levels of worker participation which are; low-level participation, middle-level participation and top-level participation. These are further classified as direct and indirect worker participation. The former according to Lammers (1967) allows workers to speak directly with employers on matters that affect them and this is common in small enterprises like family restaurants with reference to my study while the latter involves both internal and external representatives such as works council or works committees and external institutions like trade unions and is prevalent in the mining sector as reflected in my study.

In my study, participation was viewed as a process by which foreign workers are actually involved and are invited to or prevented from being involved in decision-making processes that affect them in the workplace. By analyzing the rate of participation of foreign workers, the study revealed how foreign workers are included or excluded in the decision-making process by management or fellow workers. In general, job insecurity threatens all workers irrespective of nationality such that employers unilaterally make the decision to retrench or fire workers without consultations. The study shows that this action by employers has worse consequences among foreign workers who also lack institutional representation by trade unions as manifested through the case of the hospitality sector.

1.3.6 Universalist approach to organising

This refers to an approach adopted by trade unions to organising workers based on class while neglecting the politics of difference. The approach fails to acknowledge how class intersects with other social markers such as gender, race, nationality, ethnicity, skills, income and many others. In this way, while the goal is to equally represent workers' common interests (bread and butter), the unintended goal would be immigrants remain under-

represented as certain underlying factors related to immigration laws (see chapter 4) inhibit the latter from securing employment in the first place. Traditionally, unions' primary focus has been to address bread and butter issues within a Marxist approach of a homogenous working class. As such, union constitutions, policies and practices are 'blind' to the dictates of global forces that have resulted in labour fluidity across borders. As a result, currently, many union policies across the globe fail to appreciate the politics of difference and tend to overlook vulnerabilities and 'special' needs associated with foreign workers. To further elucidate this claim. Pazuka (2017) argues that:

> The failure of unions to develop specific policies to address the unique concerns, vulnerabilities, and grievances of non-citizen members is a result of their inability or refusal to acknowledge difference. This denial of difference stems from two overlapping failures of imagination: first, South African trade unions have failed to evolve beyond the parochial Marxist notion of proletarian sameness; second, South African trade unions' denial of difference is rooted in a false dichotomy that considers equality and difference to be incompatible. In both cases, the denial of difference privileges and legitimates the experiences and struggles of citizen members - understood and upheld as the uncomplicated ideal of The Working Class or The Proletariat - at the expense of noncitizen workers, whose additional concerns and struggles are actively silenced through a discourse that paints all workers as essentially the same and ultimately united (Paziuk, 2017[4]).

This is supported by Fine (2015) who argues that "COSATU's organisational norm of "one working class" universalism eschews ethnic identity or migrant worker focus in favor of a broad worker identity. Furthermore, Seidman (1997) cited in Fine (2015) contends that ethnicity as introduced by apartheid "explicitly sought to link ethnic identities for Africans to specific 'homelands' in an attempt to legitimate 'separate development'." Consequently, unions in their efforts to undermine apartheid legacy of a fragmented working class in the post-apartheid era, borrow the Marxist approach that views the working class as homogenous thus overlooking particular needs of various components that constitute it.

Alho (2015) castigates the Universalist approach as excluding foreign workers on the grounds of high unemployment and also perceive them as undermining general working conditions. In support of this notion, Connolly and Martinez Lucio, (2010) argue that union experiences, responses and attitudes towards foreign labour vary and in many cases are dependent on

[4] E-mail conversation 28.04.16

economic sectors in which migrants are concentrated. At the same time, both unions and employers find a common ground premised on nationalist interests (Alho, 2015). Marino, Pennix and Roosblad, (2015) identify union attitudes as grounded on national migration laws and policies; workplace restructuring and atypical forms of work including the power of the union in national decision-making as influencing union responses thus challenging the notion of universalist approach to organising workers as it is apparent that foreign workers are already disenfranchised from enjoying their labour rights. In the study, I measured this aspect by interrogating union constitutions and policies to see if they accommodated foreign workers specific needs and if at all unions have developed specific policies to address the question of foreign labour.

1.3.7 Particularistic Approach to organising

This approach advances the notion of union strategies that seek to integrate migrants by putting in place strategies and mechanisms which accommodate their 'special' needs and interests such as work permits and social challenges such as xenophobia. In support of this approach, Penninx and Roosblad's (2000) propose for a "third dilemma" regarding "equal or special treatment" for migrant workers. What unions fail to understand is that by ignoring foreign workers 'special' needs would ultimately erode the collective bargaining gains as employers continue to hire undocumented foreign workers as means to maximise profits (see Alho, 2015). By emphasizing the 'Greenbook' as the form of identity on the recruitment form (see Chapter), unions fail to acknowledge their major weakness in terms of addressing the issue of documentation for foreign workers. This is sometimes compounded by the language of communication which in a subtle way tend to exclude immigrants. Be that as it may, Fine (2014) is hopeful that in the near future unions will adopt the particularistic approach for three compelling reasons: [when] "relationship to state deteriorates to a point where unions are under existential threat; membership in an individual union or movement as a whole dips below a certain level and immigrants or NGOs take action" (2014). Her prophecy seems to be coming to pass as we begin to witness the rift that is expanding between COSATU and ANC and also the union density is slowly plummeting as a result of workplace restructuring and also mechanisation (use of techno savvy/ robotics) leading to job losses.

1.3.8 Liminality

The concept of liminality was first coined by Van Gennep in 1909 in his works which attempted to explain the various rituals and rites which an individual transition through in life which are defined by certain boundaries; changes of place, state, social position, religious

calling, and age in a culture. Gale, (2005) describes "liminality as the condition that prevails during the inner phase of rites of passage, those rituals performed in many societies to transfer a person from one stage of life to another. Liminality is the experience of being "betwixt and between" (Gale 2005: 1). Liminality, according to Thomassen cited in Underthun (2015), "has a temporal dimension, distinguishing between liminal moments, liminal periods and liminal epochs… and has a spatial dimension" (2015:29). In relation to this study, liminality explains the low levels of organisation of foreign workers in certain sectors is as a result of job mismatches (see) and thus, view their situation as being temporary and defined by change of place. Thus, as my study shows, migration to some extent results in alienation in the workplace and tends to disengage workers from participating in workplace related issues for two reasons; restrictive immigration laws and self-fulfilling reasons in which they do not worry much about their social status in the host country but that from their country of origin. Today, many cross-border migrants comprise of young graduates who have never worked before (See Chapter 6) and would present themselves as 'novices' in the workplace and again do not have experience in unionism. Thus, they prefer to restrain from joining unions at an early stage of their career partly because they will be hoping that their working conditions would one day improve or are discouraged by employers' union busting strategies. (Underthun, 2015). The concept of liminality is also reflected in the mining sector whereby professionals like mining engineers fail to enter the labour market due to particular bureaucracies and restrictive immigration laws. For instance, for foreign engineers to be employed in the formal mines, they first need to register with the South African professional body of engineers, which is such a cumbersome process in itself. Yet, they would need money to cover their accommodation, food and everyday expenses while they process the relevant documents. Some resort to abandoned mines where they could exploit their skills to earn some income on a temporary basis. As a result, they perceive the informal mining sector as a short-term temporary measure such that they see no reason to participate in struggles related to the sector (such as protesting against police brutality) as they are hopeful that one day they would find permanent employment in the formal sector.

1.4 Structure of the dissertation

The dissertation is organised into eight chapters. First, the introductory **chapter 1**, outlines the main analytical questions posed by the study and sets out the main concepts. In **chapter two**, I present the methods employed by the study in my quest to understand factors shaping

political subjectivities of foreign workers in South Africa including the setting and context of the study including ethical considerations. The methods section describes the research design and indicates the analytical tools for the study. **Chapter three** reflects on scholarly work related to migration and labour interrogating discourses of class, vulnerability and agency using Gramsci and Marxist frameworks (subaltern and proletarian classes). Further, it lays out theoretical dimensions of the research, at the same time locating the study in the body of knowledge. The bulk of the dissertation resides in **chapters four, five, six and seven** which present findings of the research in relation to the key questions raised through the lens of two selected case studies. **Chapter four** looks at how the state influences political subjectivities through laws and policies while **chapters five and six** interrogate factors shaping political subjectivities among foreign workers drawing from the case studies of the mining and hospitality sectors. The last empirical chapter, **chapter seven** examines union responses to foreign labour and alternative models of representation. In the last **chapter eight**, I present conclusions based on empirical findings and discussions and engage with existing scholarship in relation to the study including identifying areas of future research. Thus, the subsequent chapters provide insightful analysis aimed at answering the critical research questions as proffered in this introductory chapter.

Chapter 2: Methodology

2.0 Introduction: Research design and methods: Justification of methods

The methodology used in a study is integral to the reliability and validity of its findings. This chapter delineates the research approach and methods employed, procedures, data gathering techniques and analysis of the body of information presented in this study. A description of the instruments used to measure various constructs applicable to this study is also provided. Appropriate and relevant methods (documentary analysis, ethnography, life histories, workplace survey and in-depth interviews) were chosen in an attempt to unpack "respondents' representations, perceptions and states of mind as sources of knowledge that need to be rigorously unpacked in their complex, incongruous, and multi-layered meanings" (Barchiesi 2011). In addition to this, is a discussion of background and context of the chosen case studies which are hospitality and mining sectors. Lastly, ethical considerations are included in this chapter.

The nature of the questioning the chronology covered and the nature of data envisaged seem clearly more relevant to a qualitative enquiry Because of the nature of data envisaged, a qualitative research design seemed the most appropriate to answer the question: ***"what have been the key factors shaping political subjectivities amongst foreign workers in South Africa in the period 1980-2013".*** In particular, the study aimed to understand factors shaping political subjectivities including foreign workers mobilisation, participation and representation in a post migrant labour regime. As noted in Chapter 1, political subjectivity is difficult to measure and thus I had to employ ethnographic work over an extended period of time which allowed me to interact, observe and listen to narratives of foreign workers through observations and in-depth case studies of mining and hospitality over an extended period of time (see Burawoy, 2003).

This section provides information on the rationale for a qualitative enquiry; the methods chosen; the desk review and the case studies review. My study was interdisciplinary in nature and thus my research design was organised in two parts; a desktop review based on literature review on migration theories, sociology of work, political economy and a series of sectoral case studies. This was followed by a review of government and union documents including archival material. Qualitative research design was chosen as opposed to a quantitative study because of the historical nature of the question, which requires in-depth analysis. However, I made use of statistical data for background study and also from the

workplace survey conducted in the hospitality sector. Qualitative methods of inquiry namely documentary analysis, ethnography, workplace survey, in-depth interviews and life histories were used to gather data through case studies. Qualitative methods often involve the gathering and analysis of in-depth information on a smaller group of respondents. Burgess (1984) identifies several advantages of qualitative methods and key among them is how they enable the researcher to understand human and social interaction from the views of insiders as well as the participants during the interaction (see also Jorgensen 1989). The subsequent section presents the various methods which were employed in the study embedded within case studies.

2.1 Research instruments and procedure

A triangulation of methods was used calling for the development of a variety of instruments. First, a pilot study was conducted to ensure clarity; test internal validity, reliability and the appropriateness of instruments to address the questions under study in relation to methods and theoretical framework. Validity relates to how effective the design is in employing methods of measurement that will capture the data to address the research questions. Where necessary, adjustments were made. For instance, the semi-structured schedule was modified based on observations and sensitivities related to informal mining. Instruments were developed in line with data gathering methods and questions for the instruments were guided by the key and sub-questions of the study. These included a workplace survey questionnaire, semi-structured questionnaire which was relevant for life histories, in-depth interviews and focus group discussions. Guidelines were also developed for ethnographic methods. These were guided by the primary questions and sub-questions of the study focusing mainly on the key terms for analysis; political subjectivities, migrancy, mobilisation, participation and representation.

2.2 Data gathering methods

The subsequent section presents a discussion of selected data collection methods in relation to fieldwork procedures and activities. A triangulation of methods was used and these are discussed in more detail in relation to how they were used in the study to gather relevant data to respond to the questions under study paying particular attention to their strengths and shortfalls.

2.2.1 Case studies

A case study (or case report**)**, according to Green (2003) is a descriptive or in-depth analysis of a person, group or event. Yin (2009) asserts that a case study should be explanatory and be able to explore causation in order to reveal hidden facts or experiences. Case studies may be prospective and included as they become available or because of their historical background. The study focused on two case studies of mining, agriculture and hospitality. The case studies of mining has been chosen because of its historical relevance in labour migration in contemporary South Africa and hospitality has been included as an emerging sector which today, relies more on foreign labour. As mentioned earlier in Chapter 1, South Africa's economy was built on migrant labour.

The case study of mining was chosen because of its historical relevance in labour migration in contemporary South Africa and also served as a foundation to analyse the contemporary form of mobilisation bearing in mind that little is documented about other sectors in general; even the oldest sector to attract foreign labour to South Africa – the agriculture sector. The hospitality sector has been included as an emerging sector which today, relies more on foreign labour.

Selection of cases was also precipitated by the need to draw from different historical migration and mobilisation trajectories. While acknowledging nuances and particularities of the two sectors, the choice of the two sectors was informed by the need to understand mobilisation trajectories in relation to the old and emerging workplace dynamics. In addition, the two cases provide a gender analysis of mobilisation considering the fact that mining is predominantly male while hospitality mostly recruits female workers. A comparative study of two sectors of the economy over the time period mentioned required an in-depth inquiry into current dynamics including structural transformation that have occurred in the South African economy. The research design therefore relied on specific case studies developed on the basis of my analysis of the background information, desktop review and archival work. To achieve this, a triangulation of methods to allow for observations and in-depth studies were used to gather data through the selected case studies.

In particular, the case of mining foregrounds the hospitality sector and sheds light on mobilisation trajectories of foreign workers back-dating to early industrialisation when diamonds were discovered in Kimberley and gold in the Witwatersrand (see Callinicos, 2012). Furthermore, it demonstrates how local and foreign workers were militant forged unity

and solidarity based on their class struggle as Black workers (Allen, 1992; von Holdt, 2002). In contrast, the emerging sector to attract foreign labour to South Africa following the collapse of the migrant labour system -hospitality sector, is characterised by individualistic and clandestine mobility to South Africa and is somehow fragmented with diminishing solidarity. In particular, the case of the hospitality sector, presents ambitions to analyse how the unregulated, post-migrant labour regime has impacted on mobilisation, participation and representation of foreign workers in post-apartheid South Africa. While this does not mean a celebration or vindication of the migrant labour system, the case of the mining sector however, reveals that under apartheid, a strong sense of solidarity existed among both local and foreign workers as their main enemy was apartheid and the capitalist system (see Allen, 1992). Foreign and local workers forged strong collectives as a united force in various economic sectors which culminated into the formation of the first black unions led by foreigners like –Clements Kadalie who was originally from Malawi. The two case studies allowed for an in-depth analysis of factors shaping political subjectivities paying particular attention to mobilisation, participation and representation of foreign workers in a post migrant labour regime. In a way, such analysis also pointed to political subjectivities among workers change over time.

In the post-apartheid period, workers' power seems to be diminishing partly because of the effects of workplace economic restructuring which threatens workers job security. In this way, foreign workers are viewed as economic threats and this is manifested in xenophobic attacks where they are blamed for 'stealing local' jobs by their local counterparts. To some extent, the erosion of unity and solidarity between locals and foreigners could be attributed to the kind of sectors which attract migrants today –the service sector. It is within this context that I chose the hospitality and mining sectors which are completely different in nature with the later providing service while mining is industrial labour. Hospitality sector is predominantly female while mining is a male-dominated sector hence to a lesser extent; this observation prompted me to invoke a gender analysis in pursuit of the question under study.

A comparative study of two sectors of the economy over the time period mentioned required combined research based on strong theoretical framework with an in-depth inquiry into current dynamics. The research design relied on specific case studies developed on the basis of my analysis of the background information, desktop review and archival work. Structural transformation of the South African economy calls for multi-sector qualitative case study of the workplace over extended periods of time to allow for observations and in-depth studies.

Stake (1998: 89-9) cited in Brewer (2000: 315) identified three kinds of case studies namely intrinsic, collective and instrumental. Intrinsic deals with one instance of the phenomenon while collective involve several instances of the same phenomenon with the aim of identifying common characteristics. The third type - 'instrumental' case study focuses on phenomenon and facilitates understanding of something else. Gillham (2000) asserts that case studies play the role of grounding and deepening analysis towards a specific argument. In relation to rigour, collective cases permit empirical generalisations which means application of data to a wider population while instrumental cases allow for theoretical inferences (Brewer 2000).

Ethnographic case studies can be conducted in two ways in order to allow for generalisations. First, this could be by way of series of parallel ethnographic studies with different cases or with the same case conducted in different fields, possibly using multiple researchers (see Brewer, Lockhart and Rodgers, 1997). Second, case studies could be designed as a single project in the pattern of similar ones in different fields so that the comparisons can be made across them and a body of cumulative knowledge built up (Brewer 2000:315). My study adopted the second type as I envisaged understanding how migration dynamics and trends in two different sectors (mining and hospitality) shape political subjectivities over time. These cases were well planned and thought of considering their relevance to the question at hand and time period under study.

According to Brewer (2000):

> Effective sampling of cases is critical to the aspiration to engage in empirical generalisation. To sample means to select the case or cases for study from the basic unit of study when it is impossible to cover all instances of the unit and the sampling is unnecessary –this is possible when the unit of study is a specific organisation interesting in its own right. But where there are many instances or where the ambition is to engage in empirical generalisations, sampling becomes necessary (2000: 315)

Guided by this theoretical knowledge and also literature review, I chose the cases of the hospitality and mining with the confidence that I would solicit envisaged data out of them. In other words, my study involved what Glaser and Strauss (1967) call 'theoretical sampling' in which an optimal case is selected as the fieldwork site where the processes being explored can be expected to happen. For instance, mining has been the main magnet of migrant labour since the discovery of gold in the 1890s while the hospitality sector surpassed and has

become the major sector to recruit foreign workers in the 21st Century, signifying a shift in foreign labour supplies and recruitment. To be precise, the sub- question posed by the study is: "How have **historical shifts in labour supply, recruitment strategies and production processes** of South Africa influenced foreign workers' identities over time?" This question required analysis of how the shift from mining to hospitality as a key sector to attract migrant labour has impacted on political subjectivities and mobilisation of foreign workers in South Africa.

The two case studies of the mining and hospitality sectors provide an opportunity to analyse how the two different periods and processes herein the historical migrant labour system during apartheid and the post migrant labour regime shaped political subjectivity and mobilisation trajectories of foreign workers. A case study (or case report), according to Green (2003) is a descriptive or in-depth analysis of a person, group or event. Yin (2009) asserts that a case study should be explanatory and be able to explore causation in order to reveal hidden facts or experiences. Case studies may be prospective and included as they become available or because of their historical background. The study focused on two case studies of mining and hospitality.

The mining sector has been historically identified as highly unionised with a high rate of participation of foreign workers who also founded the NUM. Migrants have been credited for playing an instrumental role in the formation of the first and largest union for miners - the National Union of Mineworkers (see Allen, 1992). Prior to the founding of the NUM, the African Mineworkers Union was formed in 1930 and foreign migrants like T.W. Thipedi, the first secretary general and according to Allen, (1992) foreign miners played a very instrumental role; Thus, the most compelling question is, if foreign miners played an instrumental role in the formation of NUM and were awarded amnesty in a post-apartheid South Africa, why is it that the same has not occurred amongst hospitality workers? Yet, the hospitality industry/sector is today a key magnet and employer of foreign workers. The subsequent section provides an overview of the two sectors and will attempt to explain how they are involved with migrant labour and why they are appropriate as cases for analysis in the study.

2.2.1.1 A brief overview of the Mining Sector

In 1870 diamonds were discovered and gold in 1872, though gold was officially mined after 1886 (Callinicos, 2012). Mining gave rise to an upsurge in demand for skills such as

engineering which were relevant for the extraction of these minerals. Locals did not possess such skills and artisans were recruited from overseas mainly from the United Kingdom. These artisans brought with them not only the knowledge and skills necessary for mining, but also "British trade unionism which provided them with a power base in the work environment when interacting with their employer" (Nel and Rooney, 1993:55). White immigrants from overseas were usually more skilled than Afrikaners and African workers.

Development in the mining sector meant that more manpower was required as White labour was no longer sufficient. This resulted in the employment of more and more Black workers, including imported labour from China, though the latter group of workers was not classified as 'Black' at the time. Immigrant Asian labour was often positioned in skilled jobs though they were paid the rate of unskilled wages which resulted in conflict between workers and the employers. This resulted in the promulgation of an Act, Ordinance No. 17 of 1904, a discriminatory piece of legislation against non-South African and non-White workers especially Chinese (Nel and van Rooney, 1993).

The presence of ex-slaves and indentured labourers of both Chinese and Asiatic origin made South Africa's population truly multiracial and complex in terms of industrial relations leading to racial strife especially in the mining sector (1993: 56). Skilled workers in the mining sector kept their labour scarce by limiting trade union membership, thereby maintaining job standards which prevented dilution and fragmentation and thus depriving other workers (Africans) of the opportunity to acquire the relevant skills. In 1930, the first Black mineworkers union – the African Mineworkers Union was established and worked closely with the Communist Party. The apartheid government invested a lot of efforts to thwart this union which eventually collapsed. In 1982, the NUM was formed and started off on a very high note mobilising both local and foreign miners without discrimination. Inopportunely, a negative turning point was ushered in, first with the introduction of policies which limited the recruitment of foreign miners as required by the Mining Charter and also the Marikana massacre of 2012, which resulted in a sharp decline in membership of the union. Be that as it may, miners still believed in institutionalised form of organisation and renounced their membership from the NUM to the Association of Mineworkers and Construction Union (AMCU).

The most recent available data confirms this shift from mining to other sectors of the South African economy. Firstly, the dwindling of foreign labour in mining is neat after 2003 as

shown in Tables 1 and 2. Whereas the share of foreign labour on the mines stood at 57% in 2000, it fell to 47% in 2005 and was only 22% in 2012 (Crush and Williams, (2010: 11) in Budlender for MiWORC, 2013).

In general, union density in South Africa is reported to have declined since 2006 (ADCORP Report, 2013). Nonetheless, unionisation rate in the mining sector has increased. A report by NALEDI of 2002 revealed that the mining sector was the most organised sector with a union density of 77%. Sharp (2013) claimed that union membership in mining was as high as 80.7% of the total workforce in the industry. This is a huge figure considering restructuring that has occurred in the sector, labour broking and casualisation of employment. Some studies have demonstrated that the rise of sub-contracting where vulnerable non-nationals especially from Mozambique and Lesotho are hired "has had a marked impact on trade union strength in the mining industry and has led to a marked deterioration in wages, working conditions and underground safety" (DoL, 2007: 11). Considering the afore-mentioned figures in terms of union density, the question would be who then constitutes the remaining 19, 3%? Do foreign workers form part of the unionised workforce? Against this backdrop, it is important to evaluate such claims through investigating the level of mobilisation, participation and representation of foreign workers in this sector.

Participant observation was used to interrogate social phenomena like perceptions or stereotypes which exist amongst workers as working class communities. The mining sector has been very unstable since the Marikana massacres of 2012. It was not wise for the researcher to establish herself or directly associate with any of the unions organising in this sector for safety reasons. Moreover, the affected unions might not be interested or trust outsiders in the aftermaths of the tragedy. The researcher therefore resolved to locate herself in a more strategic mining locale where she was able to interact with miners and attend their meetings as they occur. Thus, the researcher embarked on an ethnographic study of the informal usually perceived as illegal mining where because of its informality, access was easier although consent to participate was difficult.

The following section presents a sub-section of the mining case study – informal mining, a new analytical area which emerged during the course of my study. It provides a brief background about the emergence of illegal mining in South Africa.

Over the past twenty years, structural changes have taken place in most economic sectors of South Africa. These changes have posed huge challenges in the manner in which work is

organised including recruitment strategies (see Segatti and Munakamwe, 2014). For instance, the mining sector has witnessed economic and labour restructuring in its core sectors relying mostly on outsourcing and subcontracting labour to execute its core business. Policy and legislative reforms, in particular the Mining charter of 2004, has resulted in dwindling numbers of foreign workers in the sector (see Forrest 2013). While the Charter emphasises the need "to ensure non-discrimination against foreign migrant labour" (Mining Charter: 2004: 3), local labour remains a recruitment priority.

The mining sector in South Africa has shed hundreds of thousands of jobs, and the composition of its workforce also radically changed. From 70% foreign migrant labour in the 1970s originating from neighbouring countries (Lesotho, Mozambique, Zimbabwe in particular), the workforce is now mainly domestic (foreign workers currently represent less than 20% of the workforce), following a political agreement (the Mining Charter) between mining houses and the South African government in 2003. In 2003, the ANC-led government signed a political agreement with the mining sector named the Mining Charter. This agreement was reached after years of negotiations and in the hope, from a business perspective, that the ANC's close ties with unions (the ANC officially belongs to the Tripartite Alliance, a political alliance between the South Africa Communist Party and COSATU since the early 1990s) would guarantee a degree of social peace (Segatti and Munakamwe 2014). Inter alia, the Mining Charter committed the mining conglomerates to two historically new policy trends which were imposed by the ruling party: the progressive elimination of foreign labour through non-replacement; prioritisation of recruitment among local communities for new operations. This political decision in addition to large scale reductions in the mining labour force due to downscaling, particularly in gold and coal, has affected the distribution of the foreign workforce in a way that is unprecedented in South African history. Mines have closed leading to job losses and today, both locals and foreigners rely on illegal mining which involve identification of old mining dumps and scraping residual traces of gold left behind by huge mining companies (see Debra et al, 2015: Kuntala 2011). There is a huge presence of foreign nationals which the Chamber of Mines (2014) estimated at 70% based on statistical data of arrests and prosecution (Segatti and Munakamwe 2014; ISA Paper).

This sector provided rich data to respond to the questions of solidarity amongst local and foreign workers in the post migrant labour regime. Through participant observation, the researcher managed to deduce how foreign workers perceive themselves and how has this

shaped their mobilisation, participation and representation in a post migrant labour regime. What emerged more from this sector was the concept of resistance as opposed to mobilisation unions. This is despite commitments made by unions to organise vulnerable workers falling outside of standard employment relations such as informal, casual, out-sourced or labour brokered workers. It is critical to point out that informal mining is referred to in my study to explain current dynamics in mining in light of a decline in recruitment of contract foreign miners in the post migrant labour regime giving rise to the hospitality sector. The subsequent section presents a synopsis of the hospitality sector.

2.2.1.2 A brief overview of the hospitality service industry in a post migrant labour regime

The post migrant labour regime has been characterized by economic restructuring, massive job losses and progressive marginalization of foreign miners who currently constitute less than 22% in gold and platinum mining (see Budlender, 2013). Whilst there has been a decline in recruitment of foreign miners, the service sector (construction, finance, hospitality) has expanded and has become the largest employer of foreign labour. Budlender (2013) contends that the share of foreign workers in the service sector stands at 9% of the total share.

Equally important to note is that the post-apartheid period has experienced a shift in migration patterns where the number of women migrating to South Africa has increased feminisation of migration (see Dodson 1998) and are employed in the service industry where hospitality falls. The 2002 census revealed that women constituted 37% of the 687 000 SADC born residents in South Africa and 63% were men (DoL, 2007). Migration trends have shifted over the years and individual, clandestine, informal labour migration has become dominant with a remarkable decline in fixed contracted labour facilitated usually by TEBA (see Crush 2007; DoL 2007; Simelane and Modisha 2008). Indeed, there has been massive disruption to the old migrant labour system (Simelane and Modisha, 2008) precipitated by new labour policies that emphasise recruitment of local labour (see Forrest 2013).

The hospitality sector is a labour-intensive industry characterised by irregular hours, low wages and a lack of job security. The sector is increasingly becoming informalised and precarious (HSRC, 2005). Despite the poor working conditions, the sector has continued to expand as reported by LRS (2012):

> The hospitality sector has grown increasingly quickly over the last decade and is now one of the fastest growing sectors in the economy. It is said that globally the business

> volume in this sector equals or even surpasses that of oil exports, food products and automobiles. In South Africa in 2009 the sector generated R179 billions of economic activity and 45 000 jobs through direct employment and a total of 1 011 000 jobs, representing 7.6% of total employment according to the CEO of the Tourism Business Council of South Africa. (LRS, 2012).

The above statement reveals that the hospitality industry is expanding and creating more employment in the economy. The study explored the hospitality industry as one of the emerging sectors that rely on foreign labour in a post migrant labour regime. The idea is to compare the degree of receptiveness to mobilisation, participation and representation of foreign workers between this highly feminized sector and the masculine mining sector. The LRS report of 2012 documented that workers operate under a high wave of job insecurity with constant threats of retrenchments. According to a research by NALEDI (2001), more than 70% of workers in the sector are not covered by collective agreements or Bargaining Councils. This means that most workers in the industry are protected only by the sectoral determination (SD). SD is the minimum wage and work conditions laid down by the Minister of Labour in order to protect workers in industries that are seen as particularly vulnerable to exploitation and where there is a very low level of representation by organised unions. Workers in this sector are subjected to retrenchment threats which make it difficult to push for financial benefits (wages) within the collective bargaining process. Hence, a few or no protests have occurred in this sector since the democratisation of the country.

The hospitality sector provided a new insight into the newly emergent sectors to attract foreign workers in a post-apartheid South Africa. The LRS report claims that there is an increasing number of foreign workers in this sector which poses a challenge to organising efforts by unions (LRS 2012: 22). It was noted that there are high and increasing levels of foreign workers in the workplaces. The high presence of foreign workers in the sector has to some extent been blamed for the increased level of vulnerability and fragmented solidarity between local and foreign workers. This is well captured in the quotation below:

> Participants felt that immigrant workers were an easy target for management abuse as they do not know their rights or are willing to give them up in order to keep their jobs. This vulnerability makes immigrants popular with management as they are cheaper and easier to control. On the other hand it sows divisions among workers who see immigrants as destroying the hard won gains for conditions that South Africans have

> fought for as well as making it more difficult for locals to get jobs. Where immigrants have joined unions, it is reported that South African workers are not always willing to join the union if they see that foreigners have joined it. *(*2012:22).

In fact, new political subjectivities are created both ways between local and foreign workers employed in the hospitality sector. The case of hospitality sector helped us to appreciate the new forms of political subjectivities in a post migrant labour regime. Both two cases (mining and hospitality) assisted in comprehending the questions of political subjectivities, mobilisation, participation and solidarity amongst local and foreign workers.

2.2.3 Research Sites

Two sites were selected as I needed to spend quality time within the environment in which I believed would generate in-depth data to respond to my key question under study. The two sites were then studied monographically as two cases with common and different characteristics and then analysed as a combination of different logics of action which co-exist. Interestingly, the cases were gradually enriched by new issues which emerged and required in-depth understanding. The site for mining case study was in Durban Deep, Westrand, in Johannesburg while I settled in a big chain hospital for my ethnographic study of the hospitality sector.

2.2.3.1 Site A: MT[5], Westrand Johannesburg

Given the question at hand and the selected cases studies, multi-site approach involving two sectors; mining and hospitality was used. The first site was an informal mining workplace where a sizable number of immigrants are involved in informal mining of gold. This site is located in the margins of the City of Johannesburg's Westrand area. For ethical reasons, I will not exclusively mention the actual site given the sensitive and 'criminal' aspects attached to activities involved in this area. I was first introduced to this area by Linda, who later became research assistant. Decision to target this site was informed by the need to understand where immigrants were earning a livelihood in light of an intensive literature review which showed that in the post migrant labour regime, immigrants were entering the country clandestinely and individually. In addition, literature also pointed out that recruitment to the mines in contemporary South Africa had declined although ex-miners including new immigrants were still dependent on remittances such that they found an economic net in abandoned mines where they risk their lives tracing for residual gold for survival. To

[5] Not real name

substantiate this literature were media reports which documented fatalities in these informal mining spaces emphasising the high presence of immigrants. Again, I was introduced to this sector during a seminal study conducted by MiWORC at the African Centre for Migration & Society (ACMS) which conducted sectoral studies which attempted to understand migration dynamics related to worker. I also used the ethics clearance granted to MiWORC in 2013 and was further extended to 2016 for study exclusively focusing on Zama-Zama.

I employed ethnography in the form of shadowing considering the 'illegal' activities involved; in-depth interviews and life histories with foreign migrants undertaking mining activities due to two major reasons; restrictive immigration laws and bureaucracy in obtaining work permits which posed as barriers to seek employment in the formal labour market and secondly because of labour policies which prioritise citizens given also the escalating rate of unemployment in the country. As such, even highly skilled foreign professionals are also involved in mining activities as a 'temporary' means of survival as they await registration with professional bodies as the starting point for eligibility to apply for work permits. Very often, these foreign professionals come into the country on a visitor's visa but will eventually become illegal because of the length time to process their paper work. While the new immigration law requires that foreign workers initially apply for the first work permit in their countries of origin, some responded outlined the issue of clearance with the South African Qualification Authority (SAQA) and also registration with professional bodies as attracting them to migrate before they are granted work permits. Given the length of time taken to acquire the aforementioned documents, they would rather come and process them personally than to wait for agents to undertake the task on their behalf. At the same time, they need food on their table and through social networks they are directed to the abandoned shaft where it is easy to enter without papers. One of my respondents was a Zimbabwean mining engineer who was compelled by economic and migration status to engage in 'prospecting' work in the abandoned mining shafts. This site fitted very well in my study because it presented a contemporary real picture of labour migration dynamics in a post migrant labour regime.

However, it is important to underscore the fact that the primary goal of including the mining sector in my study was to ground labour migration and mobilisation trajectories, participation and representation of foreign workers in its historical context. Thus, the major case for analysis in relation to my question was the hospitality sector which since the decline of labour migration to the mines has emerged as a contemporary sector to attract foreign workers to South Africa. The following section presents a description of the research site for

the hospitality sector. The study was conducted at one of the abandoned mines in Durban Deep, which is located in the western part of Johannesburg and a combination of shadowing; in-depth interviews including working life histories of workers were conducted. According to Thornton (2013) the area is known for producing gold since the discovery of the mineral in the Witwatersrand. The miners live in rented shacks located at backyards of government RDP houses. From afar, the area appears as a typical informal urban settlement. During the rainy season some of the shacks are washed away or flooded.

Through observation, I managed to observe social processes that would be otherwise hidden (McMillan and Schumacher 2006:347). However, as Allen (1992) argues:

> Writing about social relations is always a learning experience …The explanation of social situations is dependent upon which analytical method is used and not affinity to them through race, colour, gender, religion, age or some other kind of proximity…it is not only those who have experienced a situation that can interpret or document it better (Allen, 1992: 4)

I observed and *shadowed* illegal miners in their workplace since October 2013 when I was working on a project on labour migration at the Afrcan Centre for Migration & Society (ACMS) referred to as Migrating for Work Research Consortium (MiWORC) [see www.miworc.org] . As the mining shafts are informal, access to the site was easier but it proved very difficult in the beginning to get consent for participation. I had to take exercise extra caution to ensure confidentiality including protection of my respondents‘ identity taking into account the sensitive and highly criminalised environment in which they operate. Ten key informant interviews were conducted with buyers of gold including agents, the Department of Mineral Resources (DMR), one of the largest gold mining companies – Anglo-Gold Ashanti and one union – National Union of Mineworkers (NUM).

A total of 40 interviews were conducted with women and men involved in the sector; 26 were Zimbabweans, 9 Mozambicans and 4 Sotho and 1 South African from KZN. Of these, 15 were women while 25 were men and all were cross-border migrants from Zimbabwe, Mozambique and Lesotho. The profiles of participants varied from individual to individual and nationality. For instance the majority of Zimbabweans interviewed had completed their ‘O’ levels and some had gone as far as university education. Two of the participants possessed first degrees in geology and marketing but failed to secure jobs in the formal economy because they did not have the right documents to work in South Africa. Ten of the

women interviewed were independent migrants[6] and were single parents while five were married. Of the 25 men interviewed, 18 were married while 7 were still single. The demographic profiles of respondents point to feminization of migration and also support my earlier arguments that the contemporary foreign worker while educated is limited to employment in the formal labour market due to restrictive immigration laws.

2.2.3.2 Site B: Restaurant P, Johannesburg South

This big multinational-restaurant is located in a big mall in one of the southern suburb Johannesburg. The choice of this site was made after observations and informal conversations with waiters each time I went out with my family. I also realised that one of the senior managers who later agreed to be interviewed and also granted me access was a Zimbabwean national. As one of the restaurant's loyal customer for quite a number of years since I moved to stay in that suburb, some rapport had been somehow established. The other advantage that I also come from Zimbabwe such that every time I visited the restaurant, we would communicate in Shona. Thus, I took advantage of this social and '*mwana wekumusha*[7]' relationship which had been established over the years. I explained my research to Tendai[8] and also that it was meant for the purposes of my academic study although he teased me that "*hatidi vanozobudisa nyaya dzedu kumusha*[9]*".* After some time, in the course of my research, I revisited this statement because for me it was loaded with a lot of analytical data. Tendai eventually opened up and told me that he was in possession of a marketing degree. While he had acquired a work permit through the popular Dispensation for Zimbabwe Permit in 2010, which was granted under the Minister of Home Affairs discretion to regularise undocumented Zimbabweans in South Arica, Tendai was struggling to secure a job in his field which is already 'flooded' as he had this to say:

> Eish…it is very difficult to find a job in my field. The problem is that the sector accommodates graduates from those with elementary certificates, diplomas and degrees. The challenge is that priority is given to South Africans…I have been invited for many interviews but always receive regrets although I know that I have the right qualifications for the job. The next thing, you find very young unexperienced graduates

[6] Independent migrants in this study refers to those who migrate based on their personal choice other than to join a spouse

[7] This is colloquial language used by Zimbabweans when they meet in a foreign country anywhere in the world.

[8] Not his real name

[9] Meaning we don't want you to expose our economic activities back home

> driving these ‘poshy’ cars because the job always comes with a very lucrative package…But what can we do…this not our country!

As previously, proposed, I requested for an opportunity to work as a waitron or in the kitchen –washing dishes or cleaning, but this was not granted as Tendai also reported to senior management. He also seemed reluctant to accommodate me every day at their premises since I had already opened up about my intention. He also explained that his hands were ‘tied’ and that this might land him in trouble the moment his bosses knew about his plans - given their hatred of unions. His level of education assisted him in making interpretation of the question as ultimately ‘mobilising’ workers to unionise in a subtle way. We discussed this and settled for mere observations and interviews. Tendai seemed very co-operative and during, the course of my study, we communicated through WhatsApp especially when I needed to verify certain observations. We also agreed on a strategic timetable which required me to visit the restaurant for observations during the time that he or another Zimbabwean supervisor (a young lady named Sarah) whom he introduced me to was on duty. This would curb suspicions and conflict with his bosses.

I employed ethnography, workplace survey, life histories and interviews with foreign workers mainly from Zimbabwe, who I later realised that they constituted almost 90% of the workforce. A young student from Zambia also worked there during weekends and semester breaks, as her aunt who she lived with, stayed in the same suburb although she was studying in Inner-city Johannesburg. This restaurant is ever busy as it is located in one of the affluent surburbs where families can afford to ‘take out’ their families for lunches and dinners. As part of our agreement, Tendai advised me not to interfere with ‘his employees’ during working hours because they virtually all relied on tips, such that productivity was of priority. To fulfil my promise, I requested that I hand out my questionnaire for the workplace survey, of which workers would respond to in their free time or after work.as the workplace survey was the basis for selecting participants for life histories and interviews, I requested respondents to provide their contact details if they so-wished. I explained to them that privacy and confidentiality would be observed. I noted that the majority were keen to share their contacts for two reasons; first because they had very good working relationships with their supervisors and managers who also shared almost the same grievances with them and secondly, te question related to unionisation and representation stimulated the desire to participate as many later opened up about their grievances related to exploitation and wage disparities. Some went further to share their previous experiences with former employers. I

later realised that of the 90% foreign employees, 73% were young workers who also owned android mobile phones and participated on social media in particular WhatsApp. One of the respondents hinted me about their WhatsApp groups where they interacted and shared advice on work related matters and also social matters. I approached the administrator who also was my respondent to add me to the group. Given my background and experience as a union activist, I had advised or even referred some to migrant rights organisations for assistance with documentation or other work-related matters. Tendai had also hinted to them that I was not only there to research about them (as others had complained about "being researched time and again yet their problems remained the same") but also to offer advice where I could help either directly or through referrals.

In addition to the two sites mentioned above, I was also granted access to one of the main trade unions organising in the hospitality sector – SACCAWU. While the idea was to work closely with the national organiser through the shadowing method, this did not end up taking place as a result of meagre resources. However, I had an interview with the then national organiser who at the time was already working with migrant rights organisations through the COSATU Vulnerable Workers Task Team (VWTT). I also had the privilege to participate in the forum as an academic and trade union activist by orientation. In other words, aside positioning myself at a physical locality, I also participated in workers for a; meetings, seminars, workshops and conferences.

In addition to observations, I also interviewed the Secretary General, of the largest labour federation in Nigeria - Nigeria Labour Congress (NLC) and the national legal coordinator for Ghana Trade Union Congress. These interviews revealed some commonalities and nuances among trade unions and their responses to migrant labour. It emerged that the Ghanaian policy environment is not very receptive to cross-border migrants as they are barred from participating in economic activities like street trading. Also, trade unions emphasise legal documentation before one joins a union although he acknowledged that in times of crisis they might assist non-union immigrants especially with repatriation. Interestingly, in Nigeria the labour law allows for anyone in a unionised workplace to belong to union organising in that particular workplace irrespective of their nationality. One becomes a union member the moment he begins work at a unionised workplace unless they motivate against membership. These insights assisted in analyzing the concept on international worker solidarity and also given the fact that the two federations are close allies of COSATU, it was very important to examine what lessons could draw from the two federations.

In addition, through the Mineworkers Development Agency (MDA), an arm of the NUM responsible for assisting ex-mine workers, their families and communities to recognise their socio-economic potential, I was granted access to interview mineworkers at one of the largest gold mines, an opportunity which I struggled to realise for four years since we began the MiWORC project. This also somehow provided some insights of dynamics related to migrant labour in formal mines in the post migrant labour regime and key findings are presented in Chapter 6.

2.2.2.3 Language and Translations

Most of the interviews were conducted in vernacular languages; local and those of foreign workers from across the SADC region – the majority being Zimbabweans. This was an advantage for me and underscored the importance of myself being a migrant. In addition, respondents were very keen to open up having assurance based on my migration status. However, I still had to seek the services of Ethel Musonza as my translator. Ethel is very eloquent in almost all indigenous languages spoken in South Africa except for Afrikaans including those from key labour-sending neighbouring countries such as siSwati, seSotho and Xitsonga. Ethel also assisted with setting up of meetings, a very daunting task and challenge when researching vulnerable workers. It is important to point out that Ethel had been trained on research skills and ethics through the MiWORC project, where she was also hired to undertake translation services. Further, I explained to her about the sensitivity of the informal mining sector such that extra caution had to be exercised especially related to privacy and confidentiality. The advantage of having Ethel was also that she was very familiar with the research site and people in the Westrand area as she trades in sim cards and banking services related to remittances and is popularly known as "Mother". While I possessed the academic knowledge she is very knowledgeable in what we would refer to as good "public relations" skills in the corporate world. To be precise, I relied more on her social capital and networks including behavioural aspects surrounding the site like dressing. In a way, while she does not live in that locality, she was well-accepted by community members; more like an insider/ outsider. The importance of inside understanding of researched communities is emphasised by Fakier, (2012) in her study of internal migrant nurses. Citing Albert (2008), she argues that:

> Drawing on the tacit knowledge and understanding of "insiders" (i.e., residents of a community) enhances a contextually sensitive understanding of a research site when a

researcher is able to supplement fieldwork with historical and theoretical sources (2012:5).

2.3 Documentary analysis

Documentary analysis is a qualitative method in which a researcher analyses primary and secondary documents in order to come up with data that is relevant to the research. The documents are in two parts namely: personal documents and official documents (McMillan and Schumacher 2006). It is important to note that documents can also emerge during an interview or participant observation (2006: 357). For the purposes of this study, documentary analysis served a useful purpose to explain the historical progression of the migrant labour regime, analysing how it began, benefitted the apartheid system and how it is replicated through policies and legislations in a post-apartheid South Africa. The major official documents targeted were, archival material from the government gazettes; labour policies and legislations promulgated with a focus on foreign labour, union constitutions/ policies [especially NUM (mining) and SACCAWU (hospitality)], migrant associations outside unions, Chamber of Mines, and those of TEBA (the recruitment agency for mine workers during and in a post-migrant labour regime). Since access was granted, it was easier for me to access archival material from SACCAWU. The material included information on the formation of the first Black union in the sector, ICU led by a Malawian migrant worker, Clement Kadalie to the SACCAWU which was led by Mama Emma Mashinini. In contrast, it took me almost four years to gain access to the NUM (including the time I began working on the MiWORC project in 2012 which was somehow intricately connected to my study before I officially began my doctoral studies). The Mineworkers Development Agency eventually 'opened' up doors and negotiated access to the archival library of the union where I manged to access historical material tracing back to its formation since the first Black union, AMWU, was banned. In addition, I managed to access material from the Chamber of Mines dating back to the discovery of minerals in South Africa and some of the agreements related to unionisation of Black mineworkers.

I also managed to review government documents in particular the South African Constitution, Labour Relations Act (LRA), Basic Conditions Employment Act (BCEA), Employment Equity Act (EEA), Skills Development Act (SDA) to examine how the **South African state policies / legislation** categorised and conceptualised foreign labour and how this has shaped policy development and class –based representation.

In addition, I also explored the implication of the new Immigration Act promulgated in 2014 in relation to aspects of citizenship rights and political subjectivities of foreign workers. Interestingly, while much of the statutory instruments mentioned above emphasized the rights for all in South Africa, they seem to be blind and ambivalent in as far as migrancy is concerned. As a result, while subtle, the policies and legislation to a greater extent exclude migrants in relation to the rights to organise, representation and collective bargaining.

I was also privileged to access documents from the Chamber of Mines (COH) and Anglo – Gold Ashanti in particular the Mining Charter of which provided information recruitment shifts of foreign workers in the mining sector. Earlier on, I had conducted key informant interviews with officials from the COH and Anglo-Gold Ashanti through the MiWORC project. Through these two methods, I managed to get views on how **historical shifts in labour supply, recruitment strategies and production processes** of South Africa have influenced foreign workers' identities over time.

As a participant observer within the COSATU's Vulnerable Workers Task Team (VWTT), I had easier access to documents such as minutes and discussion documents related to migrant workers. Through my interactions with the International desk, I also had access to the federation's policy documents on foreign workers. In addition, I attended a workshop organised by the same desk in commemoration of International Women's Day on the 20th of March 2015, whose aim was to encourage members to denounce xenophobia both in the workplace and communities. Delegates of the workshop also called for the need to have migrants join the union.

2.4 In-depth interviews (IDI)

Part of the case study design involved in-depth interviews with key informants and workers in the two selected research sites. In-depth interviews as opposed to surveys cover a small population but are able to generate rich in-depth data to understand a particular phenomenon. According to Barchiesi (2011), in-depth interviews "can produce incomplete meanings that allude to the respondents' precariousness, the intrusions of the state, or the brutality of market forces rather than systematising or conclusively situating them in a conscious historical narrative". Further, Rapley (2001) cited in Barchiesi (2011) asserts that "the interviewee's ability to signify the social world is not, in fact, premised or conditional upon the production of coherent, fully transparent reports…interviews are not accounts aimed at objectivity but social encounters where the researcher and the researched are mutually and reflexively

constituted and signified". In essence, theoretical concepts should be linked to empirical indicators as validity of interviews is contextual whereby they might "provide valid indicators under certain conditions for some theoretical concepts and very invalid evidence for other theoretical concepts" (Zimitri 2013 seminar reading pack). Similarly to life histories, through IDIs, I managed to gather in-depth data in the informal and formal mines including hospitality sector. Through this method, key informants revealed detailed information on mobilisation trajectories of foreign workers in South Africa. Key policy makers interviewed also expressed their policy position of foreign labour in South Africa. With reference to informal mining, key informants from government, business and trade unions seemed to unanimously agree and as having common view that these kind of activities need to be eliminated. Nonetheless, they seemed to avoid confronting the 'elephant in the room' that of migrancy and changes in recruitment policies in the mines which forced contemporary cross-border migrants to seek an economic net in abandoned shafts. This observation by the researcher pointed to the subjective nature of interviews in general as these key informants attempted to corroborate their arguments based on media representation of Zama-Zama other than through scientific facts. Again, for trade unions, it was clear from IDIs, that while there is this increasing rhetoric around organising those who fall outside standard employment like casuals, informal, out-sourced; they were reluctant to intervene in this sector not only because it is criminalised but also because there is a strong presence of immigrants and the issue of responses to this growing sector haunted them again.

Interviews were initiated by invitational questions like: **key informants: "would you like to share with me about what you think is the role of foreign workers in the SA economy?" or to workers I would say: "are you a member of a trade union or any workers organisation". To participants of life histories: "Would you like to tell me about your working life (history), where you were born, when you started working, and your activism?"**

Participants for interviews were selected purposefully; and selection was based on the input they provided in the workplace census and comprised of both locals and migrants in order to understand common and divergent issues among the two categories of workers. I used my activism skills to access respondents such as trade union leaders and workers. Interacting with Zama-Zama exposed me to the realities of harsh working and living conditions in informal workplaces and settlements. In some instances, I was tempted to make interventions in particular when respondents from the informal mining kept referring to 'police brutality' as

their major problem within their workspaces. This culminated in a documentary project by the Legal Resource Centre which documented the human rights atrocities faced by Zama-Zama in particular women and cross-border migrants in the abandoned shafts. To select key informants for the study, I was guided by desktop review and information gathered in the field. For instance, I was only alerted to buyers after speaking to Zama-Zama.

2.5 Workplace census

The purpose of the workplace census was to understand the site itself and also to inform purposive sampling which was targeting those participants whom I believed would generate quality data to respond to the question(s) under study. A workplace survey allowed me to have a picture of demographic data of the workplace such as migration status, age, sex, education, race, wages, (in particular wage disparities), length of employment in South Africa, experience with unions before migration; mobilisation, participation and representation in the workplace. The survey assisted in selecting participants for in-depth interviews and in particular life histories where purposive sampled out of the universe. The survey allowed me to capture the views of locals although they were few in both workplaces and also revealed that migrancy was not the only issue for exploitation but also employment contracts which were more of casuals for both locals and foreign workers. In addition, I was able to observe dynamics like out-sourcing whereby depending on the time of the year like festive season, there are many employees in the restaurant thus the total number of employees fluctuates according to seasons. For instance, when I began my observation during the festive season of 2014, Site A the restaurant employed over fifty employees categorised into morning, afternoon and evening shifts. Some were hired at ad hoc basis when demand was high. During the festive season, various companies host Christmas parties for their employees. Because, virtually all waiters are hired as casuals, it was really difficult to locate permanent employees, who are very often middle managers, accountants, cashiers and public relations. In a way, while this restaurant is formally registered, it seems like its employees are hired on an informal basis through placement agencies. In a way, they do not sign direct contracts with the primary owner of the restaurant and this will be explained further in Chapter 6.

2.6 Life histories

This method of inquiry provides an analysis of participants' life stories over time. The individual story is intimately connected to historical conditions beyond own experience and

control and involves tapping into intersections of personal experience, historical circumstance, cultural frame and institutions and their influences on perceived choices. Following Bozzoli (1991), the use of life histories grounded my analysis of the structural and policy conditions in which foreign and local miners mobilised around the issue of class and race as opposed to politics of difference based on nationality or citizenship. Furthermore, understanding the working life histories and experiences of ex-miners assisted in appreciating how identities are constructed over time including change of space and how this shapes political subjectivities. For instance, I argue here that during apartheid local and foreign miners had a common identity forged around class, race and their aspirations to dismantle apartheid. However, we witness an acute shift in the post-apartheid period whereby workplace restructuring has created divisions based on nationality among Black workers as they compete against each other for jobs and as a result, many incidents of xenophobic attacks have occurred. Again, the new democratic dispensation kind of dismantled solidarity among workers as locals feel more entitled to jobs (see Barchiesi, 2011).as opposed to foreigners (whom they accuse of stealing their jobs) and also that the apartheid system seems to have been totally eradicated.

Life histories make use of memory to transcend interview settings while at the same time evoking feelings. They also capture change by providing insight into how past experiences shape current and future identities and subjectivities including also class privilege and its links to class mobility. Life histories were significant as they provided an analysis of the series of events and dynamics leading to construction of one's political subjectivity towards mobilisation and unionisation. It is very critical to mention that for life histories, not any foreign or local worker was selected. Thus purposive sampling was used and the target group was local and foreign old cadres (comrades), particularly those who were active or are still active within the period under review and have a history to tell. For instance, the assumption was that those who have been union members in their countries of origin had some experience with unions; whether positive or negative and this would inform their political choices in the host country. Again, the objective was to understand the impact of a particular discourse on the construction of political subjectivities amongst foreign workers. Again, the idea was to map foreign workers' biographical accounts in terms of their mobilisation, participation and representation in a post migrant labour regime (see Hollway and Jefferson, 2000). By tracing life histories of retired ex-foreign workers in South Africa, the study aimed to position these within the modern narratives of contemporary workers and also "pay

attention to the unconscious structures of meaning that transverse life histories" (Freeman, 2004). These narratives helped us to understand how political subjectivity is constructed over time. Literature has revealed that most of the foreign workers were as good as their local counterparts and that foreign workers played an instrumental role in the formation of first Black trade unions (see Allen, 1992; Nel and Rooney, 1993; Bezeduinhout and Buhlungu, 2009).

The question on the role of foreign workers at different political stages of workers struggles in South Africa was articulated through life histories of both local and foreign workers. Semi-structured in-depth interviews with key union leaders were conducted to complement the life histories. It is important to note that life histories as a methodology for this particular study did not necessarily have to deal with the workers upbringing but their **working life experiences** which I call **'working histories' based on my articulation of ethnography as a method of data collection**. With regard to local workers, the study was interested in interrogating the interactions, relations and solidarity (if any) that have existed between them and their foreign colleagues as sharing a common class of the working poor.With regard to local workers, the study was interested in interrogating the interactions, relations and solidarity (if any) that existed between them and their foreign colleagues as sharing a common class of the working poor. Pertaining to life histories of foreign workers, the study focused more on those working in the hospitality sector and documented when they came to South Africa , their experience with mobilisation, participation and representation by trade unions in their countries of origin (if they have a working history before migration). From the data gathered it is somehow clear that the majority of respondents had not worked before migrating and thus had little knowledge of trade unions although some had some insight knowledge from media coverages like in the case of Zimbabwe where unions re associated with police brutality and violence.

By tracing life histories of retired ex- foreign workers in South Africa, the study also aimed to position these within the modern narratives of contemporary workers and also "pay attention to the unconscious structures of meaning that transverse life histories" (Freeman, 2004). These narratives reveal an understanding of how political subjectivity is constructed over time. Literature has revealed that many the foreign workers were as equally respected and embraced as their local counterparts and that foreign workers played an instrumental role in the formation of first Black trade unions (see Allen, 1992; Nel and Rooney, 1993; Bezeduinhout and Buhlungu, 2009). The question would be how and why participation trends

for foreign workers has changed in the post-apartheid period? Could this be because of a shift from the mining to hospitality sector which is predominantly female or could this be attributed to workplace economic restructuring or globalisation and its competition for jobs? These questions were somehow answered in Chapters 5 and 6.

2.7 Ethnography

Ethnographic methods of participant observation and shadowing were used to gather data and this approach was critical in further explaining material gathered through other sources like interviews and also in explaining the social world of participants (see Fakier, 2012). Geertz (1973) defines ethnography as "thick description" which involves generalisation "within cases" through observations made for at least one year. I was privileged to have an opportunity to spend almost for years of observation time. A more elaborate definition by Brewer (2002) describes ethnography as "a style of research rather than a single method and uses a variety of techniques to collect data". Furthermore, Brewer (2000) defines ethnography as:

> The study of people in naturally occurring settings or 'fields' by means of methods which capture their social meanings and ordinary activities, involving the researcher participating directly in the setting, if not also the activities, in order to collect data in a systematic manner but without meaning being imposed on them externally (2000: 10).

In his study of Zimbabweans in South Africa on "strategies of social disconnection – of remaining out of sight or 'incommunicado' (Worby, 2010: 1), the author used ethnography to understand the social relations and flow of remittances and found out that it is not always the case that immigrants maintain ties with those left at home for fear of 'surprise visits' and the moral obligation of sustaining families left back home while they suffer in South Africa. This rich data would not have been revealed in a survey or mere interviews where respondents would attempt to portray a more responsible and moral approach to the question. Thus, ethnography allows a researcher to make analysis beyond ethical judgements through observing participants over time.

Ethnography is significant for researching organisations and research participants as this assists in revealing under-lying meanings. This method is closely associated with the naturalism philosophical framework which is:

> the study of social life in natural settings as they occur independently of experimental manipulation and is also linked to the humanistic, hermeneutic or interpretative paradigms…knowledge of the social world is acquired from intimate familiarity with it and in capturing the voices of people who inhabit it (Brewer 2000: 323)

Hughes (1951) cited in Brewer 2000 describes ethnography as 'dirty work' based on some of the activities that ethnographers are involved in such as nightclub hostess (Allison, 1994); train locomotive repairers (Gamst, 1980); police officers (Brewer, 1991; Holadaway, 1983); prison warders (Jacobs and Retsky, 1975) lorry drivers (Hollowell, 1968), assembly line workers (Chinoy, 1955), machine operators (Burawoy, 1979) and massage spar trainees (Chapkis, 1997).

In relation to this 'dirty work' (Hughes (1951) , I believe mine was dirtier as it did not only expose me to harsh work but also to a criminalised working environment where at some point I was perceived as a 'sex worker', 'illegal' buyer or 'policewoman' (in the eyes of Zama-Zama) and as a 'criminal' in the eyes of police. Again, working in dusty areas coupled with mercury which is irresponsibly disposed of to some extent exposed me to health hazards. One can easily contract tuberculosis as the immunity system is not adapted to such environment as compared to those who live and work within for the greater part of their lives. Even so, I was attracted to this environment by the desire to understand informal social interactions in informal and illegal workplaces where the contemporary migrant find an economic net and how these spaces relates to mobilisation and representation of such workers by trade unions or any other worker organisations. Interestingly, the study revealed the interface of the formal and informal and justified why these workers while perceived as 'illegal' were in fact a subset of big formal corporates. In particular, the research also illuminated the dynamics of worker resistance (see Beynon, 1975) as opposed to mobilisation, in a way, demonstrating workers' agency outside of union protection. With regards to the hospitality sector, ethnography as a method allowed me to focus on "naturally occurring activities and social meanings of workers capture in real life workplaces, captured in their own words and understood in their own terms (see Brewer 2000).

Also, an extended ethnographic enquiry into the working conditions of foreign workers would reveal significant issues, such as attitudes and behaviours) which they might not do through interviews (see Wolcott, 1998. I also assumed that the ethnographic totalisation (linking the micro-culture with the whole), the elements of narrative (the content of the

personal narration of process observed) as well as the disparate case-book information (data collected in various ways from a variety of sources) could elucidate my understanding of the factors shaping political subjectivities among foreign workers. Likewise, extensive observation could reveal contextual realities of workers in their workplaces holistically (see Henning 2000).

Ethnography involves counter factuality and the critique of ethnocentric social thought. It helps us to understand cultures or systems as part of a whole; that is the life world as a frame for 'holistic' analysis (see Malinowskian, 1950). Overall, ethnography assists us to be able to contextualise, historicise and theorise. The ethnographic casebook or combinative ethnography according to Bazsanger and Dodier, (1997: 16) "identify certain cases (and notably life histories) as examples of more general phenomena, but with quite a high degree of freedom to circulate between different levels of generalisation" (1997:16).

2.7.1. Criticism of ethnography

Ethnography as a method is criticised by natural scientists for failing to meet the principles of natural science methods as applied to social life (see Goldthorpe, 2000). Some of the shortfalls deal with the role of the researcher who to some extent behave as part of the variables because of their intimate attachment to the study as their obtrusive presence is to some extent perceived as influencing the study (Brewer 2000). Flexible, unstructured and open-ended data collection methods according to the critique can result in unsystematic data collection which might interfere with data analysis as any noted nuances could be attributed to variations data collection methods. Yet, according to Brewer (2000):

> The rationale behind the highly structured methods of the natural sciences is to minimise extraneous variations in order to insulate 'real' differences in the data which is why natural models of social research are designed to eliminate both the effects of the researcher and of the tool used to collect the data (2000:319)

Another shortfall of ethnography is its subjective nature. Again, the method has been criticised for assuming the world to be a collection of cultures yet people have complicated differences. Further, it ignores all the connections which exist in communities. Post modernists also criticised Gees definition of ethnography as "thick descriptions" as not impartial and being selective on which picture or version to present neglecting the fact that there is different ways of presenting a story or image (Denzin and Lincolin, 1998: 21-2; Brewer 2000: 38-54). Equally important is the fact that there are phenomenon that exists

independent of researchers and knowledge claims about them can be judged reasonably and accurately in terms of their likely truth.

Despite the postmodernism critique, ethnography is still relevant and the best way of understanding social phenomenon and their meanings in as long as rigour is a priority for qualitative researchers as demonstrated by my study of which I consciously selected the method and was cautious not to influence my observations. There is still hope in ethnography as maintained by Seale (1999), who asserts that "quality in qualitative research is possible (1999:17), and there are a number of sets of guideline by which the practice of ethnography is codified and can be made rigorous" (see also Brewer, 1994, Hammersley, 1990, 1992, Silverman, 1989, Stanley, 1990)

My critique of the method is that a researcher cannot directly participate in activities which are criminalised - as in my case study of illegal miners and this confines the researcher to observer status only or shadowing subject to access. This might not provide a holistic picture of the circumstances being observed hence this will also to some extent impact negatively on rigor and generalisations. In his description of ethnography, Brewer clearly indicates "the method used must permit access to people's social meanings and activities and involve close association and familiarity with the social setting". I was quite limited in my study of the Zama-Zama to stay closely to them for security reasons from both robbers and police (See chapter 5). However, to augment the gaps, I conducted in-depth interviews and collected photographs taken underground (see Pink, 2001) in order to understand fully the activities involved underground.

Ethnography usually involves a triangulation of methods which is the use of multiple methods of data collection like interviews which could come earlier or later in the research process or surveys, or life histories. Usually, the researcher develops questions during the progression of the observation process. The researcher would need to keep a diary to note down all observations. At the same time, ethical considerations (especially, confidentiality and anonymity) should be at the centre stage of all observation processes.

2.7.2 Shadowing

My study involved a combination of two ethnographic methods of *shadowing* and *participant observation*. The study involved a *multi-sited ethnographic approach* of two workplaces of the mining and hospitality sectors. Sampling was done at workplace level. The idea was to attempt to comprehend the patterns of mobilisation, participation and representation of

foreign workers by trade unions in South Africa in the period 1980-2013. The researcher has used the shadowing method before in a quest to establish the possibilities of organising informal workers –home-based care workers in South Africa and worked closely with one of the largest unions – the National Education, Health and Allied Workers Union (NEHAWU) (see Munakamwe, 2008 (unpublished thesis). Shadowing has proved to be very effective as the researcher is able to establish certain phenomena (like organisational weaknesses or red tape) which could not be revealed through interviews with union officials

The researcher shadowed one key union which is critical to this study and which has already embarked on a massive recruitment drive and mobilisation of foreign workers, which is the South African Commercial, Catering and Allied Workers Union (SACCAWU) which organises hospitality workers. The idea was to attempt to comprehend the patterns of mobilisation and representation of foreign workers by trade unions in South Africa in the period 1980-2013. The researcher has used the shadowing method before in a quest to establish the possibilities of organising informal workers in South Africa (see Munakamwe, 2008 (unpublished thesis). Shadowing has proved to be very effective as the researcher is able to establish certain phenomena (like organisational weaknesses or red tape) which could not be revealed through interviews with union officials. In terms of access, the researcher was invited by SACCAWU the union in her capacity as a labour activist to attend workshops and if interested participate in foreign workers recruitment drives which the union embarked on since 2012.

2.7.3 Participant observation

Participant observation involves both observation and participation by the researcher in the social setting (small–scale) of those being researched, which gives room for the researcher to penetrate and learn more about the subjects (Neuman, 2000). By so doing, the researcher would be able to gain an in-depth understanding of the findings from information gathered through observation. On the other hand, McMillan and Schumacher (2006:347) define participant observation as " a combination of particular data collection strategies; limited participation, field observation, interviewing, and artifact collection" Therefore, the observer should always be alert so as to capture all relevant details as she will be playing multiple roles. Through observation, a researcher would be able to access social processes that would be otherwise hidden (McMillan and Schumacher 2006:347). One major disadvantage of this method of inquiry is when there is nothing to observe at all.

The question of political subjectivity is a sociological phenomenon which is complex and difficult to measure. It is not only personal but also requires ample time for one to really understand the social interactions, judgments and opinions that exist amongst various groups in society. The study therefore proposes an ethnographic approach to interrogate this phenomenon. Participant observation will also be used to analyse solidarity as a key component for mobilisation of both local and foreign workers. One cannot measure solidarity through surveys or interviews as responses might be very subjective. For instance, to a local worker, a question like: **"is there solidarity amongst them and foreign workers" might imply issues of xenophobia and as such, they might want to paint a good picture of themselves by just simply saying "yes"**. The same question posed to a foreign worker might elicit some psychological reactions like 'inferiority complex', which might be hindering them from associating with their local counterparts. But, if the researcher lives amongst these two groups of workers for a substantial amount of time, one would be in a position to deduce the answer to this particular question. As a female researcher with an activist background, researcher was well informed about indicators of solidarity which would assist in measuring the existence of solidarity amongst both groups of workers.

2.7.3.1 "Sex worker, policewoman, informer and journalist"

The worst moment in my study was when I was perceived as a sex worker by both male and female Zama-Zama. Men thought I was there to sell sex while women were worried about their husbands or boyfriends as one wife of a gold buyer, did not hide away her anxiety and fears by confronting me about how I looked and dressed. This was useful as it assured that I somehow comply with the dress code of the community every time I re-visited the site. In his study of police organisations, Brewer (2000) also faced problems related to sexual politics as his research assistant was initially treated as a sex object at the police station which was their research site. My gender really mattered in the mining sector as argued by Van Maanan (1981: 480) in his study of police in the US that "researchers on police had to be male in order to participate fully in masculine occupational cultures, although this is no guarantee" (for the difficulties of a male researcher in establishing rapport in the police (see Warren and Rasmussen, 1977:358). However, Hunt (1984) argues that female ethnographers' gender in fact present a comparative advantage as males within their research sites do not perceive them as a threat. According to (Lofland, 1971: 100), this might lead to more opening up in sharing of information, devoting more time and care to explain (see Easterday et al, 1977;

Hunt, 1984). In her study of female prisoners, Asale (2004) identifies gender as an advantage while race initially presented access difficulties.

However, Brewer (2000) highlights some of the demerits of being a female researcher in a male-dominated sector as exposing women to "sexual hustling, fraternity and paternalistic attitudes from male respondents, and treated as gofers, mascots or surrogate daughters" (2000: 318). In my experience case study in informal mining, male Zama-Zama who go underground were very much open to sharing their information, secrets and strategies as it seemed I was not much of a threat to their activities. Again, they had cautioned me that women were not allowed underground as this is a cultural taboo or else people would perish. So, to them they were guaranteed that I would not interfere with the underground ecosystem and activities. Initially, some were sceptical and suspicious that perhaps I was a policewoman or informer and warned me that they should not be raided by police after our interviews. Thus, I would pray all the time for raids not to occur during my presence or soon after my departure. So, though that I was a journalists and Zimbabwean Zama-Zama cautioned that they should not hear from their relatives back home that they were on television. This is because many would rather remain secretive of economic activities they engage in South Africa (see Worby, 2010).

2.7.4 Site visits and participation in meetings, workshop, seminars, and WhatsApp groups

I visited the Westrand area almost daily between September and November 2016 as I could not stay in the area due to security reasons. Stories of gunshots every night were narrated by almost all respondents involved in the informal mining sector. Access was also allowed at one of the big chain restaurants in Johannesburg South, although I was not allowed to work and observe at the same time. I visited the restaurant almost every weekend and would informally chat to workers who were predominantly of Zimbabwean origin. I kept my research diary and documented those aspects which were relevant to my research and sometimes issues which were not initially intended to be observed.

In addition to site visits, I also participated in COSATU's Vulnerable Workers Task Team (VWTT) where I observed activities related to the federation's efforts and responses to migrant workers most notably a workshop organised exclusively for migrants on 3-4 December of 2014 which solicited ways and strategies of integrating migrants into the union. On the 6th -7th of December 2014, Chris Hani Institute (CHI) in collaboration with DITSELA,

a workers training institute also organised a workshop to assist SADSAWU, a domestic workers union in its campaign to organise migrant domestic workers which was also supported by COSATU. Prior to these workshops, in October of the same year, the International Labour Organisation (ILO) also organised a workshop for the South Africa, Zimbabwe and Lesotho corridors also aimed at assisting SADSAWU in organising migrant domestic workers. I also attended this workshop and its follow-up which took place in April 2015. Aside, I also participated in a Public Service International (PSI) South Africa National Working Group in June 2015 where they discussed strategies of organising migrant workers in the public sector. While the sectors might be different from those targeted by my study, I found the workshops useful as it discussed issues related to integration of both local and foreign migrants and how trade unions have responded. Of interest to me, was the commitment by PSI's five affiliates to establish migrant desks in their unions as part of the process of embracing migrants into their structures although none had been established by the time of writing of this thesis. I also shadowed a migrant workers union through a WhatsApp group which I was invited to participate and exclusively discussed issues of documentation, updates on immigration and labour policies; advice related labour disputes including opportunities and challenges which exist in South Africa.

From the 4th to the 6th of August 2015, I attended COSATU Gauteng 12th Provincial congress in Johannesburg which discussed aspects of labour migration. The Food and Allied Workers Union sponsored a resolution for the implementation of the previously adopted 2012 resolution on organising migrant workers. A lengthy debate ensued but consensus was that if immigrants prefer to join unions, they should find a home within the existing COSATU affiliates other than organising autonomously. One of the founding principles of the Federation emphasises the need for workers within the same industry to organise as one and thus promote worker to worker solidarity.

I also had the privilege to participate in the COSATU International Conference on Africa which took place from the 14th -16th of September 2015 where I also contributed towards debates related to migrant labour. In particular, there was robust debate related to a proposal for intentions by the African Union to launch of an African passport in 2020 as part of integration process. Surprisingly to me, the proposal was not very well received by some participants from civil society (from South Africa) who felt that if borders are liberalized, all Africans would 'flood' to South Africa. They argued that opening borders would in fact

benefit economies of labour sending countries through remittances while locals would wallow in poverty as a result of unemployment

Because of my activist background, accessing key informants was not much of a challenge although it proved difficult to access government officials compared to trade unions, business and civil society. I conducted KIs with trade union leaders, middle-managers, supervisors, placement agents, gold buyers and civil society leaders. Having presented my data gathering methods, it is important to explain how data gathered through a triangulation of methods was categorized, consolidated and analysed. The following section explains how data analysis was done. It is important to point out data showed a triangulation of results which somehow demonstrated a degree of validity and ability for generalization of results.

Analyses of data guided by a triangulation of methods, various analytical methods appropriate to respective methods were used and these included thematic, discourse analysis and statistical analysis. Data analysis is critical in order to derive meaning out of collected data. Thematic analysis was used to interpret data derived from interviews, ethnography and life – working histories. Many themes emerged out of the study and will be discussed in respective chapters. Discourse analysis was used to analyse data from policy documents, archival material, WhatsApp individual group messages (a relatively new method which emerged during the course of my fieldwork); while statistical analysis was used to analyse workplace census data.

Coding involved labelling of both semiotic and semantic aspects of units of text (Henning 2000: 8) meaning naming both surface lexical items and recognition of semiotic value of the language such as the use of metaphors from interviews, WhatsApp conversations/interviews and field notes (ibid). This process involved deconstruction and reconstruction of themes. Some of the titles of chapters emanated from emerging themes of the study.

2.8 Discourse analyses (DA)

This involves interpreting the nature of discourse emerging in both spoken and other forms of communication and is used to examine the meanings and narratives constructed through choice of language (Johnstone 2008). For instance, while migrant/anti-xenophobia rights activist are not comfortable with the term ‘foreign’, the immigration policy of South Africa categorically mentions this as the political term to succinctly delineate those who are coming from outside in relation to citizenship. DA interprets data from interviews, focus groups,

newspapers, books, and archives which is very often in the form of texts. Potter and Wetherell, (1987:7) describe DA as "all forms of spoken interaction, formal and informal, including written texts of all kinds" (1987: 7) while Parker refers to DA as "…a system of statements which constructs an object" (1992:5)

In my study, DA was critical in providing qualitative insights to some of the sub-questions raised and presented below:

- In particular, how have the **South African state policies/legislation** categorized and conceptualized foreign labour and how has this shaped policy development and class–based representation?
- What have been the patterns of mobilisation and representation of foreign workers by trade unions in SA in the period 1980-2013?
- How do migrant workers perceive themselves and how does this shape their mobilisation, participation and representation in a post-migrant labour regime? (through WhatsApp closed group)

I also examined how foreign labour is contextualized by government departments in particular the Department of Home Affairs (DHA) and Department of Labour (DoL) and how this influenced foreign workers' identities and political subjectivities. Also, of particular interest to me was the aspect of xenophobic and integrative language which could be drawn from the documents. According to Parker (1990) "Discourses do not simply describe the social world, but categorise it, they bring phenomena into sight" (1990:191). From union documents, I was very much interested in terms like working class solidarity, xenophobia and how they are presented and interpreted in union constitutions and other relevant policy documents. Again, I was looking for membership clauses – "who is eligible to be a member" and how this is contextualised. In this regard, I observed that union recruitment material such as recruitment forms still exclude migrants in a very subtle way as they still only request for the green book number without recognizing other documents. Respondents complained that they cannot join because the form does not accommodate passports or asylum papers or refugee certificates.

Political subjectivity is complex and cannot be easily interpreted through overt behaviour or mere observations. Thus, a new way of self-expression by foreign workers in the hospitality though social media platforms was noted during the course of my fieldwork. WhatsApp messages corroborated observations through participants' expressions through messages they

posted in their closed WhatsApp group. The use of WhatsApp by participants to express themselves somehow complemented the adage: "words speak louder than voice" because while foreign workers voices seem to be suppressed in the public domain and unions, at least they used this social media platform to lodge in their complaints, share challenges and also to express their agency. In a way, by analyzing some of the participants group statements, language used and interactions, this somehow pointed to how political subjectivities among foreign workers and their attitudes towards unions are constructed. According to Parker (1990):

> Discourse analysis views language as a social practice which not merely reflects or represents the social world, but also constructs it and has power more than itself –it affects and is affected by other things that we are, do or experience (1990: 191).

Most importantly in my study, DA assisted in explaining how power relations are reproduced. For instance, the principle of "one industry one union" as encouraged by trade unions in South Africa tends to undermine and disempower foreign workers from establishing their own foreign workers unions although ironically the existing unions are not prepared to absorb them into their ranks. At the same time, through an analysis of union constitutions and policies, systems of subtle exclusion against foreign workers became clear as none of the clauses explicitly mentioned foreign workers as a distinct social category within the working class which had its own specific needs in particular related to documentation; a pre-requisite for one to be able to work in South Africa thus in need of union representation. In contrast, foreign workers are blamed for not joining unions without engaging them on the underlying reasons for such indifferent attitude, social power and aspects of belonging. Instead, it seems unions tend to take for granted foreign workers genuine needs and in a way further reproduce the trait of political apathy associated with immigrants (see Martiniello, 1997).

DA views language as inherently political and as shaping social structures, ideologies, understandings and identities (Gee 2005). A major critique of the discourse analysis is the power of the researcher who in the main could be biased based on own personal experiences and interests (situated meanings) which can interfere with interpretation. Situated meaning' can be defined as the socio-cultural experiences which readers bring with them to texts. Essentially, Gee (2005) acknowledges that situated meaning can help to build understandings of particular concepts and phrases (Gee 2005).

DA is also associated with conversation analysis, which describes the practices through which talk-in-interaction is accomplished and is based on naturally occurring conversational and institutional talk. Data is in the form of recordings and transcriptions of talk; text-based (e.g. online) interactions. Text was drawn from WhatsApp group interactions of a closed group of foreign workers working in the hospitality sector at a multinational restaurant.

In the digital media age, how internet technology can be used in migration studies by researchers is itself worth examining (Oiarzabal and Reips, 2012:1335). First, I would identify an issue raised which is directly or indirectly related to my study then would follow-up privately (inbox) with the primary stimulant of the conversation. I found this method very effective as participants would respond in a more generous and organic manner on issues that affect them. This is different from the researcher raising a question which they expect the participant to provide answers but the mere fact that the researcher grounds their question based on an issue initially raised which is of mutual interest to both participant and them. This is a relatively new method of data gathering and which also proved complicated in relation to ethical considerations. I tried to observe all protocols like requesting for access through the group administrator. Also, I converted all WhatsApp conversations into texts for analysis and stored them in line with ethics requirements. In other words, these modes of conversations could be best described as 'WhatsApp interviews'. The major advantage is that the participant stimulate the discussion and is somehow already motivated by the need to air out their views and is patient enough to text back.

2.9 Thematic Content Analysis (TCA)

Various recurring themes emerged from a triangulation of data and were analysed called for thematic content analysis (TCA). Denzin and Lincoln, (2003) define a theme as a pattern of content or meaning from the data in relation to the research question. Themes can be identified at different levels through either semantic (explicit) or latent (implicit) (see Yardley 2004; Greg, et al 2011). TCA identifies both implicit and explicit data and also examines themes emerging from data set through a method of coding. Nonetheless, it is also important to take into account data that is overtly in variance with dominant themes. With semantic themes, thick description of data without depth and complexity is lost while latent themes identify underlying ideas, patterns and assumptions (see Bernard and Ryan 1998, 2010). The process of coming up with themes involves coding and attachment of labels to particular pieces of data which contributes towards a theme (Bernard and Ryan 1998). This is a

systematic process of organising and gaining meaningful data related to the research question. It is important to note that codes can also emerge from unexpected data and in my study, unexpected themes emerged from the case study of mining which pointed to informal mining as an emerging sector to accommodate foreign migrant workers following the collapse of the contract migrant labour system.

Further, data are organised into rich descriptions beyond simply counting phrases or words in text. TCA occurs in two ways namely deductive which is theory driven and inductive which is independent of theory and where themes are data driven (Corbin and Strauss, 2008). Inductive methods are connected to grounded theory which Charmaz (2006) defines as "a set of methods that consist of systematic, yet flexible guidelines for collecting and analysing qualitative data to construct theories 'grounded' in the data themselves (2006:2). My study consisted of two data sets from the two case studies; mining and hospitality and common material from each was analysed separately (see van Zyl, 2015, seminar notes). Again, data gathered through various methods was categorised into distinct themes first and then combined later where commonalities were identified.

While my study was guided by theories from sociology and migration disciplines, my study used the inductive method particularly considering the use of ethnography as the major method of data collection. And also because the hospitality sector which was the key case study for analysis suffered from a dearth in literature. Thus, recurring themes emerged based on the workplace census, interviews and participant observations. The major concept of analysis which is mobilisation was grounded by literature review based on the mining sector which has a long history of political mobilisation of foreign workers in South Africa. In a way, the case study on mining served more to foreground and provide a background to foreign workers mobilisation in South Africa given the fact that nothing much had been documented in the hospitality sector other than seminal surveys conducted by NALEDI, 2011;SWOP, 2012;LRS in 2013. In addition, the title (van Zyl, 2015) and key question of the research also assisted in guiding the data analysis process. In particular, the key objects of analysis in my study were migrancy, political subjectivities, post migrant labour regime; mobilisation, participation and representation and this required particular attention. However, data set from the hospitality sector revealed a new important theme; social media as a means to mobilisation, participation and representation of foreign workers in South Africa.

A major shortfall of TCA as an interpretive approach is that it is subjective and flawed with biases towards values and judgements of the researcher. This problem can be managed through the use of a reflective journal and analytic memos which document nascent patterns and themes. Guided by this theoretical knowledge, I ensured that I keep a reflective journal in addition to my fieldwork notebook and diary. Various themes which emerged in the study will be presented in more detail in chapters 4, 5, 6 and 7 and are discussed in relation to the literature review. The subsequent section presents ethical considerations for the research.

2. 10 Ethical considerations regarding data collection and storage

The overall aim of the question was to identify factors which shape political subjectivities and thus I went out precisely targeting such but also with an open mind to accommodate other interesting issues that would emerge related to migrancy, political subjectivity, mobilisation, participation and representation of foreign workers in South Africa. Interview schedules, consent forms, participant information sheets and recording consent forms were prepared and approved by the Wits Research.

There was need to ensure that the study complies with the University of the Witwatersrand policy on research ethics and in light of this, an ethics clearance; Protocol Number: H14/08/18 was obtained. As such, various ethical issues were considered which are well documented in some of the sections which involve access issues and consent. Through Wits University's library services, the researcher was trained on good data management and storage systems to ensure compliance with ethical considerations especially those related to privacy, confidentiality and anonymity during the course of the study and afterwards (thesis writing and publication).

Participants were informed of the objectives of the study before they agreed to take part in the study. The researcher developed a participant information sheet which spelt out the aim and objectives of the study including participants' right to agree to participate or not. Participants were requested to sign consent forms or verbally agreed to participate[10]. Unfortunately, participants in the mining sector were reluctant to sign the consent forms as they were not sure of the ramifications given the sensitivity of the activities that they were involved and as

[10]See attached in the appendices section; the participant information sheet, consent form and research instruments

such were also not keen to be recorded either through audio or taking down of notes. Thus, I had to rely on my memory to jot down notes afterwards in my reflective diary.

Maximum protection of participants and researcher was of high priority especially considering the fact that the mining sector in South Africa has gone through very volatile phases in the 2012-2013 periods. Increasing violence among unions continues to plague South African trade unions in the aftermath of Marikana massacre. Extra caution had to be observed for the protection of both the participants and the researcher to avoid stimulating any violent behaviour and any possible attacks. Xenophobic attacks that also occurred in the year 2008 (see Landau, 2012; Misago, 2012, Nieftagoodien, 2012, Hayem, 2013) also re-emerged during the course of my fieldwork. This was also exacerbated by massive job losses across sectors; the majority being in the mining sectors followed by agriculture. Thus, precaution was taken when interacting with retrenched workers especially in the abandoned shafts to avoid opening up of 'fresh wounds'.

In the hospitality industry, caution was exercised as the majority of workers work under casual conditions within a high wave of precarity and job insecurity (see Webster, et al, 2009). The researcher ensured maximum observation of ethics and that none of the participants would lose their jobs through her interaction with them as detailed in the section describing research sites and access. To avoid loss of jobs or victimization of workers by employer because of participating in this study, I ensured that access to workplace(s) was well-negotiated with management. Further, I used my activism skills and prior theoretical knowledge gained through my experience with conducting research on unionisation in Zimbabwe, South Africa and at a global level through the Global Labour University (GLU). Finally, I also made use of contacts established through such interactions with South African trade unions to ensure maximum success of the study. For instance, through the Mineworkers Development Agency (MDA) - an empowerment arm for ex-miners for the NUM, I gained access at one of the largest gold mines in Randfontein where I conducted interviews and life history interviews with both local and foreign miners in 2016.

Where participants needed advice or any form of assistance, the researcher made efforts to refer them to relevant worker organisations or migrant rights organisations (MROS) in line with the referral list which was compiled before embarking on fieldwork. MROs assisted with services related to documentation. For instance, cases of arrest and unfair detention were

noted among Zama-Zama and in two cases, the researcher referred relatives of detained Zama-Zama to seek legal assistance from Lawyers for Human Rights (LHR)[11].

Observing privacy and confidentiality ensured maximum protection of participants' workplaces where participant observation occurred. Participants were not identified in any way given the sensitivities of the sectors involved. Again, caution was exercised where photographs were involved to ensure security of individuals and communities and also taking into account subtle xenophobia in the workplace. Where participants did not agree to be identified, pseudonyms were used. However, certain highly profiled key informants or prominent public leaders like government officials, trade union leaders or business people or those who have publicly presented their positions related to objectives of the study, like the public announcements by Minister of Home Affairs on developments in immigration laws and policies were identified by name.

The data collected was coded and locked up in a computer with a secret password only available to the researcher. All information that might identify participants or exposed 'illicit' activities in the case of informal mining was avoided in the final report. Participants were informed of the benefits of participating in the study and it was also stated upfront that no monetary rewards or any form of payment would be done towards their participation. All the participants of the research were informed of their right to access the final product of the study. The study, though mostly academically focused, would to some extent need to contribute towards government, trade unions and business policies thus it will be essential for the researcher to debrief participants of the overall outcome of the study beyond the thesis.

Ethnography is not such a very easy method as it involves establishing relationships, rapport, trust which is built over time and is "based on same qualities people bring to all social relationships –honesty, friendliness, reciprocity, openness, communication and confidence building (Brewer 2000:316). And one should not expect to be liked by all within a research site over a long period of time for fieldwork (see van Maanan (1982:111). It is also very difficult to get people to talk before trust is established in particular in situations where access is permitted through management as experienced by Westley (1970) in his ethnographic study of police in the USA. Establishing trust and getting people to talk in a very precarious and highly criminalised sector like illegal mining proved very difficult. It was worse especially when police raids occurred the day after visiting the abandoned shafts. As such, I

[11] Records of referrals are available

had to resort to what (Brewer 2000) referred to as "naturally occurring moments when sensitive topics came up in conversations naturally or could be artfully manufactured to appear as if casual by use of props" (2000;316)

With time, trust was built but I faced another challenge where responded did not allow me to voice- record or even jot down notes in my notepad, yet they were giving me very useful data which I did not want to lose at all. In his study of police organisations, Brewer (2000) acknowledged the importance of note-taking while at the same time warning that this "can be obtrusive and that one should attempt to minimise visibility of the pad and the physical activity of note-taking occasionally foregoing it when the situation seems appropriate, and by emphasising that the notebook are not a secret" (2000: 317)

While a sense of trust somehow prevailed based on my nationality (as a Zimbabwean of which the majority involved in these activities were Zimbabweans and Mozambicans), respondents in the mining sector were very sensitive based on previous experiences engaging with unethical journalists and researchers whom they felt had betrayed them by "selling their information to police and the media". And the statement below is illustrative:

> You can't tell me that she is a student…look at the way she is dressed. Some journalists have come here before and even policewomen in the name of research and we ended up seeing ourselves on ZBC back home (Zimbabwe)

Where consent to write notes was permitted, I jotted down field notes which I later typed electronically every evening as I reflected on what I had encountered in the field on each day. These notes were kept in my drop box protected by a password (see Fielding and Lee, 1998). Apart from the notebook, I also kept a diary where I reflected on my impressions, feelings and emotion, strengths and constraints which affected my fieldwork which I later used as the reflexivity that contextualised the results (see Brewer 2000).

I also recorded some interviews where respondents agreed to although many of the worker participants were scared to be audio recorded and in such situations I took down notes if they did not further object to this. In the hospitality sector, the major reason was for foreigners lack of documents coupled with fear of losing jobs and for local, their major fear was based on their type of contracts which in most cases were casual and temporary hence they were scared to lose their jobs. With informal miners, it was the criminalization of their activities coupled with being undocumented which they cared more than anything else. This proved to be worse with consent forms as many were suspicious that they could be betrayed by their

signatures, which resulted in a few agreeing to written signatures as compared to oral consent which to some extent led to informal conversations (see Henning 2000).

Chapter 3: Literature Review

3.0 Introduction

The chapter examines the theoretical concepts and literature related to the broader migration and sociological debates on mobilisation, participation and representation of foreign workers in South Africa. Furthermore, the literature review raises theoretical questions about political subjectivities drawing on aspects of belonging and exclusion and how various multiple factors shape the politics of recognition, social identity, citizenship and inclusion of foreign workers in relation to spatial spaces. Building on and contributing towards existing literature, the study takes the form of an interdisciplinary approach drawing on various theories and concepts from migration studies, industrial sociology, and political economy with a historical materialist approach.

The chapter examines the broader migration and sociological debates on mobilisation, participation and representation of foreign workers in South Africa. Building on the work of Burawoy (1976) on labour migration, this chapter attempts to explore foreign workers mobilisation trajectories reflecting back to the contract migrant labour system during early years of industrialisation upon the discovery of minerals such as diamonds and gold to the post migrant labour regime. In particular, it draws on literature on migration and industrial sociology. Grounding this research with concrete understanding of these two disciplines assisted in unpacking factors shaping political subjectivities among foreign workers in post migrant labour regime in South Africa. Furthermore, a review of literature assisted in identifying gaps and also providing an analysis of how foreign workers mobilise, participate and are represented through an interrogation of global and local literature. Qualitative methods involving a triangulation of methods were used combined with a workplace census although somewhat limited. While qualitative studies exist which document mobilisation trajectories of mineworkers, very little literature is available on the emergent sector to attract foreign labour in contemporary South Africa – hospitality. Thus, as mentioned in Chapter 2, a workplace census was the starting point for mapping out the sector. Various themes emerged which build on existing academic literature related to mobilising, participation and representation of foreign workers in a post migrant labour regime.

3.2 Context

To fully understand the key question under investigation in this study, it is important to interrogate the concept of migrant labour system in its historical and contemporary context. Swindell (1971) cited in Taylor (1981) argues that "labour migration can be viewed as a continuing dialectic between the individual, his family and the local community on the one hand and the larger political economy on the other" (1981: 12). Labour migration developed to meet the needs of the capitalist system (Wilson, 1972b; Murray 1976) and thus "the pattern and volume of migration must therefore be analysed with reference to the requirements of that system" (Tylor, 1981:6. Cobble, 1995) asserts that labour migration to the mines "has been a feature of the economy of southern Africa for well over a century that some of the demand for relatively unskilled wage labour has been met by temporary, oscillating migration" (1995: 151). Spatial imbalances created by the migrant labour system have given rise to a wide range of circulatory movements of workers, on seasonal or contract and sometimes long-term employment (Gould and Prothero, 1975).In the post-migrant labour regime, it seems that people are migrating for other reasons other than to seek employment (see Elphick and Amit, 2012; Palmary, 2009; Zingu, 2007 and Staunton et al, 2008. Nonetheless, the focus of this study is targeting those who migrate to seek employment in South Africa.

Nel and Rooney (1993) document that during industrialisation in the 19th century, South Africa first hired skilled migrant labourers from Europe particularly the United Kingdom. The discovery and opening of more gold mines meant that more labour especially low-skilled from within the region had to be recruited as gold mining is labour intensive (see Allen, 1992). In response to the demand for migrant labour, the apartheid government ensured the construction of road and rail infrastructure which were meant to support the movements of mineworkers, equipment and produce within the region. Accordingly, for instance, the Witwatersrand Native Recruiting Agency (WNLA) fleet of airplanes was used as the main mode of transport to ferry low skilled foreign workers from villages in Malawi to South Africa (Pirie 1993). Labour migration within Southern Africa is a key feature in the region and has increased due to the inevitable forces of globalisation (see Sachikonye, 1998). Migrant skilled labour was also hired from Asian countries like India and China, though such workers were paid at a rate of unskilled migrant labourers (Nel and Rooney, 1993). Such practices of different pay for the same amount of work were some of the defining characteristics of the migrant labour system.

The migrant labour regime was a system established by the apartheid government to control and manage cross border labour migration through government-to-government agreements in South Africa during apartheid (see Crush 1997). It was characterised by closed contracts, deferred pay, corruption, racial double-standards and special privileges for certain employers (Reitzes, 1998, 1995a; Dolan, 1995; Sinclair, 1996; Crush, 1998 a, b). At one level, "today's mine labour system shows excessive continuity with the past, but nothing about recruitment and use of mine labour is as certain as it once seemed" (Crush 1995:15)

The starting point for analysing the migrant labour system is to understand the compelling factors which promoted such a regime. Thus the story of the African migrant begins at the very point when they were dispossessed of their land, then came the introduction of hut and cattle tax; the desire to purchase goods traded by white traders which resulted in accumulation of debt. After being dispossessed of their land, according to Tylor (1981) Africans became squatters on land that was then owned by white settlers and were forced to work for these new farmers, with each farmer allowed only four families (Tylor, 1981: 17, 19). Head contends that income generated from subsistence farming was "also central to the reproduction of the peasantry, although the impact was not uniform" (Head, 1995: 135). Wuyts (1989) also notes that "poor peasants continued to rely on migrant labour to sustain their production as well as to buy food (1986:32). In support of this, Simelane and Modisha (2008) argue that "labour migration in southern Africa was a class project aimed at proletarianisation of Africans which was never completed since the established modes of livelihood, such as subsistence farming were never completely destroyed" (2008: 3).

Put together, all these adverse developments were aimed at the proletarianisation of Africans as Allen (1992) precisely puts it:

> It was, then, not simply that Africans were forced out of the reserves by sheer necessity to work in the mines but that even when they were earning wages their families could not escape from poverty. Black mineworkers were either trapped by permanent indebtedness to white traders, forever paying interest on loans to survive, or they sank to the level of absolute starvation and destitution (1992:372).

Be that as it may, the menial wages they earned in the mines would not fully support and sustain their families such that subsistence farming borne by women and children in the reserves had to "subsidise gold mining, to make otherwise 'non-payable' mines profitable to shareholders. Part of the profits from gold mining subsidised everything except the reserves"

(Allen, 1992:372). At the same time, the mining industry was viewed as a major contributor to state revenue such that employers had the privilege and support of the state in the recruitment of foreign labour from within the southern African region (Crush and James, 1995).

In his analysis, Arrighi (1973) asserts that the migrant labour system and particularly the disjuncture between maintenance and reproduction costs (see Burawoy, 1976) allowed the enormous gains of the South African mining sector, that in fact the homelands and neighbouring countries subsistence farming subsidised the sector by allowing for workers' reproduction over generations. The segregationist apartheid state administration and policies played a critical role in ensuring "the sophistication and reproduction of this system over time" (Segatti & Jinnah, 2013; see also Burawoy, 1976). The reproduction of the system was thus ensured at a fraction of the costs that reproduction would have entailed had it taken place on production site (Segatti & Jinnah, 2013). Social reproduction which subsidised capital and the apartheid state was sustained through subsistence farming undertaken by migrant miners' families in the Bantustans or countries of origin (Wolpe (1972); Arrighi (1973); Arrighi et al. (2010); Burawoy (1976). Thus, in a way, the legacy of the migrant labour regime has contributed to the underdevelopment and structural inequalities experienced in the southern African region today (see Arrighi et al. 2010; Crush 1997).

Today, the under-development of labour sending countries is manifested by an over-dependency on remittances yet post-apartheid policies such as the Mining Charter of 2002 dictates that mining houses prioritise locals as opposed to migrants in their recruitment process. Furthermore, massive retrenchments are continuously taking place in the mining sector forcing skilled retrenched miners including foreign nationals to seek an economic safety net in abandoned shafts in the margins of large cities like Johannesburg. This is further compounded by restrictive immigration laws (see Munakamwe, 2017) which make it difficult for foreign migrants to seek employment in the formal labour market.

The question of documentation (work permit regime) is a long-standing problem among foreign miners. This seems to be quite a well calculated and orchestrated strategy which draws lessons from the contract migrant labour system whereby both local and foreign miners were only allowed in the country during their time of employment (which was short-time framed). Migrant workers would be required to go back home at the end of the year. According to Fine (2014), the post-apartheid regime retained some components of the Aliens

Control Act of 1991. In accordance with the immigration laws particularly the Aliens Control Act of 1991, by then, one would only be entitled to permanent residence after serving for five consecutive years, which made this impossible under the contract arrangements. Thus, despite working for many years in the country, virtually, all foreign miners would not qualify.

At the ushering in of democracy, the Mandela government in collaboration with the National Union of Mineworkers was the first to attempt to "humanize an inhumane and unjust labour system" by offering miners who had served for many year but still could not qualify for permanent residence. This was partly as a result of redundant amnesty in the form of permanent residency for those who had worked on contract for 10 years or more (SAMP 1997:11). The first offer was made from November 1995 to March 1996 for those miners who had worked for 10 years and the 2nd was made in June 1996 and later extended to the end of November 1996 for those who had worked for at least five years (see De Vletter, 1998). Subsequently, regularization processes have occurred in the post migrant labour regime with the most notable ones being the Dispensation for Zimbabwe Permit offered to Zimbabwean nationals by the Zuma government in 2010 and was later renewed in 2014 as the Zimbabwe Special Permit and successively the Lesotho Special Permit granted to Basotho in 2016. Still, such regularisation processes rely on restrictions almost similar to those under apartheid to avoid permanent stay of foreign nationals in the country. This is reflected in the recent White Paper adopted in March 2017, which has increased the number of years for one to qualify as a permanent resident and also as citizen to ten years (see Jinnah, 2017). While policy-makers acknowledge skills shortages in certain sectors of the economy, still they view foreign labour as a short-term response to this crisis; and at the same time need foreign workers for transfer of skills according to the Mining Charter of 2002.

This brief background on the history of migrant labour system in general and the post migrant labour regime in particular, is critically significant as it assists to situate our understanding of migrant labour and how it relates to mobilisation, participation and mobilisation of foreign workers at different political and economic stages of workers' struggles in South Africa today. It is quite clear that the manner in which this system has developed makes it difficult to mobilise workers. Not only have contract jobs dwindle for foreign workers and these contracts become more precarious than before, but the vast majority of other migrant workers outside of the mining and hospitality sectors, are employed outside of any specific protection framework, other than South African legislation.

3.3 Political Economy of South Africa and of the sending countries in relation to migration theories

South Africa, according to Berglund (1970) is the leading industrialised power on the African continent, drawing labour from among various ethnic groups from within; the southern African region; the entire continent and abroad. Migrant labour, from its inception, has been the cornerstone of the county's economy (Tylor, 1981; Prothero, 1962). Indeed, migrant labour to South Africa has had an impact on the country's economy. It needs to be noted that regional economic disintegration has led to an increased movement of migrant workers into South Africa, especially low-skilled labourers. This is because many labour supplying countries in the southern African region are under-developed such that their citizens migrate formally and informally in search of employment in South Africa (Davies and Head, 1995). The viability of African socio-economic and political structures has been hindered by colonization, mis-governance, mismanagement, wars, and recently, modernization and globalization. According to Chabal in Webner and Ranger (1996):

> Africa's economies today are in worse state than they were at the time of independence. It is not ... just there has been no growth or development, but that in absolute terms, both the economies of African countries and the economic prospects of the majority of Africans have been steadily eroded over the last decade" (1996:30)

In addition to these problems facing Africa, Maphosa (2012: 4) gives a detailed outline that demonstrates that Africa's predicament emanates as a result of the (mis)/ management of resources that it is endowed with as he asserts:

> ... exploitation and production of mineral commodities have negatively affected socio-economic development and livelihoods in several regions and contributed to unprecedented crisis flashpoints. For instance in the SADC region, various countries have gone through political crises, which has ultimately affected their economies. Cases in point are those of Angola (1975 – 2002), Mozambique (1976 – 1996), DRC (1993), and Zimbabwe [2000 – 2008] (2012:4).

It is self-evident from the facts presented above that regional instability emanating from social, political and economic insecurity is not a new phenomenon in the SADC region. Yet any kind of disintegration generates fear, vulnerability including insecurity, and these are important variables that push migrants into other parts of the world.

Nevertheless, it is not the intention of this review to engage fully the extent of problems faced in Africa but to demonstrate firstly, why there are influxes of migrants from other parts of the region to South Africa, and secondly, to expose the impact of regional disintegration on the South African economy.

South Africa as an economic powerhouse in Southern Africa over the past twenty years has received a large number of migrants, low-skilled, semi-skilled and highly skilled. Today, labour sending countries are so diverse and spread throughout Southern Africa - including Lesotho, Mozambique, Malawi, Tanzania and Zimbabwe. During apartheid, the road and rail infrastructure supported the movements of mineworkers, equipment and produce. Accordingly, for instance, the Witwatersrand Native Recruiting Agency fleet of aero planes was used as the main mode of transport to ferry low skilled migrant workers from villages in Malawi to South Africa (Pirie 1993).

Be that as it may, there is need to understand that there is a broader range of factors that attract migrants into South Africa. Various scholars note the following: economic conditions (hegemonic status of South Africa in Southern Africa), diplomatic relations, openness to outsiders, a liberal political ideology, need for skilled professional workers, constitutionally guaranteed rights, accommodative immigration policies among other reasons (Landau & Kabwe-Segatti, 2009: 3) as the magnets to foreign labour. A common trend among the listed factors indicates that South Africa has, "a growing economy that reduces inequality" and a "supportive political culture" (Mattes 2002: 33). Based on these favourable factors, South Africa continues to attract skilled and low skilled migrants from neighbouring countries.

Harington *et al* (2004: 65) reports that, during the apartheid era, the existence of recruiting agencies such as the Witwatersrand Native Recruiting Agency which was responsible for recruiting cheap labour from South African rural areas and those from regional countries, such as Malawi, Lesotho, Mozambique, Swaziland, Botswana and Zimbabwe facilitated the flow of migrant labour into South Africa. The same author maintains that poverty in rural areas of Mozambique "played an important role in encouraging people to become involved in labour migration". In addition to this, Kabwe-Segatti (2008: 62) asserts that during the apartheid era, before the 1990s, no asylum system existed. Thus, it can be argued that the introduction of the asylum system was a pull factor although it must be stated that clandestine movements from the African continent into South Africa is not new (Vigneswaran, 2008:142).

However, with "surplus population", there has been a tendency that leads "to a decline of various labour power or wages" (Hlatshwayo, 2008: 10), which adversely affect the people's standards of living. Inevitably, migrants are forced to accept low wages and tolerate poor working conditions because of their various limitations on law, pressing issues at home and limited time in the country as revealed in this study. The cumulative effect of this, is the exploitation of migrant labourers, especially unskilled workers (Parsley and Everatt, 2009:4), which "leads to a downward pressure on wages" (Hlatshwayo, 2008:11) and other services. In a way, the high presence of foreign labour on the market results in what Engels (1844) in his theory on migration refers to as 'reserve army' ready to accept any wages. Against this background, it is important to interrogate how foreign workers mobilise around the issue of wages and also how unions have responded given the fact that exploitation of the former leads to undercutting of wages and also undermining of collective agreements and sectoral determination. In a way, undercutting of wages tends to exclude locals which lead to low unionisation rates and thus emasculating unions.

3.4 Theoretical framework: Gramsci Theory of hegemony

As the study takes the form of an interdisciplinary approach, various theories were used to explain a particular phenomenon. However, there are two major theoretical frameworks that inform this study. First, is the Marxist theory of 1980s, which was used to explain the link between migration and expansion of capitalism. According to this framework, migration is viewed as the inevitable outcome of the spread of capitalism and concludes that migration is the only option for people once they are alienated from their land (Marx theory 1980s). This theoretical framework is relevant to this study as the majority of immigrants to South Africa are compelled to immigrate due to economic reasons and to seek employment and greener pastures for most skilled immigrants (which in economic terms, the argument is labour follows capital).

Second, the study draws from selected sections of a Marxist philosopher, Antonio Gramsci whose theory is popularly known as "The Theory of Domination or Hegemony". Some scholars accuse Gramsci as a workerist (see Harman, 2006). It is important to point out that Gramsci was inspired by the events that took place in the early 1920s where "tensions at all strata of society were high, there were mass agitations and people were forming factory councils and workers co-operatives. But despite the intensity of the mobilisations, it fizzled

out remarkably quickly. Unions were co-opted; workers' co-ops became marginal and uncompetitive. Common people were intimidated by elites or otherwise captivated by the magnetism of fascist rhetoric" (Brown, 2009)

Gramsci's theory is an extension of the Marxist theory and it serves to close the shortfalls noted. It is relevant to this study as it introduces a very fundamental aspect omitted by Marx, which is power. Understanding the power relations between foreign and local workers and the differentiated modes of mobilisation will benefit from being envisaged from the perspective of Gramsci's theory of hegemony/domination. *Hegemony* is a combination of force and consent, in which subordinated groups are complacent with domination exerted by oppressors. Hegemony works through civil society and the state. The notions of power and resistance are certainly fundamental to the understanding of political subjectivity and mobilisation. An extension of the Marxist theory, Gramsci's theory provides an analysis of power and resistance as fundamental factors necessary for any successful class struggle; political emancipation and mobilisation (see Hoare and Smith, 1971; Clark, 1977). Analysing power as an institution is one of the most effective ways of understanding key factors that can shape political subjectivities among foreign workers in a post migrant labour regime.

Gramsci's framework provides heuristic value in explaining the relationship between economic transformation and cultural and political transformation in modern capitalism. His distinction between the two moments of struggle, which he designated as the "war of position' and the "war of movement", will be key in grasping the specificity of the South African post-apartheid moment. Because civil society consists of the institutions with which people's daily lives come into contact, it is an important arena for control by disseminating hegemonic ideology, which presents the interests of the dominant group as the interests of all, but also harbour hope for transformation (see also Von Holdt, 2002). In Gramsci's theory, the state is not only a repressive force, but also a mediating institution that maintains class relations. This will be a critical insight to better understand the attitude of the post-apartheid state towards foreign migrants.

According to Gramsci's theory, in the realm of political forces, there are three phases that every class experiences which are economic corporate, economic class and political class (Boothman, 2008). The relation among these forces and also the experience of the class within the balance of forces will determine the nature of the struggle. For instance, it must be considered who has economic power, access to military power, and what the configurations

within the classes are. Key to Gramsci's theory of domination is the emphasis on the need for solidarity amongst the "subaltern" (Brown, 2009). My study explored how solidarity has been mobilized (or not) between local and foreign workers, or, in other words, whether the 'subalterns' have been able to articulate common grievances.

For society to forge solidarity and undergo a successful revolution, power is a critical factor. In his theory, Gramsci also emphasises the need for solidarity amongst the "subaltern". In the same vein, Gramsci argues that divisions among the working class endangers the alliance of workers and peasants and is guilty of fractional activity. Further, he emphasises that unity and discipline cannot be mechanical and coercive. In contrast, my study revealed some deep divisions among workers along nationality and employment contracts. While Gramsci contends that workers committee(s) are "vitiated by bureaucraticism" and in his Prison Notebooks he developed a more coherent and sophisticated analysis of trade unions and the contradictory social forces which support them. He believed that trade unions were the "organic intellectuals of the proletarian, indispensable [realising] if the latter was to win power". Consistent to this claim, my study shows that unions are inherently bureaucratised and as a result have responded slowly towards mobilisation of foreign workers. Gramsci proposed resistance and participation in a collective enterprise and creation of autonomous class organisations of the proletariat and peasants as opposed to isolation as the hegemony to overthrow capitalism (the biggest enemy of the working class).

In his prison Notebooks, Gramsci introduced the concept of intellectuals and argues that "the notion of intellectuals as a distinct social category independent of class is a myth" (Prisons Notebooks, pg. 5). Further, he asserts that all men are potentially intellectuals or philosophers in the sense of having an intellect but not all are intellectuals by social functions. This point is very relevant to my study as it challenges the notion of the South Africa's immigration law which categorises workers based on skills whereby highly-skilled foreign workers are prioritised more than the lowly-skilled yet all are very critical to various functions and sectors of the economy. For instance, while a sheep-shearer might not have high level skills, still very few locals possess the technical know-how and is the reason why it is classified under the critical skills permit. According to Gramsci, intellectuals fall into two categories. First are the traditional professional and scientific intellectuals, whose position in the apertures of the social order possesses a certain "inter-class aura about it but derives ultimately from past and present class relations and conceals an attachment to various historical class formations". Second, are the "organic intellectuals" are the think-tanks central to social class. They are

responsible for development of organising strategy and their jobs are "characteristic of their class, than by their function in directing the ideas and aspirations of the class to which they organically belong" (Prison Notebooks pg. 1).

In a nut shell, Gramsci upholds that intellectuals are central to the class struggle and serve a central function of mediation. My study reveals this function through the fundamental role played by intellectuals in civil society, social movements, migrant rights organisations and worker advice office although caution needs to be taken to avoid 'hijacking' of the struggles as expressed by some respondents. It has emerged in my research that civil society plays a very critical role in mobilisation and education of foreign workers about their rights. In this regard, they provide theory and ideology (and often leadership) for a mass base of non-intellectuals who constitute who are very often mundane workers. Such distinctions according to Lenin need to be eradicated as they tend to create hierarchies and thus divide workers solidarity. To him, socialist consciousness needs to be undertaken by what he refers to as the 'vanguard' and not the traditional intelligentsia. It is however, important to underscore that while unions constitute part of such external forces, they have nonetheless, played a very minimum role in mobilising and representing foreign workers as revealed by the study. This could be due to what Flanders (1970) cited in Webster and Ludwig (2017: 165) refers to as the 'two faces of unionism: the idea of the union as a 'sword of justice' or as a 'defender of vested interest'. Furthermore, in support of this, Webster and Ludwig (2017, 165) depict the inclusionary and exclusionary tendencies manifested by unions in their organising strategy as stated below:

At the centre of trade union strategy is a tension between trade unions' obligation to focus on immediate interests of their members against the broader commitment to the interests of all working people (2017: 165). The relation among these forces and also the experience of the classes within the balance of forces will determine the nature of the struggle or mobilisation in this particular study. However, the source of power should be established. For example, who has economic or access to military power? Also important to note is to ascertain the organization of classes involved.

Unlike Gramsci, my study was inspired by the contemporary casualisation and exploitation by capital of the working class in general and immigrants in particular. Indeed, with neoliberal policies shaping the labour market today, the capitalist system has devised ways of ensuring maximisation and maintenance of their profits by exploiting labour. The state's

welfare system has collapsed and workers bear the brunt. Again, the monolithic capitalist state works hand in hand with business to maintain their hegemony over labour. In his theory, Gramsci quoted by Brown (2009: 7-8) asserts that:

When the interests of the capitalist class are directly threatened, however, the hegemonic forces will inevitably resort to coercion. There is no room to negotiate on this, within the current hegemonic order. On a simple level this can mean legislating to allow police to crack down on workers taking industrial action; who threaten profits in an immediate sense. The state becomes the mechanism by which this is done: policies are enacted and enforced that allow the hegemonic group to more effectively to achieve its goals and to create symmetry between its goals and those of other groups. But a far bigger threat to the capitalists is the development of a hegemonic alternative within civil society" (2009:7-8)

Gramsci acknowledges that the state uses both coercion and consent. For instance, for striking workers as we witnessed at Marikana in one of South Africa's platinum mines, coercion was used in an attempt to break through the strike. Later, we discover that with the involvement of unions, the state attempted to solicit consent from the workers to stop the strike, after many lives had been lost. In the same manner, one would find that capitalists would divide workers through pitying them against each other. For instance, employers make use of 'scab' labour very often drawn from among foreign workers and in times of 'industrial peace', they would exploit foreign labour as a way of undercutting wages and maximising profits as revealed in my study. Subtle force is used to make local workers accept minimum wages of the sector while immigrants accept lower wages simply because they have no any other alternatives thus the 'necessary evil' referred to by Gramsci. The study therefore argues that unless local and immigrant workers unite and mobilise around their common grievances, business continues to occupy its capitalist hegemonic position to exploit both group of workers. Alho (2015) argues that unless unions organise and represent immigrant workers, they will continue to lose their bargaining power as employers continue to hire foreign nationals for the purposes of exploitation and undercutting wages. In a way, solidarity is divided along institutional and associational power whereby workers enjoy direct protection by the law (labour laws are silent on immigrants).

Webster, Britwum and Bhowmik (2017) identify four sources of power which include structural or logistical, associational, institutional and societal. Structural power according to scholars like (Piven, 2000; Silver, 2003; Wright 2000) cited in Webster, Britwum and

Bhowmik (2017) constitutes the backbone of trade unions and occurs in two forms; marketplace bargaining and workplace bargaining and is manifested when "workers effectively interrupt production processes through collective action" (Silver, 2003) cited in Webster and Ludwig (2017:67). Associational power is derived from affiliation to trade unions while institutional power is vested in legal frameworks such as the national Constitution, LRA, BCEA and others. Finally, societal power involves coalition-building by trade unions and communities to include issues beyond the workplace and is also referred to as co-operative power (Webster, et al, 2017).

For the sake of this study, it was critical to understand the concept of hegemony as the notion of domination of the working class by the capitalist system. The proletarian, according to Lenin, could only emancipate themselves from the repression of the ruling class or capitalists through gaining of 'hegemonic' power. In the context of immigrant workers mobilisation in South Africa, workers need to be empowered first, undoubtedly through political representation although my study points to huge gaps and under-representation by traditional unions.

3.5 Theorising International migration – A historical and contemporary perspective

A huge body of literature exists which attempts to explain migration and its effects on migrants in relation to documentation, exploitation in the labour market, integration, xenophobia, access to services, but little is known about how foreign workers political subjectivities; how they assert themselves in the workplace and their agency thereof. Migrant workers are very often perceived as vulnerable thus overlooking their agency although this overgeneralisation does not mean that there are no vulnerabilities associated with migrancy and the context under which they migrate; political and economic factors. Such observations call for particular attention and the need to understand factors shaping political subjectivities among foreign workers in host countries.

International migration often has positive and negative perceptions in the public and hence on migration policy (Kok et al, 2006). Labour migration benefits both sending (remittances) and receiving (transfer of skills) and the stimulus given to business activity by the Diaspora (ILO 2004:96). Historically, migrant labour system was a cornerstone of the landscape of colonial

and apartheid South and Southern Africa (Sachikonye 1998). Migrants from within Southern African region, Mozambique, Malawi, Lesotho moved into the relatively wealthier countries in the SADC region:~~;~~ Botswana, South Africa and Zimbabwe[12]. But, Zimbabwe's economic reforms in the early 1990s resulted in an increase in the volume of its migrants into South Africa. In the post-apartheid era, South Africa has received a huge volume of immigrants and asylum seekers from many parts of the globe, though regional immigrants from within SADC countries who constitute the largest population. The results of the 2001 census revealed that the majority of immigrants in South Africa, who constituted a total of 687,678 persons originated from the Southern African Development Community (SADC) countries whilst 228,318 were from Europe, 41,817 came from other African countries and finally the Asian immigrant community, being the lowest, resting on 40,889 (The Migration Policy Institute).

3.5.1 Informal, clandestine and individualistic migration in the post migrant labour regime

Migration is a complex phenomenon and today this is further compounded by informal and 'illegal' nature which makes it difficult to obtain reliable information on statistical data. Foreign workers go through very adverse circumstances, from their migration ordeals as well as settlement in respective South African communities as some prefer to remain 'invisible' (Segatti and Munakamwe, 2014). Accordingly, Davies and Head (1995) assert that it is relatively easy to cross the border and no reliable data on clandestine migration is available, except deportation statistics of "illegal immigrants". It is however, important to point out among the deported are refugees who have domiciled in South Africa and have been failed by the asylum system. In their study in 1995, Davies and Head estimated that unofficial data projected that there were over a million 'illegal immigrants' in South Africa (Davies and Head, 1995:206). Nonetheless, the actual numbers of immigrants in general hosted by South Africa has always been an area of contestation. Clandestine migration is somehow promoted by post-apartheid migration laws and policies which in a subtle way exclude foreign miners. Accordingly, Crush and James (1995) argue that the "apartheid state, despite draconian measures such as border electrification, was unable to control the influx" (1995:222). This demonstrates that the post-apartheid immigration laws are more restrictive than those of apartheid. This could have been a deliberate strategy given that during the migrant labour system, large gold deposits were available yet local labour was not keen to undertake

[12] Migrant labour has flocked to Zimbabwe during the colonial times and before the adoption of the destructive neoliberal policies like ESAP by the country in the 1990s. Of late, because of the political-economic turmoil that has haunted the country, it is no longer attracting much migrant labour from within the region.

employment in the mines. Migrant labour from neighbouring countries alleviated and filed in the gap. Because of the over-dependency syndrome produced by the migrant labour system over the years, clandestine and informal migration continues as workers from within the region rely on remittances and at the same time, labour sending countries' economies continue to decline (see Cobbe (1992; Coplan and Thoahlane, 1995). Expressing concern over regional inequalities, Davies and Head (1995) assert that "the prospect of escalating clandestine migration is interpreted as a real or potential threat which underscores the need for an equitable and mutually beneficial programme of regional economic co-operation" (Davies and Head, 1995:202).

3.5.2 Informal migration, precarity and labour broking in South Africa

Informal migration is directly linked to precarious work as foreign workers do not possess the 'right papers' to work in South Africa. In their study labour recruitment agencies in Canada, Choudry and Hanaway, (2012:37) contend that:

> …temporary agency workers' conditions and struggles for labour justice must be contextualised in relation to broader historical and contemporary trends in national and global labour as well as immigration and economic policymaking (2012:1)

As revealed by the statement, migration and economic policies to a greater extent shape and influence mobilisation of foreign workers in the broader context and South Africa in particular. The struggle against labour brokers (similar to recruitment agencies) is a long standing and unresolved labour question in South Africa (NEHAWU, 2016). Denouncing the agency industry, Hatton (2011) cited Choudry and Hanaway, (2012) in maintains that "an aggressive agency industry established a "workers liability" model in the US…Instead of selling flexibility to those who needed it, the temp industry promoted flexibility for everyone, casting permanent employees as expensive inventory that should not be kept in stock" (2012:41). Precarity among foreign workers is a universal and a global crisis today as they are hired as temporary or casual workers, low income, working poor, insecure employment, income inequality irrespective of their qualifications (Standing, 2011). Standing (2011) argues that such descriptions maybe underestimating as he describes precariat as people who lack the following seven forms of labour related security under industrial relations which are labour market security; employment security; job market; work security; skill reproduction security; income security and representation security. The self-regulated market economy has resulted in commodification of social and economic life as more and more become

commodified all through the global. And today we see the erosion of social protection that used to exist before 20th century, and the restructuring of labour which exposes workers to precarious life.

3.5.3 Theories of international migration in relation to foreign workers' political positioning in South Africa

Various theories attempt to provide explanations to the phenomenon of international migration. This section will present a review of some of the key theories related to migration in order to give a general insight and understanding of international migration and how it relates to the study.

Numerous academic studies (Anderson 1991; Appadurai 1990; Brettell 2000; Foner 2000; Massey et al 1998) have documented about drivers of migration, which focused mostly on global capitalism and the technological advances that make those transnational networks possible. Emerging theories of identity, ethnicity, economics and politics made a number of scholars to question classical migration theories such as the 'push and pull' theory which was largely used by social scientists to explain peoples' movements (Brettell 2000). This model was criticised for failing to explain the complexity of the clandestine migratory phenomena. The theory focuses more on macro level factors in sending countries, such as poverty and unemployment as pushing people out, while consumption patterns, higher living standards, job opportunities, attracted international migrants towards the receiving usually economically wealthy countries. Accordingly, the theory perceives the potential migrants as mere victims of push and pulls factors and seems to deprive them of the power to make decisions (Schoorl et al. 2000). Again, the push-pull model fails to explain the intervening obstacles to migration, and does not take into account the personal factors involved in the process. A substantial amount of studies have demonstrated that the reasons why people move out of their countries of origin are much more complex and do not necessarily fall under simple pull and push factors. Also, the push-pull theory is too simplistic because it fails to explain the movements of millions of people across the globe and contributes relatively little to the understanding of the complexity of the migration phenomenon (Anderson 1991; Appadurai 1990; Gilroy 1993).

The structuralist theory of migration maintains that international migration is as a result of unequal distribution of political and economic power in the world economy. Structural Marxists like Massey (1998), have examined migration from the lens of world systems theory

arguing that the relationship between core and periphery nations within the context of world development is the most viable explanation of the various migratory movements in today's world. Populations in nations of the periphery whose economic conditions are worsening as a result of globalization and the various structural adjustment policies have an added incentive to leave their countries and move to the core for better economic opportunities. The characteristics of globalisation prompt irregular migration and bring about more flexibility and cheaper costs for countries in the core. The global market is generating a new division of labour, stimulating labour mobility where it becomes possible for core countries to exploit the advantages of lower labour costs opening the doors for people in the periphery to become potential migrants (Portes and Landolt 1999).

Another theory which emerged in the nineties and is essential to this study is networks theory. According to Massey (1998), a migration network is defined as a composite of interpersonal relations in which migrants interact with their families, friends or compatriots who stayed behind in their country of origin. Massey's conceptual framework focuses on micro level factors present in human migratory networks that vary in their size, composition and the way they fuel motivations for migration (Massey et al. 1998). Network theory provides an analysis of interpersonal relations in migration process and how they influence mobilisation, participation and representation of foreign workers sharing the same identity, nationality, ethnic and tribal ties (see Von Holdt, 2002; Milkman, 2006; Webster, 1985; Sitas, 1983). Further, the theory will assist in explaining the existence of political subjectivities within 'rich' social networks of foreign communities in South Africa.

While migration theories provide us with rich data on reasons and factors that facilitate or hinder movement of people from their countries of birth to various destinations in the world, as explained by the 'push-pull model', structuralist and the network theories have nonetheless, failed to recognize the in/ active role played by foreign workers in their host countries thereby perceiving them as mere victims (see Ochs, 2006). While contexts might be different, empirical evidence from the US (Milkman (2006) has demonstrated that im/migrant workers are actively involved in self-mobilisation on national and ethnic lines such that unions could 'tap' on already existing networks amongst this community of workers for mobilising and organising purposes. A more recent study by Segatti and Polzer (2012) has again revealed the active role that immigrant communities in South Africa mobilise politically based mostly on their nationality. Based on empirical evidence, I would therefore

argue that foreign workers in South Africa are organisable but that unions are reluctant to embrace them into their structures for various reasons that this study aims to disentangle.

3.5.3.1 The intersectionality of gender and migrancy in relation to mobilisation, participation and representation

As mentioned before, the post migrant labour regime is characterised by high levels of movement by female cross-border migrants which is been referred to as feminization of migration. Thus it is important to interrogate gender as it relates to migrancy and other variables. Feminist theories on intersectionality argue that gender matters in whatever analysis that is administered on any particular social group. Looking at the key question of the study, it is important to examine political subjectivities, mobilisation, participation and representation of foreign workers with a gender lens. Gender, according to Borrell and Benach, 2010 contend that gender plays a very critical role in our analysis of social inequalities, vulnerabilities and experiences of migration. In South Africa, labour migration has always been associated with male migrants (see Dodson, 1997) such that much of the existing literature focuses more on male migrants. While historically women (both local migrants from the homeland and southern African region) migrated to the cities to undertake employment, very often they worked in "invisible' spaces or private homes as domestic workers (see Cock, 1980; Ally, 2007; Abebe & Bessell, 2011) and thus their stories, experiences choices for jobs (determined by gender) are under-documented. In contemporary South Africa, young cross-border women workers are concentrated in the service sectors like hospitality (see SWOP, 2012).

Findings from my study also point towards this phenomenon as young women constituted the majority as revealed in the workplace census and this will be explained in detail in chapter 6. In many cases, they are super-exploited because of their gender and as Cobble (1996) points out, predominantly female jobs are usually under-paid and this was also revealed in my study on home-based care work in South Africa (Munakamwe, 2008). Examining migrancy from a gender lens, Hiller (2007) shows how cross-border female migrants at times exchange sex for passage and also how they are victims of human trafficking. In relation to mobilisation, while conventional studies referred to women as docile, Munakamwe (2008) challenged this notion as I found out that home-based care women were very receptive towards unions although the latter did not invest much efforts and resources to organise them. While various factors attempt to explain poor mobilisation among the current foreign workforce which is

predominantly women, at the core of this is the aspect of gender. Haartman, (2010) a theorist on patriarchy argues that:

> Men allied with capital to exclude women from certain jobs…skilled craft workers used their unions to exclude women from some trades. But it was not only women they excluded. The children of unskilled workers and of immigrant workers could stand as little chance as women of getting apprenticeships in such trades and the exclusion then was of anyone who had not "served their time (2010:2).

However, given how the current workforce is typically exploited almost at the same level, it was difficult to identify such claims in my study. Such indicators could be noted through wages (gender-wage disparities) (see Ledwith and Munakamwe, 2015). My study revealed that both men and women respondents were paid the same wages commensurate with work of equal value. Further, in addition to patriarchy and migrancy, Hartmann (2010) identifies race as another inhibiting factor towards full participation of women in the labour market as she posits that:

> … White male supremacism – [and it would be beyond absurdity to make it fit the historical facts] by being "white skilled male supremacism" which discriminates not only against all women and all immigrants, but against most "native" workers as well (2010:2).

On the relationship between capitalism and migrancy, she argues that:

> But the structure of women's jobs has more to do with the period of capitalist development in which they entered the labour force (the expansion of the service sector in particular) than with any male conspiracy. This is particularly clearly shown if you compare the jobs women have with those of immigrants of both sexes. Both are concentrated (with a few exceptions such as foundry workers) in cleaning, transport, catering, light manufacture, food processing, because both entered the workforce at similar times. The job segregation of women has nothing to do with their role in the home. It is sometimes argued that women's jobs reflect motherhood and housework. But canning peas can in no way be seen as an extension of the sort of things women do in the home. Nor can the jobs of bank tellers, typists, filing clerks, telephonists, cashiers. (In offices, only the privileged elite secretaries play the role of surrogate wife to the (male) managers – the mass of clerical workers certainly do not (2010:3)

In the statement above, Hartman (2010) locates the current subordination of women in the labour market in how the capitalist system has restructured the workplace to maximise profits through flexible employment relations like casualisation, out-sourcing and subcontracting. In addition, she also identifies migrancy as a process which exploits both women and men by defining the sectors in which they find employment along gender lines. In other words, women's oppression is synonymous with exploitation of immigrants. Thus, to Hartmann while Marxist theories serve to explain how workers are exploited through an analysis of the economic and social modes, they are however, divorced from feminist theories (Hartmann, 1979).

3.6 Understanding State policies, immigrant workers, citizenship and political subjectivities

3.6.1 The South African immigration policy before 1990

At democracy, South Africa embarked on an institutional and constitutional policy overhaul aimed at redressing historical inequalities and racism. The demise of apartheid encouraged both domestic and international migration (Parsley & Everatt, 2009: 4) in a diverse range of sectors. Before the 1990s, South African immigration policies were crafted to be exclusionary, reactionary and xenophobic. Throughout the early 1980s, several repressive laws such as the *Aliens Control Act of* 1939, *Aliens Registration Amendment Act of* 1949, *Aliens Control Act of* 1963, *the Border Control Act of* 1967, *Group Areas Act* and others, which regulated the entry of foreigners into South Africa and controlled movement of people within the union, were promulgated and enforced. These laws "reflected the interests of the apartheid state" and were enforced when making decisions relating to migrants up to 1991 (de la Hunt, 1998; Bollaert, 2008: 47; Khan, 2007: 2). Segatti (2008: 61) reports that the 1991 *Aliens Control Act* was designed and enacted to unite all the immigration laws since 1937. Thus, despite its shortfalls, it became the "cornerstone of South African immigration policy" throughout the 1990s (Landau and Segatti, 2008:34: Segatti, 2008: 58). However, the 1991 *Aliens Control Act* was declared unconstitutional in 2002 after serving in the post-apartheid era for almost twelve years (Segatti, 2008: 69, Maja & Nakanyane 2007: 15). Thus it has served for both the Apartheid and post-apartheid eras.

In crafting the post-apartheid law, particular attention was paid to national legislative and policy frameworks such as the Constitution, labour and migration. During apartheid Blacks were suppressed and denied the right to associate while migration policies, through the pass laws restricted mobility. The first years of the national transition were filled with euphoria as all including immigrants expected the best out of the new ANC government. Foreign workers in particular expected to have their immigration problems resolved given the role they played alongside their local counterparts to dismantle apartheid (see von Holdt, 2002).

During the era of Apartheid, the immigration policy was tailored to promote the supremacy of the white race among other things (Bollaert, 2008:38). Section 4 (1) of the *Aliens Control Act* substantiates this premise through maintaining that "a person could only immigrate to South Africa if that person's habit of life is suited to the requirements of South Africa" (Khan, 2007: 2; see also Ryan, 2005). Secondly, that the migrants from other African countries were permitted entry into South Africa on condition that they would provide cheap labour serving the interests of the white population (Mattes *et al* 2000: 2). Accordingly, it is important to note that the legislation acted as an entry 'filter' on the basis of race at the point of entry into South Africa, and secondly, to control and monitor all foreigners entering the 'Union' (Segatti, 2008: 33; Khan, 2007: 2). For the most part, the rules were justified because of the wars of liberation in South Africa's neighbours, whereby the apartheid regime feared that migrants or refugees might negatively influence or destabilised the country's socio-economic and political situation through radical mobilising actions.

Although the immigration policy showed signs of being discretionary before 1994, deterrence strategies were used to limit foreign workers to gain entry into South Africa. For instance, foreign workers were only "recruited under agreements between the employing company/ organisation, which in most cases were the big mining conglomerates, and the governments of the supplying countries" (Khan, 2007: 3; Bollaert, 2008: 37; Kate, 2005: 15) and the South African government. It seems reasonable to argue that since such migrant workers documentation was fixed through bilateral agreements, their movement and capacity was limited to supply cheap labour only. Contracts were also used as another form of preclusion strategies to regulate foreigners from gaining entry into South Africa whereby the worker entered into a contract of which upon completion, they would be required or forced to go back to their home countries (see Nel & Van Rooney, 1993; Khan, 2007: 2). In addition to this, Ria (2001: 1) observed that South Africa did not allow foreign labourers to bring their families to their work place. However, the need to build close family ties forced migrant

workers to return to their countries after their contracts expired (Maja & Nakanyane, 2007: 2).

The Post-apartheid period, 1991 - 2012

In 1994, a new political dispensation was born in South Africa, making South Africa a safe haven for foreign immigrants (Khan, 2007: 2; Maja & Nakanyane, 2007: 8). South Africa signed a number of regional and international policy instruments resulting in an array of 'rights' and 'liberties' being observed as opposed to the existing political system of apartheid (Parsley & Everatt, 2009: 2). South Africa's *Immigration Act* of 2002 (amended in 2004) is a major piece of immigration legislation fostering the permissibility of foreigners into the Republic (Khan, 2007: 4). Through the Department of Home Affairs, the Act regulates the immigration process by issuing permits to "skilled migrants, students, tourists and other categories of permanent and temporary migrants" (Polzel, 2010: 4). These services are consistent with the intention of other policies such as the *Constitution of South Africa*, Act 108 of 1996 and the *Refugees Act* of 1998 which protect immigrants in South Africa.

Thus, the transition into a democratic dispensation somehow opened up space for migrants to enjoy certain rights in South Africa. De la Hunt (1998: 135) asserts that South Africa signed international instruments that helped to protect the interests of refugees and migrants. The principle statutes which are provided for under the international law include the 1951 UN Convention on the Status of Refugees; the 1967 Protocol to the Convention; the 1969 Organisation of African Union (OAU) Refuge Convention governing aspects of refugee problems in Africa, and other international conventions[13]. These international rights together with "rights entrenched in chapter 2 of the *Constitution* [Constitution of South Africa] are rights enjoyed by all persons, rather than only citizens" (de la Hunt, 2001: 5). Given the existence of international and regional instruments, it is thus clear that the absence of citizenship of a particular host country does not entail a dearth of state-guaranteed rights. But in practice, migrant rights are still to be realised as Parsley & Everatt (2009:5) found that 'the rights of migrant workers and irregular unskilled migrants are not respected or upheld. Migrants face human rights abuses in a number of areas, despite protection guarantees to their rights as enshrined in the Constitution of South Africa (Segatti, 2008: 58). The breaches

[13] www.home-affairs.gov.za/raab.asp).

to human rights thus arise as a result of the failure to enforce the domestic and international statutes.

3.6.2 South Africa's Policy Position on Highly –skilled and Low- skilled migrant workers

South Africa continues to revise laws and policies particularly the White Paper on International Migration of 1997 and the Immigration Act of 2002 in its attempt to respond to and manage contemporary international migration trends. While substantial efforts have been invested in addressing racial inequalities whereby the skilled labour recognition was based on race (Maja & Nakanyane, 2007; Nel &Van Rooyen, 1993), recruitment in the post-migrant labour regime is concerned about skills and the 'brain gain' to the South African society from all the races. Based on a review of state policies undertaken as part of this study, it is important to point out that the old laws were quite flexible on skills as shown in Chapter 4 and 5, as they allowed flexible movement of both highly-skilled and lowly –skilled foreign workers even though under short-term contracts particularly those of African origin in comparison to those from abroad.

Today, migration and labour policies seem to be biased more towards highly-skilled foreign labour with exceptional skills who have the potential to contribute towards the development of the economy (see Mc Donald and Crush 2002; Rasool & Botha, 2011: 2). This bias towards highly-skilled migrant workers was also noted by Gramsci in Italy where he argued in his Prison Notebooks that:

> The change in the social position of the intellectuals in Rome between Republican and Imperial times (a change from an aristocratic –corporate to a democratic –bureaucratic regime) is due to Caesar, who granted citizenship to doctors and to masters of liberal arts so that they would be more willing to live in Rome and so that others should be persuade to come there (Prison Notebooks, pg. 17).

To achieve this; Caesar granted permanent residency to intellectuals who were already in the country and "to attract to Rome the best intellectuals from all over the Roman Empire thus promoting centralisation on a massive scale". This strategy could be reflected in the White Paper on International Migration of South Africa adopted in March 2017 and other prior policies which have been crafted in such a way to attract and retain foreign graduates from local universities as a way to alleviate skills shortages in South Africa (see also Immigration Act of 2002).

In the apartheid era, recruitment into professional positions was racially biased (Nel &Van Rooyen, 1993: 56). On the other hand, recruitment in the new dispensation is concerned more about skills and the 'brain gain' to the South African society from all the races. Scholars such as Segatti (2008: 33; Rasool & Botha 2011: 1) maintain that the policy indicates a weak or poor education system which is failing to produce skilled graduates who are able to further the country's economic growth (Bernstein, 2010: 4). This is because the apartheid era's system of education failed to produce skilled graduates. Secondly, it can be argued that high recognition rates of skilled migrant labourers is inevitable since thousands of skilled workers left South Africa during the transition period from apartheid to democracy.

In its 1995 Congress, the ANC government in recognition of its economy's critical needs reiterated the need to attract highly skilled migrant labourers to come and work on the country's key sectors of the economy (Segatti & Landau, 2008: 29). Ironically, in the address, the ANC further outlined the need to protect "national interests" "of their own citizens" (Kate, 2005: 10) in the process. This is consistent with Polzer (2010: 6) who stated that the "South African economy is dependent on cross-border migration to address some of its skills shortages and sectoral labour". Despite this important observation, "large numbers of South Africans feel that the government should prioritise its own citizens for employment" (Segatti & Landau, 2008: 29). An important step towards achieving this was to tighten the borders despite the need to import skilled migrant workers into the country (Beinstein, 2010: 17). Thus, policies are crafted in such a way that they support national interests (Kate, 2005: 15; Ballaroet, 2008: 37) and to control the entry of migrants.

Thus, paradoxically two main conflicting aspects emerged; alleged security concerns about migrants and the need to attract highly skilled migrants and these present a problem for South Africa's policies on foreign migrants. Further, the desire to give preference to South Africans in the labour market as well as attend to the Government's proposal of attracting skilled migrants reflects difficulties in trying to strike a balance between the interests of immigrants versus national interests (Segatti, 2008: 92). There seems to be "a disjuncture between policy objectives and implementation" (Gigaba, 2010), wherein the main challenge comes from South Africa's need for national security (see also the White Paper as adopted in March, 2017). It is also notable that the concept of security is "widening in its characteristics to include a greater collection of socio-economic and political threats" (Kate, 2005: 11). Previously, the field of security was only concerned with protecting the borders of the country, yet now the emphasis is on the interests of its entire population. The resultant effect

is the on-going xenophobic attacks which continue to haunt the country especially in poor communities. Interestingly for me, for both the workplaces sites of my study, none of the responses cited xenophobia as a problem but however some mentioned that they only experience this phenomenon in townships where they live. The absence of xenophobic cases in the these workplaces could be attributed to the high presence of foreign workers such that while there have been claims of 'stealing our jobs' , physical violence in the workplace seems not to be possible if one is already excluded from such spaces and also given trespassing laws on private property.

There has been a notable difference in the recognition rate of skilled and unskilled workers in both political dispensations. However, the reason for the variation is discernible in that the immigration policies are of paramount importance in pursuit of protecting the sovereignty of the country (Kate, 2005: 10). The idea of sovereignty enforces states to "protect their respective societies and advance their interests" (Penez, 2003: 417). It needs to be understood that South Africa's interests have been supported by declining economic and political situations in Zimbabwe in the period between 2002 and 2009, accelerating cross-border migration and overwhelming South Africa's policy plans, while at the same time fulfilling South Africa's skills shortages needs for its comparatively robust economic growth and performance (Amisi *et al*, 2011). It is clear that from the apartheid era till this day, a trend is being revealed whereby sovereignty is seen as a duty to protect the rights of the South African citizens. In this regard, deterrence strategies are being employed to support national interests (Kate, 2005: 15; Ballaroet, 2008: 37) and to control the entry of migrants.

3.7 Mobilisation Theories

In terms of explaining mobilisation of immigrant workers, the social movement unionism theory (SMU) was used to provide a framework to explain the different strategies or modes of mobilisation of workers by trade unions or social movements (see Von Holdt, 2002). According to Kelly (1998) cited in Webster et al (2017) notes that social movement theory brings to light aspects of inequalities in its analysis of labour relations.

The choice of the SMU was reached considering the mode in which foreign workers mobilise outside of trade unions relying on migrant rights organisations, worker advice offices and community –based organisations who very often provide documentation services and this is explained in detail in Chapter 7. The theory is supported by various literatures from other parts of the world. The study also drew from the work of other leading European scholars

who conducted extensive research on immigrants' mobilisation and participation in Europe most notably Martiniello (1997; 2005) and Ireland (1994). Martiniello is popularly known for the theory of migrants' "political apathy" (Martiniello, 1997). This theory assumes that migrants are passive and do not contribute towards political processes of their host country (Martiniello, 2005).

Drawing from some of the leading scholars and sociologists on worker mobilisation like American scholar, Ruth Milkman (2006) and the seminal work of Webster (1985) on organising migrant workers (from homelands) in the foundry, in South Africa' West Rand, the study challenges the conventional knowledge and stereotypes of 'victimhood' 'quiescence' and 'dormancy' associated with immigrant workers. In fact, both Milkman (2006) and Webster (1985) have a common conclusion that immigrant workers are organisable (Webster, 1985; Milkman 2006). Where the two differ, is on the issue of immigrant workers agency where Milkman claims that the workers are ripe for organising and only waiting to be organised thereby expressing some degree of dormancy amongst immigrant workers (Milkman, 2006). On the other hand, in his study, Webster (1985) demonstrated migrant workers' agency as he argues that migrant workers were already organised into informal networks in their hostels which facilitated easier organising by unions (Webster, 1985). Further, Milkman argues that if mobilised, immigrants have the potential to strengthen and revitalise the U.S. labour movement (Milkman, 2006), a very critical point which unions could take advantage of if they are to strengthen their political voice in the shadow of globalisation (see Ally, 2007; Munakamwe, 2008).

A study by Polzer and Segatti (2012) also pointed to some degree of agency, active participation and representation amongst certain groups of nationals living in South Africa most notably amongst communities from the DRC, Somalia and Zimbabwe. However, the participation has been more of reactionary than pro-active as immigrants' visibility was first noted when they responded to what Polzer and Segatti refer to as 'crisis' meaning the xenophobic attacks that occurred in South Africa in May 2008 (Polzer and Segatti, 2012). The fundamental results presented by this ground-breaking study gives rise to very critical questions related to factors shaping political subjectivities taking into account that foreign workers have rights too and have begun to participate in shaping and influencing migration policy framework (see Crush and James, 1995).

3.7.1 Mobilisation and Social Movement Unionism (SMU)

Mobilisation of immigrant workers can be explored through the rich body of work related to social movement unionism theory (SMU) (see Von Holdt, 2002). This framework is critical in explaining the different strategies or modes of mobilisation and representation of workers by trade unions or social movements in a post migrant labour regime. Specifically, combined with the social network theory of migration, this theory provides useful analysis of the kind of solidarity between local and foreign workers and how this will influence mobilisation and representation. This is based on the fact that foreign workers are not isolated but are somehow connected to some networks (nationally –based) in their host country (see Jinnah and Holladay, 2010). Social networks, as revealed by this study provide spaces for foreign workers to express themselves interact and share opportunities and challenges they face in the workplace as demonstrated in Chapter 6. Emerging social media platforms like Facebook, WhatsApp and Twitter (see Bakardjieva, 2003; Earl and Kimport, 2011; Oiarzabal, 2012) also enhance virtual participation of foreign workers and a sense of belonging for those who feel alienated in the workplace as will be explained in a later section.

In his study in the foundries on the East Rand in South Africa, Webster (1985) found out that mobilisation was easier in the workers compounds as the migrants were already organised into networks around their places of origin. Though contexts might be different, Milkman (2006) also supports this notion as she claims that immigrant workers in the U.S. organised themselves as national networks, like Latinos, Filipina or African migrants. Accordingly, she argues that the fact that immigrant workers are already self-organised, it would therefore be easier for unions to 'tap' on these already existing networks (Milkman, 2006). Social movement unionism relies on social community networks for mobilisation and immigrant workers networks form part of communities. In South Africa, immigrants are organised along nationality lines (see Segatti and Polzer, 2012). In addition, they also come together through migrant rights organisations like umbrella organisations such as the Consortium for Refugees and Migrants in South Africa (CoRMSA) and the African Diaspora Network (ADF) (ibid).

Immigrants' mobilisation and participation in Europe has been well documented by, among others, Martiniello (1997; 2005) and Ireland (1994). Martiniello is popularly known for the *theory of migrants' "political apathy***"** (Martiniello, 1997). Condemning the reductionism of classical Marxist analyses of 'migrant apathy', Martiniello (2005) challenges the idea that migrants are passive and do not contribute towards political processes in their host country

(Martiniello, 2005). Similarly, Webster (1985) study challenges the conventional knowledge and stereotypes of 'victimhood', 'quiescence' and 'dormancy' associated with immigrant workers. Milkman (2006) also dismisses the notion of dormancy amongst immigrants and claims that immigrant workers are in fact organisable. And yet, the lack of mobilization in migrant labour intensive sectors of the South African economy raises the question of the factors hindering mobilisation. A study by Polzer and Segatti (2012) pointed to some degree of agency, active participation and representation amongst certain groups of nationals living in South Africa; most notably amongst communities from the DRC, Somalia and Zimbabwe. However, the findings of this study reveal that participation by immigrants has been more reactionary than pro-active and has largely taken place outside of the world of work (Polzer and Segatti, 2012).

3.7.1 History of worker mobilisation, participation and representation in South Africa

This section presents the history of mobilisation, representation and participation of workers in general and migrant workers in particular in South Africa. Mobilisation trends amongst foreign workers historically and in contemporary society are rooted in the manner in which the migrant labour system and apartheid system were designed. The two systems developed strategies to divide workers and to fragment solidarity (see Webster, 1985; Sitas, 1983). For instance, under apartheid, amaZulu in townships were regarded as the locals whereas baPedi, amaXhosa or baTswana from homelands were regarded as migrants. The migrant communities brought their own "cultural practices, notions of male discipline and collective solidarity, deeply rooted in their rural communities, to bear on the construction of union solidarity" (Von Holdt, 2002:289). For instance, baPedi migrants were identified with the shambok[14] style of discipline which they even employed as a mobilising tool/strategy and for "building black solidarity in the union" (ibid: 289).

There have been some notable differences with regards to workers' solidarity over years especially in democratic South Africa. During apartheid, despite their national, ethnic and tribal differences, "workers struggles were framed against racial discrimination by the demand for an inclusive, democratic citizenship. The cycle culminated in a brief honeymoon period and the promise of a participatory labour regime" (Webster and Ludwig, 2017: 166) in other words, Black workers were united around the need for emancipation from colonialism

[14] *Shambok*, according to Von Holdt's study, was a long stiff whip used for flogging as a disciplinary measure. On a negative note, though the "*shambok* tended to distinguish migrant workers from local urban workers, it however, became a "source of conflict within the social structure of Black workers. Those who refused to participate in wild cat strikes were threatened with *shamboking"*. (Von Holdt, 2002:300).

and the apartheid system. This is clearly articulated by Von Holdt (2002) when he states that "the unity of the oppressed Black people, collective identities, forged over decades of national struggle against colonialism and apartheid, became a central component in the collective identity of the trade union" (2002:288).

Twala and Kompi (2012) assert that the South African labour movement played a fundamental role in ensuring the downfall of apartheid. Within this struggle, the NUM played a leading role in which migrant workers were pivotal, most notably the Basotho (see Crush, 1997; Bezeduinhout and Buhlungu 2009). Foreign migrants' militancy under apartheid has been poorly documented. In many instances, migrants occupied shop steward positions. Aside the union structure, workers also established a parallel monitoring structure to that of the union known as the strike committee, which "embodied the political aspirations and practices of the popular movement in townships" (Von Holdt, 2002:290). The strike committee was responsible for "wild cat" strikes, which always occurred once workers felt impatient about the collective bargaining procedures of democratic discussions and decision-making between the employer and the union (ibid).

However, the militancy of workers (both locals and migrants) and their participation in the workplace diminished with the attainment of democracy based on the assumption that 'comrades' had taken over such that the expectation was that they would change the socio-economic problems of poor workers (see Barchiesi, 2011; Nieftagodien 2009). Some shop stewards who possessed skills, were absorbed into the new government structures (see Von Holdt 2002). Most low-skilled migrant workers, however, remained marginalized in terms of organization and representation. After realizing the inequalities and exclusion suffered by workers in general and particularly migrant miners in post-1994, the latter self-organised and formed militant informal counter structures to "bypass shop stewards and protect themselves" (Von Holdt, 2002: 294). This self mobilisation and representation was also been noted among the rock drillers in Marikana who, after having been frustrated by so-called "democratic" negotiations between the union and management by-passed the usual procedures and engaged in "wild cat" strikes culminating in the Marikana massacres where 34 miners were shot and killed by police in 2012 (see Hartford and Stewart, 2013). To explain solidarity among workers, Bezeduinhout and Buhlungu (2009) argue that the demise of the compound system has fragmented workers and minimised mobilisation as the authors claim that it is difficult to reach out to workers in communities where they are scattered and mingled. Living in communities also implies that mine workers have their own private spaces

which are difficult to access just like it is difficult to organise domestic workers as they are confined to private homes (see Ally, 2005). This is consistent with earlier findings by Sitas (1983) and Webster (1985) where they argue that organising and mobilising mine workers under apartheid was easier because unions could easily locate them in the compounds which were common spaces provided by the employer.

Various factors determine the success or failure of mobilisation (see Jinnah and Holladay, 2010). For instance, solidarity amongst workers is key though in the post migrant labour regime this aspect is slowly diminishing especially in the mining sector based on citizenship and recruitment policies where local recruitment of miners has been emphasised (see Chinguno, 2013; Forrest, 2013; Mujere, 2014). Again, the contestation of 'migrancy' as questioned within the migrant labour system is replicated, though today it takes a different form as elicited in the recruitment policies of mines where much emphasis has been placed on "who is local". This has somehow divided workers solidarity; for instance in the Royal Bafokeng Region in North West, there have been tribal confrontations as two tribes fight to take control of the land thereby benefitting from the mining royalties and employment and at the same time pushing migrants out (see Mujere, 2013).

3.7.2 Patterns of mobilisation and representation of foreign workers by trade unions in South Africa in the period 1980-2013

Mobilisation, participation and representation of workers take various forms and the most dominant mode is through trade unions. Unions are mass organisations of the working class whose primary role is to protect and champion workers' rights. The establishment and recognition of trade unions has a long painful history beginning in Europe in the 1700s at the time when leaders were beaten up, thrown into jail or even killed (Hickley, 2012) as a means to deter unionisation. In Britain, unions were only legally recognised in 1871 while in South Africa, this only occurred in the 1900s although Hickley (2012) argues that: "[but] workers in the mining sector showed dissatisfaction with their work situation as early as 1882 during the strikes in the mining sector". This could be as a result of the transposability of union consciousness and experience among British artisans who were hired to work in the mines (see Nel and van Rooney, 1993; Allen, 1992). According to Allen (1992), the South African Communist Party was very influential in the establishment of trade unions in South Africa.

Where trade union representation is involved, workers first have to join trade unions and thereafter elect representatives at shopfloor level known as shop stewards (see Hickley, 2012) to undertake activities on their behalf and in their interest. This means that representation

takes place across enterprises and on an industry-wide basis. Elected union officials are called shop stewards and are responsible for representing workers at shop floor level. In their efforts to provide services for their members; unions undertake various functions such as working conditions and wage negotiations through the collective bargaining process; co-ordinate collective action where labour disputes occur; mediate relations between employers and employees including representing members in workplace grievances.

Organised labour has existed for a long time in South Africa, stretching back to the industrialisation period (Parsley & Everatt, 2009: 4). According to Nel & Rooyen (1993: 49), during the apartheid era, industrial relations with trade unions involved, "worker representation from outside the enterprise, through trade unions and committee/ works council representation (that is, worker representation within the enterprise)". Despite the recognition of unions by workers of black origin, white unions dominated the body of the collective bargaining. To be precise, Black workers were denied the right to form their own unions as according to (Allen, 1992:376):

> The Vice President of the Chamber of Mines insisted that grievance committees [lead] to chaos. Indeed the Chamber declared that any form of collective expression of grievances could be 'subversive to discipline'. The reason usually given by the mine owners for refusing to allow mineworkers to form a union was not that they were opposed to trade unionism but that Africans had not sufficiently mature to handle it (Allen, 1992:376)

In response, the Black union at that time; the African Mine Workers Union (AMWU) contested Chamber of Mines claims of immaturity towards unionism and stated that:

> The argument that the miners 'are not ripe' for trade unionism is due to a complete misconception" it declared…One cannot determine by means of education, intellectual or other qualifications just when a particular group of workers is 'ripe' for trade unionism. In fact many employers believe that the workers are never ripe for Trade Unionism. Actually a trade union arises when the more advanced workers combine for the protection of their interests. They soon obtain the confidence of the more backward workers, who follow their leadership. Our experience on the mines has been that there are plenty of advanced men amongst the miners who are capable of acting as trade union officials. In our Union all the paid officials are men who have served on the

> mines, and the Central Committee consists largely of men still employed by the mines (AMWU Statement to the Lansdown Commission, p. 42 cited in Allen 1992:377).

It later emerged that some of the labour-sending countries which had signed bilateral agreements with South Africa had agreed with the nationalist government to curb communist tendencies amongst their citizens as revealed in this statement:

> The South African government had given an undertaking to the Portuguese government in 1937 to prevent "any activity of a communist character among Mozambique natives" … it would be a breach of that undertaking if the AMWU were recognised for "I do not think I would be far off the mark if I stated that most of the controllers of that Union are Communists (Allen 1992:377).

It is unfortunate that there bad blood existed between the Nationalist government and the South African Communist Party such that any worker organising efforts which involved the latter would be thwarted. Communism posed as a huge threat not only in South Africa but other capitalist states all over the world.

According to Nel & Van Rooyen (1993: 133), the role of labour movements is "to give firm political direction to workers". Labour unions are involved in the socio-political issues as a way of mobilizing lower skilled migrants. According to (Nel & Van Rooyen, 1993: 132) labour movements "feel that the economic position of workers is only determined by wages and working conditions, yet there is need to recognize the socio-political aspects" such as "the poverty of unemployed relatives and other community problems" (1993: 132). Because of this, the new economic environment requires that the trade union changes its traditional role and social functions. This entails the trade union expanding its role to tackle issues in areas such as "education, environmental protection or sustainable development" and migration/ human mobility agendas, among others (Heines *et al* 2004:5). The addition of new roles on the agenda requires a sound financial base for expanding the agenda of the labour movement needs to consider the declining/ waning political influence of unions to society. Of late, South Africa's trade unions have been faced with a huge crisis in various sectors, in particular, the mining sector where workers have self-mobilised for strikes outside of unions; a case in point being the Marikana tragedy at Lonmin, where platinum miners clashed with unions and the police (see Alexander et al, 2013).

3.7.3 Trade unionism in the post-migrant labour regime

South Africa gained its independence during the era of the post-ideological battle between communism and capitalism, entailing that communism had been buried and that liberal democracy had become the order of the day. The death of a challenging ideology made South Africa to embark on an institutional and constitutional policy overhaul. In fact, labour movements had no choice but to adopt the neoliberal economic policies into the South African trade unions. Thus, the new political dispensation, which came in the form of liberal democracy, introduced a new trend which changed the role of labour movements. For instance, today, "the basic functions of organised labour movements are to negotiate on wages and working conditions, and representing workers' interests…." (Freeman & Medoff, 1984; in Jose, 2000) as before the key rallying issue was to ensure the demise of apartheid.
In general, union density in South Africa is reported to have declined since 2006 (ADCORP Report, 2013) and this is not surprising given massive workplace retrenchments and restructuring which occurred since the 1990s due to structural economic policies. This apathy added on to the burden of low-skilled and vulnerable sectors (agriculture, domestic, construction) which were already lowly unionised.

Nonetheless, unionisation rate in the mining sector has increased. A report by NALEDI of 2002 revealed that the mining sector was the most organised sector with a union density of 77%. Sharp (2013) claims that union membership in mining is as high as 80.7% of the total workforce in the industry. This is a huge figure considering restructuring that has occurred in the sector, labour broking and casualisation of employment. Some studies have demonstrated that the rise of sub-contracting where vulnerable non-nationals especially from Mozambique and Lesotho are hired "has had a marked impact on trade union strength in the mining industry and has led to a marked deterioration in wages, working conditions and underground safety" (DoL, 2007: 11). Considering the afore-mentioned figures in terms of union density, the question would be who then constitutes the remaining 19, 3%? Do foreign workers form part of the unionised workforce? Against this backdrop, it is important to evaluate such claims through investigating the level of mobilisation, participation and representation of foreign workers in this sector.

3.7.4 Strengths and weaknesses of trade unions in post-apartheid South Africa

In post-apartheid period, trade unions gained strength through close alliances with political parties and personal links with the government (Heines, 2004: 17). These partnerships leveraged and positioned labour movements in the decision making processes (collective

bargaining) that shaped policies. For instance, NUM played a key role in the formation of COSATU, posing a challenge to the apartheid system and promoted worker agency in solidarity with other forms of collective organisations (communities, student movements and community based organisations) that led to democracy. Today, according to Bezeduinhout and Buhlungu (2009), NUM views itself as a vanguard of the liberation movement. On the other hand, the Labour Relations Act (LRA) was founded upon a tripartite process (negotiations between government, labour and employers) (Leibbrandt et al, 2008: 27). The formulation of Labour Relations Act 66 of 1995, was fundamental in that it promotes employee participation in decision-making in matters that affect them at work places, for instance, issues of social security and minimum wages, though it is silent about migrant labour.

Maja & Nakanyane (2007: 11) observe that after the collapse of the apartheid regime, the mining companies tended to "hire more vulnerable non- South African workers, particularly from Lesotho and Mozambique". The significance of hiring the vulnerable had a direct impact on trade unionism, especially within the mining sector, in that subcontracting vulnerable people meant they could accept low wages and poor working conditions, while on the other hand, the role of trade unions have changed from empowering workers to bargain for their rights to that of bargaining on behalf of workers for their welfare. As a consequence, the role of unions is presenting a paradox to workers; hence they are facing a waning popularity. For instance the relation between ANC and COSATU has become one of the major concerns (Iheduru 2001: 2). The alliance COSATU entered with ANC has led to a compromise that has haunted workers because the two organizations that are in alliance have different ideological beliefs. For instance, ANC as a political party adopted neoliberal ideologies while COSATU operates from a socialist perspective of strategic unionism (Iheduru 2001: 2). So, COSATU finds it difficult to operate from socialist ideology in a neoliberal micro-economic environment. To that end, it is a challenge for the unions to remain relevant in a globalised neoliberal environment. This is substantiated by Hlatshwayo (2008: 12) who reports that:

> ...COSATU's organising strategy is still industrial based and it has not worked on the realities of emerging forms of work. COSATU is redefining employee in the traditional sense. COSATU will always be faced with the decline of membership. No work has been done on the informal economy, migrant labour, casual and contract workers.

However, findings from my study point to some developments as the Federation has begun to reflect on a strategy to organise vulnerable groups of workers. In 2013, the Vulnerable Workers Task Team (VWTT) was launched with the aim of bringing together all workers from vulnerable sectors including migrant workers and this will be articulated in Chapter 7. Commitment towards policy-development targeting these categories of workers is still to be realised. Thus the next section examines the policy position of trade unions in South Africa from a historical perspective.

Before 1980, South Africa's policy position on industrial relations was based on racial segregation, wherein black workers always confronted white workers almost on a daily basis (Nel & Van Rooyen, 1993: 73). The investigations and findings of the Wiehahn Commission into South Africa's industrial relations changed the racial climate by introducing the manpower policy in the White Paper [1980: 4] in Part 2. Eventually, the Labour Relations Amendment Act No. 57 of 1981 was promulgated. However, according to Nel and van Rooyen (1993), only registered unions were allowed to operate within the framework of a free market economy and their registration guaranteed collective bargaining (Nel & Van Rooyen, 1993:73). Inopportunely, registration of trade unions "was only open to certain categories of workers"; and the unregistered could not participate in the industrial council system (Nel and van Rooyen, 1993: 78). Again, "the only members who were prohibited from being members of registered trade unions were foreign Blacks working in mines" (Nel & Van Rooyen, 1993: 79). In a way, it can be argued that the exclusion of black foreign workers in the registration process of unions meant that the lower skilled migrant blacks were not defined as employees in the Labour Relations Amendment Act No.57 of 1981.

Despite the intervention by the Wiehahn Commission, a number of difficulties were experienced by employers and trade unions. The period between 1988 and 1991 witnessed new issues that affected the rights of unskilled workers such as domestic and farm workers (Nel & Van Rooyen, 1993:82). Intervention strategies on labour were discussed by SOCOLA, COSATU, NACTU and the government department on Manpower. After 1991, the discussion led to the amendment of the Labour Relations Amendment Act No. 9 of 1991. The significance of this Act facilitated the change in the definition of 'employee', which captured worker representation irrespective of race.

Further, a number of statutes such as the Guidance and Placement Act No. 62 1981, Basic Conditions of Employment Act No.2 of 1983, the Machinery and Safety Act No. 6 of 1983,

The Manpower Training Act No.56 of 1981, are instrumental labour legislations in South Africa today. Although trade unions have had significant achievements in "upgrading statutory safeguards on employment and working conditions" of workers (Jose, 2000), it is their gains that are discernible in the formal sector due to the impact of the Labour Relations Act, Basic Condition of Employment Act (BCEA) of 1997 and the Employment Equity Act 1998.

In South Africa, democracy is being used as a mobilizing tool by trade unions. For instance, COSATU has been instrumental in accelerating the struggle for a liberal South Africa from an authoritarian regime through forming partnerships with other labour movements and political parties in the country. At the advent of democracy, South Africa was seen to be doing a bottom up approach through encouraging participation of workers, minorities and migrants (those in the formal and informal sectors) in democratic institutions (see Nel & van Rooney, 1993). So, when unions foster democratic principles, workers, migrants and minorities (those who bear the brunt of human rights violations) are bound to affiliate to such unions for protection (Jose, 2000). However, organizing migrant workers, let alone informal migrants, is problematic. For instance, trade unions are faced with problems of mobilizing migrant women. Amisi, (2006: 8) reports that women who work in the formal and informal sectors are **"**less willing to talk to strangers", and it is worse with migrants who do not have papers or citizenship documents (Hlatshwayo, 2008: 28).

However, Mattes (2002: 23) gives us a different position as she suggests that the democratic political culture of trade unions appears to pose a significant threat to democracy in South Africa. This threat is exposed by the fact that 'South Africa has one of the highest rates of participation in violent protest action compared to other countries' in the region. For instance, it can be argued that the protests in Marikana (2012), in the mining and transport sectors that resulted in loss of lives, demonstrate that South Africa is not yet mature enough to consolidate democratic practices. Putting it lightly, it can be argued that, "the apartheid legacy of institutionalized violence as a means of communicating grievances and achieving political leverage remains embedded within the national psyche" (Parsley & Everatt, 2009:3).

The existence of trade unions in South Africa is a paradox that demonstrates modesty, wherein "South Africans understand democracy to mean the delivery of a range of socio-economic goods" (Mattes 2002: 33). Unfortunately, progress towards this goal has been slow. For instance, in trying to attain democracy, we have witnessed the opposite, wherein social

movements, like in the recent truck drivers' strikes, lives have been claimed. Hence, it could be argued that "South Africa as a people, have not progressed beyond the constitutional rhetoric" (Mail & Guardian 24.05.08; Balloert, 2008: 14). Recent events are also important in showing the challenges being faced by labour movements, and in this instance, events show the influence unions have to control the course of events. Against this background, it seems reasonable to argue that trade union culture does not develop in a vacuum; rather it develops in response to economic and political contexts and trends of a country.

Thus, the new political dispensation encouraged trade unions to democratise their modes of operation. The significance of democratising operations broadened the image of labour movements to impact the lives of the vulnerable, lower-skilled migrants included, in a way that encouraged Social Movement Unionism (see Von Holdt, 2002). These developments had implication for worker and union movement strategies. Though industrial democracy would emphasise that trade unions represent all workers irrespective of race, gender or nationality, inaptly, eighteen years into democracy, South African trade unions have not yet embraced all workers especially those operating in vulnerable sectors (domestic work, farm workers, cleaners, security) and migrant workers. Even some of the so-called progressive labour policies that exist exclude such workers.

3.8 Social media as an emerging mobilising tool in a post-migrant labour regime

In his theory of moments of struggle interpreted by some scholars as war, Gramsci underscores the formidable role played by the media in mobilising the subaltern. While acknowledging the agency of the proletarian in their ability to self-organise to overthrow capitalism and the ruling class, Gramsci identifies relevant external factors and forces that could assist in achieving this goal while Lenin strongly believes that the working class could win their struggles on their own. However, scholars on mobilisation of immigrant workers identify social media as a critical component of self-organising struggles. Gonos and Martino (2011) cited in Choudry and Henaway (2012:42) assert that immigrant workers share ethnic and cultural ties and often live together in tightly networked communities (2012:42). This coming together according to Melucci (1996) cited in Paolo Gerbaudoa and Treréb (2015) inclines as:

> …manifestations of collective identity, to be understood as these operations by means of which social movements define their collective sense of self, who they are and what they stand for within contemporary social media activism, as the activism conveyed via social network sites, such as Facebook and Twitter. Social media platforms such as those that dominate the landscape of contemporary web communication have played a central role in the process of identity construction (2015: 865).

As revealed in Chapter 6, foreign workers and those employed in vulnerable sectors in South Africa particularly in the hospitality have adopted social media as a new platform for mobilising and organising. This is facilitated through national social networks in which they interact and come together to share about their social and working lives. Theocharis, Lowe, van Deth and Albacete, (2015) credit the successes of protests in the Occupy Wall Street, Indignados, and Aganaktismenoi movements to the use of twitter, an emerging social media platform. Writing about American politics and use of social media, Dahlgren (2009) highlights how Obama won his political campaign for presidency in 2008 and 2012 using Facebook, accentuating the significance of social media in political mobilisation. In their analysis of "The 15M demonstration, (the origin of the indignados movement in Spain and the seed of the occupy mobilizations)" the most successful protests in Spain, Anduiza, Cristancho and Sabucedo (2013:750) also demonstrate how online social networks are essential for political protest mobilisation. The authors show how online social networks could stimulate those who do not very often participate in protests and also bring together participants of all ages (Loader, Vromen and Xenos, 2014) and various educational backgrounds.in the context of South Africa, the "Arab Spring" of 2011 was triggered and made possible by use of social media (Boulianne, 2015; Ueno, 2014).Social media, as Loader and Mercea (2011) highlight how social media could be exploited as a tool for participatory democracy. Be that as it may, I will be naïve to present such means to mobilising as being a smooth process (see Loader & Mercea, 2011).

While scholars like Sitas (1983); Webster 1985; Milkman (2006) argue that foreign workers are already organised into social networks thus assuming that that they are 'ripe' for mobilisation, it is important to point out that social networks are not always representative of such social groups and nationalities as immigrants are very often concentrated in urban settings thus excluding those who prefer to settle in rural areas or small towns as demonstrated by my study. This is because social networks are very often established after physical contact which is usually difficult for those located in the periphery spatial locations.

Moreover, it is not all who have access to social media platforms considering the costs of data to get connected. Further, level of education to a greater extent also determine the use of social media (Smith *et al*, 2009) yet the majority of foreign workers who are poorly organised work in vulnerable sectors which are very often associated with low levels of education. Nonetheless, my study focused on foreign workers employed in vulnerable sectors like hospitality which comprises of both highly-skilled and lowly-skilled; the former having been forced into the sector because of restrictive immigration laws (see Chapters 4 and 6).

Job-mismatches have been noted in the hospitality sector as highly qualified cross-border migrants are limited by bureaucratic immigration processes such as affiliation to professional bodies; a daunting task on its own. Above all, workers have to develop a strong sense of 'virtual togetherness' (Bakardjieva, 2003 cited in Ueno, 2014), and 'we-ness' (Earl and Kimport, 2011: 205 cited in Ueno, 2014; Paolo Gerbaudo & Emiliano Treré, 2015) including simultaneous connection (Oiarzabal, 2012 cited in Ueno, 2014); "create a sense of camaraderie even among 'lurkers' who are less vocal" (Ueno, 2014) in order to be able to self-express themselves freely on social media.in other words, participation on social media platforms requires a sense of 'intimacy' (Ueno, 2014) and this has been demonstrated on the WhatsApp group that I shadowed in my study whereby sometimes posts took shorter or longer time to receive responses depending on who posts like "do I know you"(authors analysis). Be that as it may, in her study of Filipina domestic workers mobilisation, (Ueno, 2014) asserts that:

> ICT has transformed the landscape of intimacy by making domestic workers lives digital and enabling an online network for workers housed in isolation in the compounds of their employers. It has become a powerful tool among foreign domestic workers to enable them to communicate with their families from a distance as well as to build local and global networks.

Social media platforms also facilitate communication beyond workplace related issues as foreign workers are able to communicate with their families in their countries of origin. Some scholars according to (Ueno, 2014) argue that sometimes women fail to associate or establish networks in host countries of previous intimacy forged between them and family members [children] back home.

It will be naïve to assume that use of social media platforms ensure smooth interactions and mobilisation among foreign workers. Various threats are also presented by social media

platforms such as surveillance and political interference. Thus, extra caution needs to be taken like use of closed groups although still privacy is not guaranteed. Virtual interactions need to be reinforced through face-face interactions (Ueno, 2014). Establishment of social platforms need to be organic and not influenced by external forces for sustainability purposes unlike in the case of Filipina workers whose participation on social media was facilitated through an NGO. That said, it is important to point out that use of social media tends to encourage mobilising of foreign workers from below (Ueno, 2014).

3.9 Foreign workers agency, responses and attitudes towards trade unions in South Africa

There is a rich body of scholarship on migration and migrant labour (see Castree, 2007). However, the agency of workers as individuals and as a collective has been underplayed in most of this literature. For instance, structuralist approaches to the geography of labour (as opposed to labour geography), fail to see workers as active agents (Herod 2001:257 cited in Bezuidenhout and Buhlungu (2009). This notion is also supported by Castree (2007:858) as he points out that while a focus on worker agency defines labour geography, the notion is "both undertheorised and underspecified in most labour geographers' analyses of it". It has become a catch all for any instance in which some group of workers undertake any sort of action on behalf of themselves or others" (Castree 2007:858).

According to Bezuidenhout and Buhlungu (2009), conventional studies of labour collective action and mobilization prioritise economic exploitation as a trigger for worker agency ye according to Gramsci, material conditions are not always the primary triggers for mobilisation (see also Webster and Ludwig, 2017). However, in the context of South African workers struggles in the 1980s, economic grievances were not always a stimulant for mobilisation as there existed other non- financial factors like the desire to fight against the apartheid system. Of course, the classical analysis of the south and Southern African migrant labour system by Wolpe (1972) emphasises the exploitative nature of the system.

Bezuidenhout and Buhlungu (2009) argue that mineworkers did not only respond to their exploitation at the point of production, but also to the indignity of living in a racially despotic state. Through the union, worker resistance became formal, collective, goal directed, sustained, and moved beyond individual mines and compounds. The case of mineworkers illustrates how workers' collective agency shapes and re-shapes landscapes (ibid; Nel and van Rooney, 1993). Indeed, the role of state in shaping worker agency during colonial, apartheid

period as well as in the post-apartheid state cannot be overemphasized. Informal and localized worker agency necessitated a structural response from mining companies, and indeed the state (Bezuidenhout and Buhlungu 2009).

Struggles for recognition and dignity formed part of workers' demands. This could be illustrated by Moodie's analysis of the limits of racial despotism set by local moral economies where he argues that "there were "imithetho" or informal laws set by workers to racial abuse. They often acted collectively when these "laws" were transgressed by white workers and managers". This perspective adds notions of justice and integrity to the structural analysis of the neo–Marxists. Again, labour historian, Thompson (1963) has shown how workers mobilize notions of dignity in order to assert their agency. Bezuidenhout and Buhlungu (2009) argue that in order to see workers and their organisations as active agents, there is a need to "understand how various groups of workers went about constructing spatial fixes in pursuit of their varied political and economic objectives" (see Herod 2001:xiii; Herod and Wright 2002; Harvey 2006; Castree 2007 cited in Bezuidenhout and Buhlungu (2009).

In their study, Segatti and Polzer (2012) found out that mobilisation among immigrants was constrained by NGOs who played double roles as "as service providers (offering legal or welfare services) or as rights advocates, rather than as representative political forums". Such hybrid functions tend to 'silence' or emasculate migrants based on assumptions that 'legitimate' voices are representing and advocating for their rights. This could be the reason why unions claim that migrants are not keen to unionise. In his theory of intellectuals, Gramsci appreciates the fundamental function of organic intellectuals but also advises that the subaltern needs to take the lead in their struggles.

3.10 Summary

The literature review section has provided the theoretical foundation of the research. Very few scholars (Segatti and Polzer, 2012) have documented migrants' political agency in general with studies by (Sitas, 1983; Webster, 1985) having demonstrated how migrant mineworkers from the former homelands were able to organise along ethnicity in South Africa. Nonetheless, the literature revealed gaps in knowledge on question of mobilisation, participation and representation of foreign workers as a distinct social group of the working class. In other words, they examined workers mobilisation by trade unions without giving due attention to the aspect of foreign migrancy.

Existing body of literature demonstrated the critical historical role of migrant labour in the southern African region and the challenges linked to the understanding of foreign workers' mobilisation in the context of a drastic shift in migrant labour regime. Further, it has explained the central role of the historical migrant labour system in determining factors that facilitate or hinder mobilisation, participation and representation of foreign workers in a post migrant labour regime. Evidence from the literature review suggests that historically migrant workers in the mines did mobilised and participated in industrial processes that affected them as workers irrespective of nationality. Workers unity and solidarity was forged around the desire to transform their deplorable working conditions and to dismantle the apartheid system (von Holdt, 2002). At the same time, it has been demonstrated that the nationality of leadership was not an issue hence Basotho workers have been credited for playing a very influential role in leading the Black migrant workers struggles during apartheid. Further, drawing from historical trajectories of workers' mobilisation and also following Gramsci, it is clear that workers' mobilisation of workers in general and foreign labour in particular is not necessarily stimulated by material needs but other factors like working conditions, racism, xenophobia, documentation and others. Based on the overwhelming evidence, it was important to interrogate the shift in unity and solidarity between local and foreign workers in a post migrant labour regime and at the same time question union's representation patterns today.

The social network theories of migration have attempted to elucidate some of the reasons or factors that have attracted foreign workers to South Africa from a political economy perspective and how this shapes political subjectivities. It has emerged from the literature that social network theory is intricately linked to use of social media platforms for mobilisation, participation and representation of foreign workers in South Africa. The most dominant social platform exploited by foreign workers is WhatsApp while in the context of Europe and America, Facebook is used as a popular tool to mobilise workers in vulnerable sectors such as domestic workers (Ueno, 2014).

Various theories attempt to explain workers subordination and responses to capitalism. While Marxist theory explains how workers as a homogenous group are universally exploited, its shortfall resides in the failure to acknowledge that while universally exploited, still workers are heterogeneous with different needs. The theory also represents workers as vulnerable and powerless. Thus, Gramsci's theory of domination, because of its strong analysis of power and

domination has been identified as the most appropriate framework in understanding political subjectivities and political mobilisation among foreign workers.

Gramsci's framework is more useful than the Marxist framework (particularly for this study) as it factors in the issue of political power which is so central for mobilisation or demobilisation of the working class in order to counter the state's hegemony. While Karl Marx and Friedrich Engels provided a thorough analysis of capital at the social and economic levels – particularly demonstrating how capital antagonises the working class and gives rise to what he calls 'crisis', Gramsci supplemented this with a sophisticated theory of the political realm and how it is organically or dialectically related to social and economic conditions. He provides us with a theory of how the proletariat must organise politically if it is to effectively respond to capital's crises and failures, and bring about revolutionary change (Brown, 2009; Latham, 2010).

Again, Gramsci brings into our attention the involvement and significance of the state and civil society as the major players in the socio-economic and political realms. The opportunities or barriers to mobilisation are derived from these spheres depending on whether a state is authoritarian or democratic, mobilisation or what Gramsci refers to as working class revolution could be achieved. In his analysis of the state, Gramsci conceptualises it as both positive (consent) and negative (repression) which leads him to unbundle history from purely economic periods (Marx) to a combination of economic and political (see Griffiths, 1984). In addition, the social movement unionism (SMU) framework (von Holdt, 2002) assists in explaining the different modes through which unions or workers mobilise beyond workplace issues.

With regards to state policies, the review showed that migration laws and policies of South Africa are biased towards highly-skilled as opposed to low-skilled workers. This is supported by Gramsci theory of intellectuals as he condemns Julius Caesar' bias towards highly-skilled foreign workers in Italy as dividing workers unity and solidarity. Moreover, labour laws (LRA, BCEA and Sectoral determinations) are 'silent' on foreign workers and like Marx tend assume that workers are homogenous thus failing to acknowledge underlying factors like migration status which hinder migrants from enjoying labour rights. In the same vein, foreign workers find an opportunity in international universal laws such as Universal Human Rights and ILO Conventions to mobilise.

The review also revealed how shifts in demand and supply including massive workplace retrenchments and restructuring of foreign labour over the years have emasculated workers and trade union power thus, deleteriously affecting mobilisation, participation and representation of workers in general and foreign migrants in particular. Nonetheless, unions are still ambivalent on their commitment to organise foreign workers while the later depend on civil society for political and workplace representation and litigation. In a few cases, workers self-mobilise relying more on social media platforms although they still look up to external forces to assist with institutional processes like collective bargaining and representation in labour disputes.

In relation to gender, the review shows that the subordination of women is synonymous with that of foreign workers as it shows the kind of jobs undertaken by both female and male foreigners in the post migrant labour regime as deficient in decent work as many of the jobs fall in the vulnerable sectors like hospitality. In this case, no wage disparities based on gender are noted as men who opt to work in female-dominated sectors succumb to the low wages as their female counterparts (see Cobble, 1996). Further, such findings point to the need to understand contemporary mobilisation from the intersectionality of migrancy with other factors as opposed to normative analysis through a gender lens. To add on to this, is the 'invisibility', clandestine, informal and individualistic migration (Munakamwe, 2017) and how these interplay with collective mobilisation.

Chapter 4: Understanding South African state legislations and policies in relation to the mobilisation of foreign workers in a post migrant labour regime

4.0 Introduction

The chapter examines South Africa's state policies and legislation in order to enhance our understanding of the statutory environment which conditions the way in which foreign workers may mobilise and how this shapes political subjectivities. This is important because laws and policies create opportunities or constrain mobilisation, participation and representation of workers. Nel and van Rooney (1993) show how apartheid labour laws and policies excluded African Black workers (both internal migrants from former homelands and bi-literal contracted cross-border migrant workers) from participating in industrial relations and such deprivation ultimately mired their unionisation. Recent studies conducted through the Migrating for Work Research Consortium (MiWORC) identified policy frameworks which facilitate or inhibit regional labour migration towards South Africa (Nshimbi and Fioramonti 2013) and findings from this study point to an "absence of a migration protocol in southern Africa [and thus] suggests that SADC Members have not implemented the African Union's migration policy basic guidelines" (2013:1).

The MiWORC project also involved sectoral studies which reviewed legislative and policy frameworks that regulate the recruitment of foreigners in various sectors of the South African labour market which include public health, agriculture, domestic work and hospitality (Segatti, 2013; Munakamwe and Jinnah 2014; Kiwanuka and Jinnah 2014; Cazarin and Jinnah, 2014). Following Nel and Rooney (1993), and findings from MiWORC studies, this chapter looks at how the current laws and policies on migration and labour shape mobilisation of foreign workers in post-apartheid South Africa. The chapter does not attempt to provide a comprehensive analysis of all the legislative and policy frameworks but focuses on the major instruments of particular interest and also directly linked to the In particular, the chapter looks at how migration and labour laws influence mobility and economic lives of foreign workers from the standpoint of mobilisation, participation and representation.

The chapter involves a review of the South African migration laws, policies and labour laws because many of the problems associated with political apathy among foreign workers are to some extent a result of the weaknesses or strengths of these laws. While the former (migration laws) are clear of their position on migrant workers, the latter as shown in Chapter 3 are 'silent' on the aspect of migrancy and tend to treat all workers as homogenous.

The assumption is that South African migration and labour policies subtly deter full participation, mobilisation and representation of foreign workers in South Africa - as will be shown in a later section of this chapter. To some extent, national migration laws shape trade unions' policies such that they face challenges to organise migrant workers, not in the least due to legal restrictions and government interference with freedom of association and the right to organise, but also due to how migration laws are crafted in a manner that they create precariousness through their short term permit. However, of the fact that this will be the case everywhere: immigration laws tend to organise the precariousness of migrants, very similarly to the way in which deregulation of labour laws organise the precariousness of workers in general. Now the question is: what do South African unions do in the face of this general organised deregulation of protection? And why is it that they have almost systematically decided to collude with the state (itself at the hands of capitalist interests) instead of fighting back for the preservation of labour laws, extension of workers' benefits including migrant workers? Bogg and Novitz (2014) identify "the common law doctrine of illegality, and the standard approaches in labour law as regards who is a 'worker' and who an 'employee' is, as sources of migrants' exclusion" (2014:363).

To achieve the objective of this chapter, the study is guided by the following sub-question of the research: **how have the South African state policies / legislation categorized and conceptualised foreign labour and how has this shaped policy development and class–based representation?** Central to the discipline of migration studies is the need to understand how state policies and legislations contextualise international migrants and how this influences their access to particular socio-economic rights such as labour rights, part of which facilitates mobilisation as this study shows. While various studies interrogating policy frameworks have been conducted in relation to access to basic services like education and health for migrants, little scholarly work has been documented on state policies such as migration and labour policies and how they influence mobilisation, participation and representation of migrants at the workplace. Various scholars acknowledge that migrants are exploited by employers in their host countries but have failed to conduct in-depth research to understand the gaps or strengths in state policies and legislations which pave way for such abuses and poor mobilisation.

The chapter argues that migration and labour legislative and policy frameworks are incongruent with each other as the former restricts migration while the later promotes immigration; for example through the critical work permit in those sectors where there is

skills shortage. Nonetheless, the fact that both are not explicit on integration of foreign labour in the mainstream seems to assume that the working class is a homogenous group. Yet, if foreign labour is envisaged as a sub-set of the universal working class with its own unique and special needs then one cannot exercise their labour rights without having the right to work in their host country which is limited by migration laws and policies. In this case, labour law is subordinated to migration law as the latter has profound influence on the former in that only when the migration laws allow one to work in the country, is when the labour laws could come into effect (see Costello and Freedland 2014). This point is supported by Ryan (2014) who notes the tension between migration and labour laws; the former determines immigrants to entrance into the labour market as a pre-requisite to enjoying protection from the labour laws (if any). Similarly, Costello and Freedland (2014) are of the view that the purpose of migration laws and policies is to:

> determine whether individuals are working 'legally' or 'illegally' in any given jurisdiction, which is in a real sense one of the most basic divisions in personal work status which labour law makes so when we speak of illegal or 'undocumented' or 'irregular' workers, we are making a more closely personal status differentiation than when we speak of people as, for example, 'contract workers' or 'seasonal workers' (2014:4).

It is important to point out that 'illegal' work could be associated with any workers irrespective of nationality and is very often associated with certain vulnerable sectors (such as farming and domestic work in the US, Arab states, Europe, etc), where the vast majority of workers have become migrants. However, labour inspections across OECD countries fight 'illegal' work independently of migration. In the context of South Africa, some of the livelihood activities located outside of the dominant formal sector; for example, informal mining undertaken by both locals and foreign nationals is perceived as 'illegal mining' (see Munakamwe, 2017).In a different but related note, the fustian is that the labour law only protects those with legal documents[15] to enter and work in the country could be protected by the labour law only if they are eligible to work in the country of which this is dependent on one, the review has shown.

The chapter is informed by a review of relevant laws and policies, which are categorised as follows: international and regional legislative and policy frameworks on migration and

[15] Having been granted a work permit or any other form of legal documentation

labour; based on the assumption that they inform domestication and development of national laws, South Africa's national Constitution, Immigration Act of 2002, Labour Relations Act (LRA), Basic Conditions of Employment Act, the Employment Services Act, the Mining Charter of 2002, and relevant constitutions of unions under study – NUM and SACCAWU. Further, this is interwoven with a review of industrial relations and collective bargaining from a historical standpoint. The study shows that while the two unions are still to develop specific policies on migrant labour, they are somehow already involved in programmes run by international solidarity desks of the unions. In addition, they are actively involved in solidarity programmes co-ordinated at global union federations (GUFs) they are affiliated to in solidarity with other unions from across the globe. In general, the observation is that few resources are dedicated internally towards organising migrant workers such that sometimes programmes tare donor driven (see Castel –Branco, 2015: 99).

The chapter calls for a more coherent policy and government intervention in as far as monitoring, inspection and enforcement of the 'so-called' progressive laws is of urgency or else the efforts to democratize the labour market will remain abstract (see Coplan, 1995: 34). A key finding is that since 1994, the only time in which unions have played a very influential role was during the amendments and development of labour laws which culminated into the current LRA and BCEA. Beyond this period, trade unions have been absent in policy development processes associated with crafting of migration laws and which affect foreign workers mobilisation in South Africa. Thus, any efforts to organise migrants would sound very hypocritical and partial as only when migration laws and policies are favourable, could unions be able to mobilise foreign workers. Yet, as is the current situation, unions seem to shun this responsibility and rather indirectly delegate the issue of documentation to migrant-rights organisations while at the same time discouraging self-organising among foreign workers. Finally, while unions claim to represent all workers from a class stand point embodied within the universalist approach to organising, they still pay little attention to the inaction and subordination of labour laws to immigration laws yet only when one is in possession of the legal documentation to work in the country, would they be able to amenably enjoy their labour rights particularly the right to associate!

This chapter is organised as follows; the first section will interrogate industrial relations and the collective bargaining process in their historical and contemporary context; followed by the interactions between migration and labour laws and their impact on foreign workers mobilisation. This will be followed by a section examining international, regional and

national migration and labour policies and how they facilitate or constrain foreign workers' mobilisation in South Africa. The third section analyses selected key legislations in particular the Immigration Act 0f 2002, Employment Services Act, Labour Relations Act including union constitutions in relation to how they conceptualise and categorise foreign workers and the impact of such on mobilisation. The last section offers a summary of key issues which emerged throughout the chapter.

4.1 Industrial relations and the collective bargaining process: historical and contemporary reflections

In order to understand foreign workers mobilisation, participation and representation in South Africa from an institutional standpoint, it is important to understand the history of industrial relations and collective bargaining in South Africa (Maree, 2011). Collective bargaining, according to Harrison, (2004) is "an interactive process that resolves disputes between the employer and employee and is central to the labour relationship" (2004: i). During apartheid, according to Godfrey, Theron and Visser (2007) the collective bargaining process was co-ordinated through the industrial and bargaining council systems. However, as indicated in an earlier section, negotiations involving foreign workers; predominantly Black miners, was done through bilateral agreements and with white unions. Until, the 1979, Black workers (both local and foreign) were excluded from joining trade unions and this was only made possible in response to recommendations by the Wiehahn Commission of Inquiry into Labour Legislation (Maree, 2011) although still foreign workers were excluded from such legislative reform (Nel and van Rooyen, 1993). In other, words. Black workers 'voice' were under-represented at the bargaining table while White workers' interests were championed through their unions (see Allan, 1992; Nel and van Rooney, 1993; Moodie, 1994). Such discrimination and exclusion was at the centre of the struggles against apartheid as revealed in an interview with two key informants. In addition, according to one key informant, the dehumanising conditions at the point of recruitment and in the hostels where fathers would be 'packed' together with their sons, and made to undress in their presence also contributed to the grievances. As revealed in Chapter 3, trade unions were very influential in the struggle to dismantle apartheid such that the post-apartheid government prioritised workers' demands in the transitional democratic phase, perhaps, as a way of rewarding their counterparts in the struggle. However, such respect for workers' rights was short-lived (see von Holdt, 2002; Pons-Vignon and Di Paola, 2013)

During apartheid, the Industrial Conciliation Act of 1924 (the IC Act) later changed to the Labour Relations Act 28 of 1956 governed collective bargaining process. It gave provision towards establishment of industrial councils which according to Maree (2011[16]) were "rapidly formed [and reached their peak in 1983, when there were 104 in operation" (2007:1). In the post-apartheid period, statutory councils were introduced through the LRA although scholars like Godfrey, et al (2007) argue that statutory councils "appear to have more limited appeal" (2007:2). In their study, Godfrey, et al (2007) observed that "the number of bargaining councils [has] declined steeply in recent years, but the number of workers covered by bargaining councils has increased". A later study by Pons-Vignon and Di Paola (2013) noted that:

> …the number of councils has declined, after a peak at 99 in 1996; there were 47 bargaining councils in 2009. This can be attributed to councils collapsing in some industries or mergers of regional councils into national councils in others. Councils can have their collective agreement extended to all employers and employees within the scope of the council and not just the members of the party organizations (2013: 633).

In an attempt to redress historical inequalities (very often based on racism) in the labour market, various labour laws were amended promulgated and institutionalised in efforts to ensure protection of workers' rights; improved wages; to enhance full participation in decision-making in the workplace and to eradicate racism. Strategic institutions were established with the NEDLAC bringing together social partners; government, organised labour (trade unions) and business (employers). A critic of South Africa's social dialogue (NEDLAC); is that it implicitly excludes other modes of representation as it only recognises trade unions as the dominant vehicle for workers representation and this further compounds the dilemma of foreign workers, the majority of which fall out of union coverage and protection.

To regulate working conditions and to gazette minimum wages for vulnerable and poorly organised sectors, Sectoral Bargaining Councils were also established and according to Godfrey, et al (2007:3) "they remain the central pillar of collective bargaining" and participation is voluntary. Hickley (2012) outlines the main functions of bargaining councils is to "conclude collective agreements [regarding] working conditions and wages as agreed

[16] http://www.humancapitalreview.org/content/default.asp?Article_ID=1026

between employer and trade unions…and are binding on all parties and must be implemented [and] enforced" (2012: 141-2). It is also the responsibility of bargaining councils to develop policy and legislative recommendations pertaining to particular sectors to the national tripartite social partners –NEDLAC including other relevant platforms (2012: 143).

The Minister of Labour in collaboration with the Employment Conditions Commission (ECC) was mandated to also declare Sectoral Determinations in vulnerable and poorly organised sectors such as domestic, hospitality and farm work although agreements are poorly enforced (Pons-Vignon and Di Paola 2013). Above all, trade unions played a very formidable role in development of the national Constitution and labour laws; an area which is lacing today. The Labour Relations Act (LRA) is regarded as one of the most progressive laws not only in the country but across the globe and also grants power to trade unions as guardians of the working class. This point is supported by the then Minister of Labour, Membathisi Mdladlana, remarks upon signing an MOU between Zimbabwe and South Africa as he was quoted saying:

> Our labour laws protect all people working in South Africa, whether you are a Zimbabwean, Mozambican or any other nationality. Somehow, some of our employers seem to think that just because you are coming from outside South Africa you are not protected by our labour laws. They are wrong because we are signatories to a number of conventions in the International Labour Organization. I expect it is the same in Zimbabwe as well. In my view, if we get things right in the labour market, we will certainly save our two countries (Mdladlana, 2009)[17]

Above all, trade unions played a very formidable role in development of the national Constitution and labour laws; an area which is lacing today. The Labour Relations Act (LRA) is regarded as one of the most progressive laws not only in the country but across the globe and also grants power to trade unions as guardians of the working class. In South Africa, there are two dominant models of collective bargaining; at plant level and centralised bargaining which takes place at national level. Influenced by the Germany works councils, plant level bargaining takes place within the firm and involves agreements on policies and wages while centralised bargaining. Centralised bargaining is co-ordinated at national level

[17] MOU to regularize migration of farm workers. 04 September 2009 Mashudu Netsianda. Beitbridge, Zimbabwe

and seems to be more beneficial to all workers in a particular sector as it has the potential to curb "undercutting of wages by small companies" (Maree, 2011:1).

Pons-Vignon and Di Paola (2013) criticise plant-level bargaining as weakening the centralised bargaining process. International experience shows that plant bargaining weakens workers' power everywhere by virtue of limiting them to the direct employment relation they have with the employer. In 2016, social partners at NEDLAC level adopted a national minimum wage and while unions were not satisfied, it is still to be seen if this model is relevant to the context of South Africa

The next section focuses on collective bargaining in South Africa and attempts to understand how it could facilitate or hinder mobilisation, participation and representation of foreign workers. It reveals that, foreign workers are under-represented at the collective bargaining table as unions continue to prioritise core 'bread and butter' demands while neglecting legal and social issues which disenfranchise foreign workers from claiming their rights. According to Hickley, (2012), bargaining councils as prescribed in Sections 27-38 of the LRA serve the function similar to that of the CCMA. The section below presents an in-depth analysis of the LRA

4.1.1. The Labour Relations Act (LRA) and Basic Condition of Employment Act (BCEA)

As part of its transformation agenda, the democratic government of South Africa developed progressive labour laws such as the Labour Relations Act (LRA) 66 of 1995 (Maree, 2011) and the Basic Conditions of Employment Act (BCEA) which are aimed at strengthening the organisational rights of workers; protect workers in legal strikes; promote collective bargaining; curtail arbitrary action by employers and to give workers a right to take solidarity action. Further, these two Acts recognise all workers including historically excluded public service workers and farm and domestic workers. The LRA of 1995 is hailed as 'one of the most progressive labour regimes in the world' (Ranchod 2007). Further, it introduced the workplace forums which according to Godfrey, et al (2007):

The LRA also introduced the workplace forum. This institution was envisaged as a means of reducing adversarialism and promoting joint problem-solving at the workplace level, with distributive bargaining shifting to the industry level. Employers must consult the forum over proposals in respect of a wide range of issues and must disclose all information relevant to

the proposals. In addition, the workplace forum has joint decision-making powers in respect of a limited list of matters (2007: 3).

In addition to the LRA, the BCEA also accords employees' right to annual leave, sick leave and maternity leave. It introduced a 45-hour working week and details the rate of pay for overtime and public-holiday work. Its aim is to impose minimum conditions of employment on employers and to protect employees from exploitative practices by employers. The BCEA also encourages designated employers to implement affirmative action measures such as Employment Equity (EE) for previously disadvantaged groups. The Act prohibits unfair discrimination on the basis of gender, race, sexual orientation, women and people with disabilities. On a further note, the Act created a framework to address income inequality. However, income inequality continues to increase though its face no longer solemnly has racial overtones (Leibbrandt, Wegner, and Finn 2011) but is predominantly in the form of gender wage gaps or local –foreign wage inequalities. Collective agreements in South Africa are universally binding and thus in principle also covers foreign workers who fall outside of trade unions, nonetheless. Nonetheless, this is not so in practice as employers still pay less for foreign labour based on the loopholes in the Immigration Act of 2002 as noted above.

While labour legislative frameworks seem to be progressive in protecting workers, they are however, 'silent' on how they respond to migrant workers. Some labour analysts are of the opinion that there is no need to exclusively mention foreign workers as a special category as implicitly they constitute part of the working class (Alhorolle 2015. This tends to support the Universalist position which treats all workers the same. Nonetheless, some employers take advantage of such loopholes in legislations and policies to exploit foreign workers. At the same time, foreign workers feel alienated and not protected by the law hence they are reluctant to join unions and even participate in workplace processes which affect them as workers as revealed by workplace census and in-depth interviews as we shall see in chapters 5 and 6. It seems unions are also rigid and tend to comply to the dictates of these national instruments and as such pay a blind eye to the existence of foreign labour amongst their constituency (see Alhorolle 2015).

4.2 Unpacking the intersection between migration, labour laws, collective bargaining and industrial relations and their influence on foreign workers' mobilisation

Migration law is strongly linked to the promotion of labour broking within labour supply chains thereby increasing triangular labour relations. According to Costello and Freedland

(2014: 5), migration law regulates labour markets, and creates precarity among migrants through ascribing labels like 'regular' and 'irregular'; 'temporary' and 'permanent' migrants (2014:5) . This is echoed by Costello (2014) who claims that migration law combines with less formalised migratory processes to help produce 'precarious workers that cluster in particular jobs and segments in the labour market. Precarious migration status creates a "precarious, 'ultra-flexible' workforce" (Costello, 2014: 196). The subsequent section unpacks and interrogates some of the international, regional and national instruments in relation to how they could facilitate or constrain mobilisation, participation and representation of foreign workers in South Africa.

Following Costello and Freedland (2014), who argue that there is a disjuncture and contradictions between migration and labour laws, this section analyses the conflict between migration and labour laws and policies in South Africa. As William (2002) rightly puts it:

> …cross-border migration inevitably creates a "dilemma of jurisdiction". At its most basic, it becomes a tug-of-war between the Ministry/Department of Home Affairs/Immigration and the Ministry/Department of Labour. In its extended form, it also involves Foreign Affairs, Social and Welfare Services and so on (2002:66).

Further, it attempts to demonstrate how laws and policies which restrict mobility are not only generating new forms of inequality and social exclusion based on citizenship, but also a new kind of precariat (see Standing 2011; Alhorolle, 2015) including political apathy among foreign workers. Standing (2011) describes precariat as people who lack seven forms of labour related security under industrial relations which are labour market security, employment security, job market, work security, skill reproduction security, income security and representation security.

As reflected in the Immigration Act of 2002, the time framing of the work permit regime implicitly influence migrant workers livelihood choices and employment contracts given the fact that employers are required to comply with the immigration statutes and failure of which they pay penalty fees. To safeguard themselves, employers award contracts as guided by one's work permit although of course, they (employers) indirectly benefit by circumventing social security responsibilities like payment of pensions. In their study in the United Kingdom, Bogg and Novitz (2014) observed that migrants who worked illegally in the country were excluded from both human and labour rights protection.

While migration law contributes to smooth movement of individuals across borders, at the same time safe-guarding migrants against unscrupulous practices like human trafficking, it has however emerged from the review that migration law creates personal statuses (see Costello and Freedland, 201: Mantouvalou, 2014). Furthermore, Costello and Freedland (2014) argue that:

> There is no balance of power between migration law that emphasises criminalising of certain migration practices, like trafficking of migrants and forced labour and universal sectoral labour which benefit all workers irrespective of nationality.

For example, if an immigrant is found on the wrong side of the law, it is very easy to prosecute them than the case would be if their labour rights are violated (see Davies 2014). Furthermore, migration laws determine migration status, very often as temporary or 'irregular' which deleteriously affect their employment contracts (Anderson 2014) as the later depends on the former. To circumvent immigration bureaucracies, some immigrants would rather prefer engaging in informal livelihood activities in contrast to short-termed employment contracts which are very often exploitative and stressful. It is also important to underscore the fact that at times migration laws, in a very subtle way, expose migrants to become undocumented due to the bureaucratic renewal system; that is from 'regular' to 'irregular' migrants (see Costello and Freedland, 2014: Sciarra and Chiaromonte, 2014: Dewhurst, 2014).

Laws and policies reflecting very diverse trajectories which relate to migration have been developed at international, regional and national levels. Hierarchically, international laws play an overarching role and supersede those at the lower level. For instance, where existing laws of an individual country fail to address a challenge, for example a labour dispute, the International Labour Organisation's Conventions speaking directly to the issue takes precedence. In other words, national laws are usually developed to reflect international laws and policies. The subsequent section discusses international laws on labour and migration.

4.3 International laws on labour and migration

South Africa is affiliated to various international community initiatives and as such participates in various migration and labour fora most notably the International Labour Organisation (ILO). The country is a founder member of the ILO which was established in 1919 and is a signatory to a wide range of international instruments such as international human rights law and international labour instruments. It is within this context that the

starting point for analysis would be to understand the opportunities and constrains presented by international instruments which shape member states laws and policies and their responses to migrant labour. The assumption is that while South Africa might have gaps in its legislative and policy framework, where rights of foreigners are violated, one can seek legal recourse through relevant ILO conventions (see Mantouvalou, 2014). Thus, it is important to include international laws governing migration and labour as the assumption so that where a country lacks explicit laws to protect migrant workers, turn to relevant global instruments such as the ILO international labour standards (ILS). In addition to ILS, we could also draw from various ILO frameworks which are relevant depending on the case at hand.

International labour instruments like ILO Convention 143 and the international human rights framework provide alternative routes to recourse, justice and workers' rights as they are universally designed to serve all workers. Despite some shortfalls related to enforcement, such instruments could be used to bridge the gaps between national migration and labour laws of member states.

4.3.1 Mapping the ILO and its relevance to foreign workers mobilisation

The International Labour Organization (ILO) is a specialised international agency responsible for workers' rights and is also the custodian of international labour standards. The organisation is responsible for developing labour standards in the form of conventions which are binding on member states that ratify them while recommendations and guidelines are non-binding. While conventions are binding, it is unfortunate that there are no clear monitoring and enforcement mechanisms in place to ensure compliance thus the organisation depends on consensus and persuasion. A country can subscribe to ILO membership but does not necessarily have to ratify all conventions although they have the liberty to draw from conventions and recommendations as broad guidelines for their national policies. In other words, ratification and adherence to ILO Convention is of voluntary.

International labour standards are universal and all workers are protected irrespective of nationality or geographic positioning. Some of the key conventions which are relevant to this study include: the eight ILO core conventions; ILO 1998 Declaration on Fundamental Principles and Rights at Work; Freedom of Association 89; ILO Convention 97 Migration for Employment Convention (Revised), 1949 (No. 97) and its accompanying Recommendation; Recommendations 86 and 151 including ILO Convention 143, Migrant Workers (Supplementary Provisions) (1975), and its accompanying Recommendation, the Migrant

Workers Recommendation of 1975. This convention was modified in 1990 and adopted as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It covers a broad range of spectrum pertaining to migrant workers human rights. Fundamental human rights include freedom from employment discrimination, the right to freely associate and collectively bargain, the right to receive emergency medical care, and other social security benefits.

ILO operates through a tripartite body involving labour, government and business. The body that is responsible for advancing the rights of workers is ACTRAV. According to Inviolata Chinyangarara, a Workers' Specialist at ILO-ACTRAV, Pretoria, ACTRAV is responsible for:

> Supporting workers organisations and encourages independence and autonomy. Furthermore, ACTRAV promotes the rights of migrant workers as we understand that many migrants came here to seek better job opportunities. So far, we have supported SADSAWU in organising migrant domestic workers and also farm workers[18]

The ILO- ACTRAV in collaboration with other relevant departments crafted a manual, "*In search of Decent Work –Migrant workers' rights*" aimed at capacity-building for both sending and receiving countries. This educational tool is essential as sending countries need to undertake the obligation of educating potential migrants about their rights, opportunities and threats. At the same time, receiving countries need to also understand particular needs (in line with the particularistic approach) of migrants in order to be able to make necessary interventions. This view was supported by Fundi Nzimande, the then Executive Director of an institute responsible for capacity –building of all workers in South Africa; Development Institute for Training, Support and Education for Labour (DITSELA) as she cited some of the programmes which the Institute offers to unions and migrant-rights organisations. This, according to her, was a direct response to the challenges faced by migrants who are:

> "…easily super- exploited because they are not unionised and are also ignorant about where to go for advice; they don't know their way around the system neither do they know about labour and basic rights"[19].

[18] Interview with Inviolata Chinyangarara. 03/07/15. ILO Offices Pretoria
[19] Interview with Fundi Nzimande, the then Executive Director. 02/07/2015, DITSELA, Headquarters, Johannesburg

In December 2014, DITSELA in partnership with the Chris Hani Institute (CHI) and with technical support from ILO-ACTRAV hosted a capacity-building workshop[20] aimed at training a core group of domestic workers drawn from amongst local and immigrants, from across all provinces in South Africa. Beneficiaries of this workshop were then tasked to go back and educate other domestic workers (local and immigrants) in their respective provinces on labour and migrant rights including the importance of unity and solidarity as a means to fighting capitalism' s divisive agenda as employers continue to under-cut wages through hiring undocumented migrants on patronage grounds. Three years later, through the leadership of SADSAWU, we have begun to witness local and immigrant domestic workers working together in campaigns and also training workshops offered by CCMA. The ILO Multilateral Framework on Labour Migration: Non-Binding Principles and Guidelines for a Rights-Based Approach to Labour Migration were adopted in 2005. While non-binding, this instrument lays the basis for the development of national, regional and international labour migration laws and policies. In pursuance of its desire to ensure safe migration, in 2014, the ILO Director General released a report "Setting an ILO Agenda for fair migration: Migrant workers are not a commodity". The ILO Multi-lateral framework on migration is relevant to South Africa as it provides some guidelines on how to address the question of migrancy in context in which there are no specific legal and policy framework. South Africa has not yet ratified ILO Convention 143; the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. This Convention is universally designed to serve all workers and to some extent serves to bridge the gaps between national migration and labour laws of member state.

ILO convention No 143, according to Olney and Cholewinski (2014) provides explicitly for equal treatment of irregular migrants as regards rights arising out of past employment in relation to remuneration, social security, and other benefits. Forty-six countries have ratified this Convention. The poor rate of ratification of relevant conventions related to migration by SADC member states, as Musabayana (2014) puts it:

> signals the limited incorporation of international principles on labour migration at the re-gional-national level. This position does not bode well for the enabling, facilitation andmanagement of migration; or protection of migrant workers within Member States ' territories (Musabayana, 2014).

[20] Training of Trainers Workshop

South Africa which is the focus of this study has not ratified Convention 143 (see Polzel, 2010). This is not surprising given the role the country played, with the support of Namibia and Botswana, to influence non-adoption of a regional Protocol aimed at free movement of people across the borders. Furthermore, the country's failure to ratify this protocol could be attributed to its domestic policies and ambivalent position on integration of migrants within the 'rainbow nation' including the conflict between its migration and labour laws.

Yet, the country is hailed for possessing some of the most progressive labour laws and including a very pronounced national social dialogue platform (NEDLAC). The country adopted the eight ILO core conventions including twelve others by 2003 (see Brand, 2011). These conventions were domesticated through the National Constitution, the Labour Relations Act (LRA), the Basic Conditions of Employment Act (BCEA), the Employment Equity Act (EEA), the Skills Development Act (SDA), the Occupational Health and Safety Act (OHSA), the Compensation for Occupational Injuries and Diseases Act (COIDA), the Unemployment Insurance Act (UIF) and the Mine Health and Safety Act (MHSA) (Giles Files, 2011). An assessment of the country's compliance to decent work in 2010 revealed that the country fared well with a few areas that needed further improvement. In general, South Africa has complied with ILO's social dialogue and collective bargaining requirements although still migrants as a distinct social group are under-represented even in the Community Constituency (represented by civil society).

The last to be ratified was the ILO Convention 189 for Domestic workers, which the country played a very pivotal role in its development, hence can argue that the country could not escape the responsibility to ratify. Convention, 189 is the only instrument adopted by the country on migration that grants rights to migrant domestic workers. The ILO has since provided technical capacity –building programmes aimed at educating key departments involved in the migration process; DHA, DoL and SALGA. Through the ILO-ACTRAV, technical assistance has been provided to South African trade unions particularly in vulnerable sectors such as domestic and agriculture.

The ILO Multilateral Framework on Labour Migration: Non-Binding Principles and Guidelines for a Rights-Based Approach to Labour Migration was developed in 2005 and adopted in 2006. While non-binding, this instrument lays the foundation for the development of national, regional and international labour migration laws and policies. In pursuance of its

desire to ensure safe migration, in 2014, the ILO Director General released a report "Setting an ILO Agenda for fair migration: *Migrant workers are not a commodity*".

Tracing back to the history of proposals and discussions for regional integration through the initial draft Protocol on Free Movement of people within the SADC region in 1995, whereby South Africa opposed the adoption of the instrument, it is clear that non-adoption of UN conventions on international migration is a deliberate move meant to avoid responsibility as the major host for migrants. While at international level, the country subscribes to the principles of labour migration and conventions, it is however, fixated in between competing interests; 'protectionist' attitude to appease its citizens within the socio-economic space including to comply with the conventions which are binding once ratified. As argued by Williams (2002):

> But the free movement of persons continues to be balanced against the political and economic interests of individual member states… It is apparent that not all member states will simultaneously agree to protocols pertaining to migration to their countries…strategic approach would be to pursue bi-lateral and multi-lateral options that, if expanded exponentially will eventually incorporate most of the SADC member states (2002: 67)

In light of the above statement, it seems reasonable to conclude that the country is selective in allowing various groups and nationalities to enter country and this could also be determined by bilateral and multilateral trade agreements in place. For instance, citizens from the SADC economic bloc such as Botswana, Mozambique, Namibia, Tanzania, Zambia, and Zimbabwe do not require a visa to enter South Africa for visits of up to 90 days while nationals from Angola, Lesotho, Malawi and Swaziland are permitted into the country for visits of up to 30 days.

Article 19 of the ILO Constitution, requires that member states report on progress pertaining to "measures they have taken to give effect to any provision of certain conventions or recommendations, and to indicate any obstacles which have prevented or delayed the ratification of a particular convention" (ILO, 2017)[21]. These surveys rely on reports submitted by all social dialogue partners; government, employers and labour. The ILO annual General Survey of 2016 focused on "Promoting Fair Migration" and thus evaluated member states on

[21] http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/general-surveys/lang--en/index.htm

how they had responded to instruments related to migrant workers within their national laws and policies. As mentioned before, South Africa has not yet ratified conventions related to migration but others like Equal Remuneration Convention, 1951 (No. 100) which was ratified in 2000. This convention is very critical as it emphasises equal pay for work of equal value irrespective of race, gender or nationality and could be evoked to protect immigrants who are very often underpaid and exploited. In this regard, the country amended a national law related to equal employment opportunities; Employment Equity Act of 1998 (EEA) to the Employment Equity Amendment Act of 2013. On the first of August, 2014, the Employment Equity Regulations was adopted while the Code of good practice on equal pay or remuneration for work of equal value of was adopted on the first of June 2015[22]. There is a long-standing campaign on this issue by unions although still they have not done much to confront employers in certain sectors who employ migrants with the aim of exploiting them; an issue that needs to be tabled on the collective bargaining table as well. It seems unions invest more interests in those conventions which cover workers in general guided by their rhetoric of a Universalist approach to working class which view workers as homogenous neglecting nuances that exist based on citizenship.

From the review of ILO instruments related to migration, it is important to note that where there are gaps in national laws related to migrant labour, international conventions take precedence. In this way, foreign workers can seek recourse using such universal laws and at the same time use such for mobilisation, participation and representation in industrial relations in their host countries. While gaps and challenges may exist, it is clear that, to a greater extent, international labour laws and policies provide an enabling statutory environment for mobilisation, full participation and representation of foreign workers in a positive way.

4.3.2 IOM mandate and role in foreign workers migration process

The International Organisation for Migration (IOM) is an inter-governmental organization established in 1951 outside of the United Nations body. Following the 2016 Declaration of New York, IOM has been integrated into the United Nations (UN) governing system. Its mandate is to protect human rights of migrants (IOM, 2009). Nonetheless, its institutional power is somewhat limited as the obligation to protect migrants is ultimately centred on member states. Furthermore, while the ILO is a standard-setting agency, IOM is not. Its scope

[22] 2016 ILO General Survey on the Migration Instruments

of coverage includes migrants, refugees, displaced persons and others in need of migration services or assistance related to migration. In a way, the organisation is heavily dependent on funding from member states. As a result, the organisation cannot openly denounce human rights violations by member states and this constrains the furtherance of migrants' rights; the very function it was established for. Thus, in order to achieve its objectives and further, to amplify its voice where violation of migrants' rights by member states are reported, IOM relies on multi-lateral relationships with relevant institutions such as the United Nations High Commission for Refugees (UNHCR), (which has a convention-based mandate to protect refugees) In the same vein, where action is needed, UNHCR has the power to escalate cases of migrant rights violations to the Security Council. Be that as it may, it is not the purpose of this study to delve into the weaknesses of this migration agency but to seek ways of consolidating its strengths for the good of migrants. This section seeks to achieve this by interrogating how some of the provisions that guide the function of the organisation can facilitate or constrain foreign workers mobilisation, participation and representation.

In its efforts to emasculate state power in the governance of migration, the organisation spearheaded the establishment of the International Migration Law (IML) and Legal Affairs Department in 2004. This department is responsible for raising awareness on international migration law as a way of building capacity of various key stakeholders involved in migration which include "government officials, civil society groups, international governmental organizations, non-governmental organizations (NGOs) and IOM staff; and provides advice on whether existing national legislation complies" (IOM Constitution).

Unlike ILO, the IOM has not developed its own specific laws and therefore draws on various UN instruments to execute its mandate and also to thrust for migrants political rights in host countries. Furthermore, the IOM, as opposed to the ILO, does not have any constitutional link to workers' organisations and habitually lumps them together with civil society which, politically, is of course very significant, while the private sector is often given a full platform. Guided by ILO international conventions, the organisation strongly encourages political participation of migrants in both their host and countries of origin.

Resolution 27/24 of the Human Rights Council grants migrants the right to "*Equal participation in political and public affairs".* In a report prepared for the United Nations Office of the High Commissioner on Human Rights (OHCHR), IOM identifies opportunities and challenges to political mobilisation of migrants including the right to vote and be elected

and thus makes recommendations in favour of migrants' rights to political participation. Nonetheless, this right is strongly conditioned on one's migration status whereas migrants who are in a country legally are in a better position to claim such a right compared to their undocumented counterparts who would prefer to remain "invisible" (see Segatti and Munakamwe, 2014) to avoid direct confrontation with state law enforcement authorities. It is important, however, to point out that documentation is not the only determinant to political 'passivity' as other factors such as state laws, socio-economic; political will to uphold the rule of law; xenophobia and more generally, a country's citizens general attitude towards migrants could also force the latter to be passive (IOM, 2015).

In its endeavour to protect migrants' rights, the organisation also draws on International Covenant on Civil and Political Rights which advocates for protection of all persons from discrimination based upon race, sex, language, religion, or other status. In addition, IOM evokes the International Convention on the Rights of Migrant Workers and their Families (ICRMW) which offers the right for migrants to participate in local politics of host countries and from countries of origin. This instrument presents a very good opportunity for foreign workers to politically mobilise in their host countries. Nonetheless, the major limitation is that, it is the prerogative of member states to grant equal access to political and public participation regardless of migration status. In other words, being legal in a host country does not automatically translate into freedom to political participation. IOM seems to adhere to this principle and this could be explained by its absence in the struggles against xenophobia in South Africa. Again, the organisation tends to emphasise legal status of migrants as a pre-requisite to enjoying human and labour rights. While it is important for states to ratify international conventions related to migration, enforcement mechanisms need to be put in place as we continue to witness violation of migrants' rights in those countries where states have signed international conventions which are binding but very often undermined in the name of sovereignty. Another gap is that member states seem not to prioritise domestication of international conventions to develop national policies to guide them in migration-related matters. In February 2005, the IOM developed a platform known as Political Rights and Enfranchisement System Strengthening Tools (PRESS) with the aim of providing essential resources to promote political self-organising among migrants. In addition, the International Recruitment Integrity System (IRIS) was crafted with aim of ensuring fair and ethical recruitment of migrant workers. Compliance mechanisms to monitor labour recruiters were put in place in the form of an international standard and voluntary certification scheme.

Nonetheless, the voluntary nature of some of the UN legal instruments make it difficult to enforce the statutory instruments and thus, to some extent, they become 'toothless'.

4.4 Regional laws and policies on migration

At regional level, which is the African continent, frameworks aligned to ILS are in place although not much has been done to implement them. Virtually, all countries in the region have developed national migration and labour policies that manage the entry, stay, and employment of foreign workers and these are further aligned to regional economic committees (RECs) although very often labour receiving countries are more influential. Thus, it is important to point out that migration laws and policies are dependent upon context and dynamics among regions. As mentioned in the preceding section, regional legislative frameworks and policies are informed by the broader international instruments but also to some extent informed by regional contexts. This study focused on the African region as the geographical location of South Africa. Generally, there are few policies in place with the most notable one being the African Union Migration Policy Framework for Africa of 2006. Accordingly, Art 3.5 of this framework draws from ILO convention which deals with Principles of Non – Discrimination. In particular, it calls for the:

> Implementation of the relevant elements from the Programme of Action of the World Conference Against Racism and Xenophobia (WCAR) held in Durban in 2001 through adoption of national legislative and policy frameworks, including measures to ensure the fair and non-discriminatory treatment of migrants, regardless of status, with particular attention to preventing discrimination against women, children, the elderly and members of minority groups. […] A growing concern for States is the rise in discrimination and xenophobia against migrants. Discrimination against migrants creates social tensions in both origin and destination countries; hinders the successful integration of migrants into host societies; and prevents the enjoyment by migrants of their fundamental rights. Combating racism and xenophobia is consequently an essential element of comprehensive national policy on migration.

The framework attempts to address the challenges of racism and xenophobia which are very pervasive in the African context and make recommendations to member states to develop national legislative frameworks to counter these problems. Such policy is informed by the Pan African ideology which united Africans in their fight against colonialism. This in a way

creates an enabling environment for labour integration. Nonetheless, the shortfall of ILS is that while binding, compliance is not enforced and seems more of 'voluntary' than statutory.

4.4.1 SADC Protocol on the facilitation of movement of people (2005)

Regional economic development and integration was at the core of the founding of SADC. Alongside, labour migration within the region was identified as central such that concerted efforts were required come up with common laws and policies to govern migration in the region (see Williams, 2002)[23]. A number of migration frameworks related to labour migration and management have been developed at SADC level although the process of adopting and ratifying has been an arduous one (see Bamu, 2014). It is critical to mention that at national level, SADC member states have ratified some of the ILS particularly the core conventions. Musabayana (2014) outlines some of these ILS as ILO conventions 97, 143, 157, 118, Recommendation 151, the ILO Multilateral Framework on Labour Migration, a non-binding guiding document on managing labour migration to effectively meet the needs and rights of constituents of the tripartite alliance(governments, employers and workers) and the ILO SADC Decent Work Programme.

The SADC Protocol on Facilitation of the Movement of Persons whose first draft was first presented in 1995 and rejected. It was later signed in 2005 but still to be implemented. This framework was developed in response to the SADC Treaty which called for a policy framework to facilitate free movement of "capital and labour, goods and services and of the people of the region generally amongst Member States" (Free Movement Protocol of 1995). It called for "harmonisation of State laws and immigration practices" (ibid). Article 2 sets out the overall objective as "to develop policies aimed at the progressive elimination of obstacles to the movement of persons of the Region generally into and within the territories of State Parties" (Musabayana, 2014). Nevertheless, this has been a very highly contested instrument among SADC member states and is not implemented till today. According to Oucho and Crush, (2001) South Africa with the support of Botswana and Namibia objected to the adoption of the protocol (see also Sachikonye, 1998). Fears were that opening up borders would bring more social ills as some African migrants are involved in illicit activities like drug trafficking. A question was also raised around who benefits the most - labour sending countries or receiving countries? Opponents of the Protocol argued that migrants send back remittances which economically benefit their countries of origins and not the host countries. While the intentions of the protocol were good, it is clear that because of an emphasis on state

[23] https://sarpn.org/EventPapers/april2002_imp/williams/williams.pdf

sovereignty "hence the key institution managing migration within SADC is the Organ on Politics, Defense and Security" (see Musabayana, 2014 slide 3), xenophobic tendencies "and at times, conflicting, interests of member states" (Oucho and Crush, 2001: 141), respective governments were reluctant to comply with its provisions.

In particular to note is South Africa's "powerful anti-immigration system (Oucho and Crush, 2001: 141). Instead, South Africa developed a much more diluted instrument; the Protocol on the Facilitation of Movement which became known as the South African Protocol which somehow rejected by the SADC Secretariat and while adopting much of the content, latter landed on the Draft Protocol on the Facilitation of Movement of Persons (Oucho and Crush, 2001: 143). Unlike the first draft, the two latter drafts emphasised facilitation as opposed to free movement with final version, the SADC Secretariat's Draft Protocol on the facilitation of Movement of Persons in the SADC being the final version agreed upon on 8 May, 1998 (ibid). In addition, **SADC Protocol on Employment and Labour** Article 3(e) sets an objective of Member States to "promote the development of employment and labour, as well as social security, policies, measures and practices, which facilitate labour mobility, and enhance industrial harmony and increase sustainable productivity and decent work in Member States" (see Muneku, 2016). This is further supported by the Charter on Fundamental Social Rights in SADC aimed at enhancing labour policies, practices and measures, which facilitate labour mobility, remove distortions in labour markets and enhance industrial harmony and increase productivity, in Member States. In other words, aims to ensure that the basic human rights of migrant workers and their rights to freedom of association, collective bargaining, access to social security and decent work are protected (Muneku, 2016).In 2014, SADC adopted the Labour Migration Policy Framework, whose aim is to is to ensure smooth and harmonised regional labour migration policies and legislation aimed at protecting rights and access to decent and productive work for Migrant Workers (Musabayana, 2014).

In 2010, the Migration Dialogue for Southern Africa (MIDSA) hosted a Ministerial Conference aimed at improving management and co-ordination of migration in the region. A key outcome of this dialogue was a proposal for establishment of migration focal points (see Williams, 2002)[24] although it seems member states have not yet made progress on this aspect. This high-level meeting also agreed on common regional standard operating practices including minimum standards for migrants' access to basic social services; capacity building;

[24] https://sarpn.org/EventPapers/april2002_imp/williams/williams.pdf

ongoing exchange of experiences and best practices; harmonised border management systems; and an integrated regional information management system (Musabayana, 2014). This was followed by a MIDSA Technical meeting hosted in Mauritius which culminated in a draft Regional Action Plan on Labour Migration for Southern Africa which was subsequently approved by the SADC Ministers of Labour and Social Partners meeting in May 2013 in Maputo (ibid). In addition, the SADC Labour Migration Policy Framework (LMPF) was developed and adopted in 2014. According to Landau and Vanyoro (2015), this framework provides guidelines and also assists in the management of migration within the region; which historically has always relied on bilateral or multilateral agreements. Furthermore, the SADC - LMF of 2014 requires that states develop national labour migration policies by 2019 and thus would somehow guide member states while ILO and IOM provide technical advice. Various other protocols related to trade and tourism were also developed and South Africa has signed both; perhaps because such treaties present business opportunities to the country and also in light of its capital investment across the region.

As member states of the SADC economic block still grapple with coming to terms with free movement of people; in West Africa, progress has been noted with the establishment of the West African Economic Community (CEAO) in 1973 which according to Asante (1986) cited in Oucho and Crush (2001).was later transformed to the Economic Community of West African States (ECOWAS) in 1975. The East African bloc in collaboration with several southern African countries established the Common Market for Eastern and Southern Africa in 1993. Be that as it may, efforts to thwart movement of people have characterised these economic blocs underpinned by visa bureaucracy. Yet, the free movement of goods and services to a greater extent benefit the ruling elite and business (see Mkone, 1997).

While labour migration in the region contributes towards the overall economic development of involved countries (sending and receiving countries), it is important to point out that government policies still undermine such role hence poor attention is given towards this process (Migration Policy Institute). Paradoxically, member states of various economic blocks are trapped in two discourse; Pan-Africanism as way of defying colonial borders in post-colonial Africa and protectionism which is aimed at restricting movement into economically–rich countries (see Sachikonye, 1998). The contestations against mobility of people across borders illustrate that the Southern African Development Community (SADC) member states are more interested in economic integration at the expense of labour migration which is associated with economic liberalisation (see Sachikonye, 1998: Oucho, 1998; Oucho

and Crush, 2001). In the end, while Draft Protocol on the facilitation of Movement of Persons in the SADC seemed very progressive towards labour, still, because of lack of consensus and the fact that it was not officially adopted, it is 'toothless'. Thus, foreign workers in South Africa are not yet protected by it and cannot draw from its provision for mobilisation purposes based on institutional power.

4.5 A Critical Analysis of South Africa's Laws and Policies on Migration and Labour

South Africa possesses some of the most progressive labour laws and policies although there is no particular position on foreign labour. However, the migration and labour laws seem to conflict with each other with the former restricting the latter in a way that deprive foreign workers from protection. While gaps pertaining to foreign workers exist in the country's labour laws, nonetheless, as mentioned earlier, at international level, ILO conventions provide guidelines on labour rights protection of foreign labour in host countries. The Constitution of the country, which is also the highest law of the land, also serves as a remedy where gaps have been observed as will be shown in the subsequent section.

In South Africa, the Immigration Act of 2002 which falls within the Department of Home Affairs (DHA) regulates the work permitting regime for foreign workers employment in South Africa. Work permits fall into various categories; general, corporate, critical skills (a combination of the special skills and quota permits); special dispensation (regularisation) and seasonal. Aside, labour laws and policies are overseen by the Department of labour (DoL), which prescribes working conditions, minimum, wages and other aspects relevant to the workplace and employment relations. I addition, South Africa holds bilateral agreements with labour supplying countries in the region, which include Mozambique, Botswana, Lesotho, Swaziland and Malawi[25] (see Nshimbi and Fioramonti 2013; Budlender 2013).

While South Africa had not signed bilateral agreements with Zimbabwe during the formal migrant labour system, this only came through during the post-migrant labour regime. The late 1990s running into the 2000s witnessed a sharp decline and deterioration of the economic and political situation in Zimbabwe resulting in mass movement of its citizens into South Africa. Many found jobs in the farms located in Limpopo before they could proceed to large cities like Johannesburg. Commercial farms in Limpopo heavily rely on cheap migrant labour from Zimbabwe and Mozambique although many cases of labour rights violations have been

[25] N.B. The bilateral between South Africa and Malawi is no longer in existence.

reported (see Rutherford, 2007). In 2009, South Africa signed a bilateral agreement with Zimbabwe to cover farm workers in commercial farms.

In 2010, as part of its regularisation process, the DHA granted Zimbabwe Dispensation Permit to undocumented Zimbabweans living, working and studying in South Africa. This was later renewed as the Zimbabwe Special Permit (ZSP) in 2014 and 245 000 Zimbabweans renewed their permits in the second phase. The permits expired at the end of 2017 and statistical data of those who managed to renew was not yet available by the February 2018. In 2016, the DHA through the Minister's discretion granted a special permit for undocumented Basotho living and working in South Africa.

Known as the Lesotho Special Permit (LSP), the permit was awarded under the same conditions objectives as the ZSP. 127 048[26] online applications were submitted through the VFS although no statistical data is available to show how many of these applications were granted by the end of the process. In its White Paper adopted in March 2017, South Africa commits to extend regularisation processes to other countries from key labour sending countries in the southern African region.

As mentioned before, during apartheid, foreign workers were recruited as contract labour from the southern African region through bilateral treaties and their entry into the country were regulated and governed by the then statutory Aliens Control Act, which provides some exemption clauses that allow for bilateral treaties which govern the entry of contract workers. This type of arrangement still persists today and like it was initially designed to achieve under apartheid, the process limits workers in certain sectors from the option of acquiring either permanent residence or citizenship of the country. The next section discusses bilateral agreements which South Africa signed with key labour supplying countries.

4.5.1 Bilateral agreements

During apartheid, South Africa signed bilateral agreements with labour supplying countries in the region, which include Mozambique, Botswana, Lesotho, Swaziland and Malawi[27] (see Nshimbi and Fioramonti 2013; Budlender 2013. Further, Musabayana, (2014) notes that in the 2000s period, the country signed bilateral agreements with following countries; Democratic Republic of Congo (2004), Tanzania (2007) and Namibia (2008) although no

[26] Lesotho Special Permit: Success as SA aims to address immigration regionally**.** 2017-01-30 10:29 – By Louzel Lombard Steyn. traveller 24 online news

information is provided as to which sectors these labour-sending countries would be providing services. Zimbabwe did not sign any formal bilateral agreement with South Africa except for a Memorandum of Understanding (MOU) signed in 2009 to cover farm Zimbabwean farm workers in commercial farms. In addition, according to Muneku (2016), South Africa also signed MOUs with Cuba and Tunisia to cover up skills shortage in critical sectors of the economy like public health.

In contemporary South Africa, the Immigration Act stills draws from certain components of the Aliens Control Act to control movement of people but still allows for bilateral treaties with neighbouring states which govern the entry of contract workers, primarily in the mining and commercial farming sectors. Restriction on the movement of people literally constrain mobilisation of foreign workers as they develop an attitude that they are here to stay temporarily and so as their participation in workers struggles whose fruits might be realized after they have left the country. Again, the short –term contracts which are circular in nature, obliquely deny foreign workers right to South African permanent residence or citizenship. As will be shown in chapter 5, the apartheid government through TEBA and respective Consulates/ Embassies of labour supplying countries exploited bilateral agreements as a tool to control cross-border migrants from participating in the political struggles of South Africa.

Table 2: Bilateral labour agreements signed by South Africa with labour supplying countries

Country	**Treaty Series No**	**Date signed & place**	**Provisions**	**Date of entry into force**
Government of the Republic of Portugal	11/1964	01/10/1964 Lisbon	Regulating the employment of Portuguese workers from the province of Mozambique on certain mines in the RSA	11/05/1971
Malawi	10/1967	01/08/1967 Pretoria & Blantyre	Relating to the Employment and Documentation of Malawi nationals in South Africa	01/08/1967

Government of the Kingdom of Lesotho Lesotho Special Permit	1/ 1973 3/2016	24/08/1973 Pretoria & Maseru	Relating to the establishment of an office for a Lesotho Government Labour Representative in the RSA, Lesotho Citizens in the RSA and the movement of such persons across the international border Regularisation Process to ensure all Basotho immigrants in South Africa are documented	24/08/1973 October 2015
Government of the Republic of Botswana	3/ 1973	24/12/1973 Pretoria & Gaborone	Relating to the establishment of an office for a Botswana Government of Labour Representative in the RSA, Botswana citizens in the RSA and the movement of such persons across the international border	24/12/1973

Government of Zimbabwe	2009		Commercial farm workers Memorandum of Understanding (MOU)	04 September 2009
Government of Zimbabwe	2010		Dispensation for Zimbabwe Permit granted as part of regularisation process; later renewed as Zimbabwe Special Permit (ZSP)	

As shown in the table above, some of the treaties are outdated while those between Botswana, Lesotho and Swaziland were reviewed in 1973 and 1975 (Bamu, 2014: 16) from initial agreements signed in 1963. In the post migrant labour regime, South Africa signed new memorandum of agreement (MOUs) agreements such as those with Zimbabwe, Democratic Republic of Congo and Lesotho were signed well after the demise of the migrant labour system. The question emerging out of this will be is it still relevant for the post-apartheid government to still rely on these bilateral agreements considering their link to the apartheid regime, where they were designed in such a way that these treaties deny workers their full labour rights? For instance, the bilateral agreement with Portugal clearly deterred mobilisation or unionisation of Mozambicans working in the mines (see Allen, 1992); a point that was also reiterated by one key informant, an ex-mine worker from Mozambique. Bilateral agreements in a way undermined workplace bargaining and collective action among foreign workers as noted by Jooste (1970:65).

> The Industrial Conciliation Act (No. 28 of 1956) established the general system of industrial relations in the Republic of South Africa, and the Native Labour (Settlement of Disputes) Act (No. 48 of 1953). The effect of these laws is that foreign workers cannot call a collective strike, and that there is no legal sanction or protection for trade unions, or for agreements resulting from collective bargaining. This situation should also be judged within the context of the concept of separate nationhood in a national territory, according to which the government concerned assumes responsibility for its

> subjects and negotiates agreements at the inter-governmental level, under which those subjects may work outside their homelands (1970:65).

Thus, while foreign workers were physically working in South Africa, collective bargaining negotiations, for instance, wage negotiations were undertaken by their governments back home. The system emphasised state sovereignty such that foreign workers were not allowed to participate in collective action and if they were to, their government was liable for any damage resulting from such actions. Thus, this piece of legislation allowed for 'remote control' of citizens by their sending governments and also constrained mobilisation although ironically, foreign workers (most notably Clement Kadalie) played a very central role in the formation of the first Black trade union in the country.

Also considering the progressive Constitution of South Africa which will be discussed below, it is important to point out that, labour bilateral agreements tend to perpetuate discrimination based on citizenship and nationality yet South Africa is said to belong to all who live in it. The National Union of Mineworkers (NUM) fought against this discrimination and facilitated amnesty dispensations to ensure all foreign workers within their ranks who had worked for five years or more would be granted permanent residence and citizenship rights hence facilitating their mobilisation as will be discussed in Chapter 5.

Three regularisation processes have occurred since 1994 and involved 700-800,-000 migrants who were granted various permits which include asylum, temporary and permanent residence (see Crush and Williams, 1999; Johnstone, 2001; Amit, 2011). It is important to point out that the granting of amnesty by South Africa has a historical trajectory as in 1987, the then Minister of Home affairs, JCG Botha, awarded permanent residence amnesty to black SADC citizens who entered the country before the first of July, 1963 (Crush, 1999) followed by 'alien black wives" of South Africa who entered the country before July 1986 (1999:16). In 1995 citizens of SADC who entered the country between 30 June 1963 and 1 July 1986 were also granted permanent residence amnesty (ibid). At the same time, amnesty has its downside; for example, in 1970, undocumented cross-border domestic workers were granted amnesty only to be deported (ibid). Such negative effects could have deterred voluntary participation in subsequent amnesties granted as reflected by statistical data of applicants in the post-apartheid South Africa; most recently the DZP awarded to Zimbabwean nationals in 2010. Thus, as argued by Crush 91999), it is important to understand the motivation behind any amnesty. On 29 November 1995, amnesty was approved for miners who had worked in

the country for more than five years and SADC migrants who had lived in the country for ten years (Lockey, 1999) and this was perceived as a way of paying back those migrants who had participated in the 1994 democratisation election. This was followed by an amnesty exclusively for Mozambicans (de Vletter, 1997) granted on the first of July, citing the civil war that had ravaged the neighbouring country as the motivation to grant the special dispensation.

Having examined the various statutory provisions and amnesty agreements which hindered or enabled mobilisation during the migrant labour system, it is important to interrogate legal and policy context in which foreign workers mobilise, participate and are represented in a post migrant labour regime.

The following section discusses some of the key national institutions, policies and laws in post-apartheid South Africa and how these expedite or obstruct mobilisation of foreign workers in the post migrant labour regime. I present these in chronological order beginning with the highest law in the land, the national Constitution, Immigration Policy of 2002, and the Labour Relations Act (LRA) with a strong emphasis on the collective bargaining process. This will be augmented by a review of industrial relations and collective bargaining process in South Africa.

4.5.2 The National Constitution

The rights of workers to join trade unions are enshrined in the Constitution and trade unions are recognised as vehicles for undertaking collective bargaining on behalf of workers through the statutory National Economic Development and Labour Council (NEDLAC). While international and regional labour standards act as remedies where gaps are noted in national laws and policies as discussed before, alternatively, national constitutions serve the purpose of protecting all citizens. Thus, it is important to analyse the Constitution of South Africa as it relates to foreign workers labour rights and as filling in some of the gaps observed in migration and labour laws of the country. In line with the dictates of international human rights law, it is the international legal obligation of countries of destination; origin and transit to protect the human rights of migrants on their territory, as employers and employment agencies have the obligation to respect human rights (see Albin and Ontiveros, 2014).

South Africa is hailed for possessing one of the most progressive constitutions in the world deeply entrenched in democratic and equality principles. The *Constitution of South Africa* is

the supreme law of the country. It provides the legal foundation for the existence of the republic, sets out the rights and duties of its citizens, and defines the structure of the government. The study pays more to those clauses which speak directly to the question of how the Constitution shapes political subjectivities amongst foreign workers.

In its preamble, the Constitution of South Africa evidently mentions that:

> We, the people of South Africa,
> Recognise the injustices of our past;
> Honour those who suffered for justice and freedom in our land;
> Respect those who have worked to build and develop our country; and
> Believe that South Africa belongs to all who live in it, united in our diversity.

In general, the Constitution acknowledges the fundamental role played by those who participated in the anti-apartheid struggles irrespective of nationality or else it could have been specified that **"South African Citizens who played a role …".** Similarly, in line 3 – one can interpret that honouring those who suffered for justice and freedom in our land accommodates cross border migrants from within the SADC region who fought side by side with locals to realise the democratisation of South Africa as revealed through life history interviews with ex-mine workers and this will be discussed in more detail in Chapter 5.

Lines 4 and 5 state that:

- Respect those who have worked to build and develop our country; and
- Believe that South Africa belongs to all who live in it, united in our diversity.

By affirming that **"South Africa belongs to all who live in it, united in our diversity"** (Line 5) including [Line 11] which state that **"every citizen is equally protected by law"**, the Constitution counters discrimination based on geographical positioning or origins of those who live in the country. Implicitly, in relation to foreign workers, the Constitution allows for freedom of association, mobilisation, participation and representation in the workplace in the same way locals benefit from such fruits of democracy.

In terms of its founding provisions which encompass aspects of citizenship, the Constitution states that:

3. (1) there is a common South African citizenship.

3. (2) All citizens are:-

(a) equally entitled to the rights, privileges and benefits of citizenship; and

(b) equally subject to the duties and responsibilities of citizenship.

3. (3) National legislation must provide for the acquisition, loss and restoration of citizenship

This part of the Constitution tends to contradict earlier principles which are nationality blind by introducing the concept of citizenship. Not all migrant workers who have contributed to the attainment of a political and economic democracy have full citizenship entitlements. This to a greater extent can be explained by the types of contracts migrant workers were subjected to through bilateral agreements, which ensured circular migration to deter foreign workers from acquiring permanent residence (see Crush 1997) as laws and policies were designed to ensure that foreign workers would not meet the expected requirements of the Alien Controls Act. However, clause 3.3 allows for "**acquisition, loss and restoration"** of citizenship, which subtly means foreign workers are eligible for acquiring South African citizenship subject to satisfying the requirements of the national immigration legislation. This assumption, however, tends to neglect the contradictions between the Constitution and immigration laws and to some extent labour laws.

Chapter 2 of the Constitution provides the Bill of Rights which emphasises aspects like Equality and non-discrimination. While according to the Bill of Rights (Clause 9.1), all are said to be equal before the law including equal protection and benefit of the law, the study has shown that there is grievous lack of knowledge among locals and migrants about the provisions of the Constitution such that migrants think the law is designed only for locals while locals think they are the beneficiaries of the Bill of Rights.

Clause 9.2 calls for the development of **"legislative and other measures to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination".** While this is plausible, regrettably, existing legislative and policy frameworks have failed to address foreign workers as a special category with specific challenges such as those related to documentation in the labour market. Unscrupulous employers have taken advantage of such loopholes, for example in labour laws, to exploit foreign workers.

In clause 9.3, the grounds for non-discrimination do not specifically mention nationality as an aspect that one cannot be discriminated against. Also, a review of existing national legislation relevant to this study does not mention the term 'nationality' except in the Constitution where the term appears in clause 28(1)(a) which reads:

Every child has the right—

(a) to a name and a nationality from birth;

The categorisation of nationality in this case, in my own analysis, attempts to shadow the right to claim South African citizenship by birth. Rather, one is provided with an option to claiming their child's nationality rather and this could have been out of a realisation that the country hosts many migrants and refugees of child bearing age and if not well managed, many would claim citizenship. However, the provision is good for those nationalities that are have strong sense of national identity and would not permit their children to assume other citizenship.

In the Constitution, labour rights are provided for in Section 13 which provides guidelines on how to deal with aspects like slavery, servitude and forced labour as it states that: **"No one may be subjected to slavery, servitude or forced labour".** In this case, the right to contest any slave-like working conditions through mobilisation is tacitly granted. Section 17 provides for freedom of assembly, demonstration, picket and petition. In Section 18 and this is at the core of this study as it also resonates with ILO convention 87 which advocates for freedom of association.

The right to freedom of association is drawn from international conventions and is a universal right which if well understood and interpreted provides an opportunity for mobilisation, participation and representation of foreign workers in workplace related disputes provided they do this within the confinement of the law. Section 21 deals with Freedom of movement and residence for South African citizens including the right to enter, to remain in and to reside anywhere in the Republic; the right to leave the Republic and the right of every citizen to a passport. In this regard, the section emphasises South African citizenship as a prerequisite for one to enjoy freedom of movement. It is silent on foreigners even though earlier in the preamble rights are granted to all who live in South Africa. At the core of this study is Section 23 which spells out labour rights for all as illustrated below:

23(1) has the right to fair labour practices.

23(2) Every worker has the right:-

(a) to form and join a trade union;

(b) to participate in the activities and programmes of a trade union; and

(c) to strike.

A key shortfall of this provision is that it does not define beneficiaries of such rights in terms of citizenship and instead prefers to generalise using such terms like "everyone" or "every worker". To some extent this is acknowledgement of the fact that the working class is heterogeneous and comprises of locals and non-locals. If well interpreted and workers and trade unions are educated on the dictates of this section, an enabling environment is created for mobilisation, participation and representation of foreign workers. In other words, this part of the Constitution creates an opportunity to foreign workers who might be interested in mobilisation and to join unions.

While the Constitution presents some gains and opportunities for foreign workers to mobilise, it is however; important to point out that there are of course limitations. Nonetheless, section 36 (1) and (2) admits that:

(1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including:-

(a) the nature of the right;

(b) the importance of the purpose of the limitation;

(c) the nature and extent of the limitation;

(d) the relation between the limitation and its purpose; and

(e) less restrictive means to achieve the purpose.

(2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights

In relation to the question at hand, for instance, the expectation is that foreign workers first have to comply with the immigration requirements in order for them to benefit from the protection of the Constitution. Surprisingly, there is no clarity on which aspects of laws

pertaining to foreign labour could determine limitations to rights. For instance, in relation to immigration laws, emphasis is placed on documentation as opposed to rights and ultimately contradicts the first section of the Constitution and thus precludes mobilisation, participation and representation in the workplace.

Lastly, Section 35 of the Constitution provides for the right to legal representation (through the Legal Aid Board) for any arrested, detained and accused person at state expense if such a person cannot afford to pay for legal representation. While these rights are well spelt out, the area of contestation and controversy resides in the conceptualisation of such rights which seem beneficial only to citizens as opposed to non-citizens. Thus, the exclusion of migrants from national politics covertly creates political apathy among workers although there are available other routes through which they can participate.

4.5.3 The Immigration Act of 2002

This piece of legislation controls and regulates the movement of people in and out of South Africa either as temporary or permanent residence. In relation to this study, attention is paid to how it regulates workers in the form of the work permit regime and how this impacts on mobilisation. In particular, the section discusses work and corporate visas, which are the two major routes through which many foreign workers enter for employment purposes in South Africa.

Work visas include general work, critical skills and intra-company transfers while corporate visa involves seasonal work and mining work through bilateral agreements. Interestingly, work visa regime requires individuals to apply for themselves while it is the prerogative of the employer to apply for corporate visas for their employees. A review of the various sections reveals the subjective nature of both categories of visa, which are biased towards the employer as illustrated below:

> 18. (1) an applicant for a general work visa, critical skills work visa or intra-company transfer work visa shall submit:
>
> > 1(a) a written undertaking by the employer accepting responsibility for the costs related to the deportation of the applicant and his or her dependent family members, should it become necessary; and…

3(b) an undertaking by the employer to inform the Director-General should the applicant not comply with the Act or conditions of the visa;

3(c) an undertaking by the employer to inform the Director-General upon the employee no longer being in the employ of such employer or when he or she is employed in a different capacity or role; and

3(d) an undertaking by the employer to pay any deportation costs incurred by the Department in relation to the applicant.

For Critical skills 18 (9) In terms of section 19(5) of the Act, the relevant employer shall ensure that:-

(a) a foreigner is only employed in the specific position for which the visa has been issued; and

(b) the foreign employee will at all times comply with the provisions of the Act and conditions of his or her visa and undertakes to immediately notify the Director-General if the employee refuses to comply with the provisions Act and conditions of the visa.

(11) The company referred to in sub regulation 8(b)(ii) shall undertake to reimburse the Department any costs incurred in relation to the deportation of the foreigner referred to in section

Section 19(5)(a) of the Act and any of his or her dependent family members, as the case may be

(6) The relevant corporate applicant shall, as contemplated in section 21(2)(a)(i) of the Act, ensure that-

Section 20 (6) (a) the passport of the foreigner is valid at all times;

(b) the foreigner is employed by the corporate applicant to conduct work for the corporate applicant only in the specific position for which the visa has been issued;

(c) such foreigner departs from the Republic upon completion of his or her contract of employment;

(d) any foreigner employed in terms of the corporate visa at all times complies with the:-

(i) provisions of the Act;

(ii) terms and conditions of the corporate visa and corporate work certificate;

(e) the Director-General is immediately notified if there is reason to believe that the foreigner is no longer in compliance with the provisions of the Act; and

The monitoring of the foreign worker in South Africa, according to the Act, is expected to be undertaken by the employer. This exposes the poor worker to some paternalistic kind of relationship with the employer and thus underpins subordination. In such circumstances, one would not risk their job by taking part or joining unions as there seems to be limited opportunity for the foreign worker to explain their case as all power is vested in the employer. Employers take advantage of this loophole in the immigration law to exploit workers and as a union busting strategy as the Act places a lot of trust in the employer with regards to foreign workers' policing in the workplace. It is not surprising that employers can lay trumped up charges based on personal differences if they no longer want an employee. This is created by the gap in the Act whereby because the obligation to report to the Department of Home Affairs in the case of an employee no longer employed by them resides in the employer. As a result, employers exploit this weakness in the law to easily abuse and dismiss foreign workers with impunity even if the reason for one to leave were based on exploitation.

While sections 18(3a)(iii); 20 (iii) outlaw wage disparities between locals and foreigners as revealed in the statement below:

(iii)the salary and benefits of the applicant are not inferior to the average salary and benefits of citizens or permanent residents occupying similar positions in the Republic;

Employers are very conscious of this statutory requirement but because of the policing mandate and paternal relationships created between them and their employees, they negotiate and cut down on wages in a reciprocity way – employer protects employee from Home Affairs and employee protects employer from the Department of Labour, where they are supposed to lodge in labour complaints or disputes. This is where we find the conflict

between migration laws and labour laws. Because of such kinds of arrangements, workers are demobilised and thus fail to exercise their labour rights in the workplace.

4.5.3.1 Time factor

Another aspect of the Act which is suppressive to foreign workers participation in the workplace is related to time period under which their permits are valid and worse still have no guarantee for renewal. For example, Sections **18 (4), (6) and (10) clearly state that:**

> A general work visa shall be issued for a period not exceeding five years[28].
>
> A critical skills work visa shall be issued for a period not exceeding five years.
>
> An intra-company transfer work visa shall be issued for a period not exceeding four years.

While the time frames seem generous compared to work permitting regimes in other countries, employers sometimes use this to circumvent statutes prescribed in the labour laws which require employers to appoint those who have served consecutive three months to be permanent workers. In this way, even though work permits might be long-termed, still employers would sign up workers for short term-contracts.

> **Section 20 (5)** also states that The Director-General may issue:-
>
> (a) a corporate visa for a period not exceeding three years to a corporate applicant on Form 14 illustrated in Annexure A: Provided that the validity period for seasonal work shall not exceed six months at a time; and
>
> (b) an authorisation certificate to a corporate worker, for a period not exceeding the validity period of the corporate visa under which it is issued;
>
> **Section 20 (11)** A corporate worker certificate issued to a person employed by the corporate applicant shall, in the case of:-
>
> (a) a corporate worker employed in terms of a bilateral agreement, be subject to the terms and conditions determined by labour laws applicable in the Republic and valid for a period not exceeding the validity period of a corporate visa;
>
> (b) Seasonal worker; be limited to a period not exceeding six months; and

[28] Source: : www.gpwonline.co.za

(c) Corporate worker employed in the mining or construction sector, be valid for a period not exceeding the validity period of a corporate visa.

(12) A corporate worker employed in terms of a bilateral agreement or for seasonal work may not renew his or her corporate worker certificate or apply for a change of status in the Republic.

It is important to point out that mining and construction sectors have the privileges to corporate permits but still under the same conditions as other general work permits. Workers contracted under bilateral agreement as shown in the clause are not eligible to renew their permits in the country. This poses as a major barrier to mobilisation as some might deem it unnecessary to indulge in struggles of which they do not have guarantee to benefit from. In summary, the Immigration Act of 2002 contains a lot of weaknesses which employers exploit to their own advantage and ultimately this has a very adverse influence on foreign workers political subjectivities in the workplace as demonstrated in this section. In addition to the Immigration Act of 2002 as amended in 2014, another piece of legislation aimed at regulating recruitment of vulnerable workers (youth and immigrants included) in the labour market was promulgated on 3 April 2014 and came into effect in August 2015; the Employment Services Act and is discussed in the next section.

4.5.4 Employment Services Act (ESA)

This piece of legislation was developed particularly to provide guidelines on the recruitment of young work seekers and other vulnerable groups including to facilitate employment of foreign workers in line with the Immigration Act of 2002 while curbing employment of undocumented foreign nationals. Further, it assists those working in companies facing economic challenges and threatened with retrenchments to retain their employment. In addition, it serves as a registration and regulatory body of private employment agencies through the Employment Service Board. Its relevance in this study is its regulatory role and guidelines on the recruitment of foreign workers, which emphasise equality and fair labour practices.

In section 2, which addresses the purpose of Act and in particular clause (h) states that:

The purpose of this Act is to facilitate employment of foreign nationals in the South African economy, where their contribution is needed in a manner:-

(i) that gives effect to the right to fair labour practices contemplated in section 23 of the constitution;

(ii) that does not impact adversely on existing labour standards or the rights of South African workers; and

(iii) that promotes the training of South African citizens and permanent residents

It is clear from item (i) that the Act is grounded in the national Constitution of South Africa as it advocates for fair labour practices although there are contradictions in item (ii) which exhibit a protectionist attitude which obliquely assume priority of job opportunities to South African citizens. This attitude is reinforced in item (iii) which places priority of training on citizens and permanent residence. In fact, employers have to justify employment of foreign workers and "assure the immigration authorities that no South African can do the job and explain why it is necessary to hire a foreigner" (Crush and James 1995:224).

In this way, the Act plays a very overt discriminatory role which divides the objectives of the equality law as advised by the National Constitution. While in item (i) it advocates for fair labour practices, it misses the point by presenting such rights in relation to one's citizenship or migration status. Such loopholes in national laws exposes foreign workers to exploitation at the hands of employers and also further instil an ambivalent attitude amongst foreign workers as to whether they are really covered by the labour laws of this country or not such that they tend to believe that labour rights are only for locals. Ultimately, they end up shunning unions and restrain from participating in labour processes like strikes as they think they are not covered or protected by the law.

Chapter 2, Clause 1(i) reads **"facilitating the employment of foreign nationals in a manner that is consistent with the object of this Act and the Immigration Act".** This in a way suggests that labour law is subordinated to immigration law (see Costello and Freedland 2014). Moreover, it overrides the mandate of labour laws which allow for recruiting of critical skills in sectors where shortages are noted.

Section 8 of Chapter 2 exclusively focuses on Employment of foreign nationals as outlined below:

> 8 (1) An employer may not employ a foreign national within the territory of the Republic of South Africa prior to such foreign national producing an applicable and valid work permit, issued in terms of the Immigration Act.

(2) the Minister may after consulting the Board, make regulations to facilitate the employment of foreign nationals, which regulations may include the following measures:

(a) The employers must satisfy themselves that there are no other persons in the Republic with suitable skills to fill a vacancy, before recruiting a foreign national;

(b) the employers may make use of public employment services or private employment agencies to assist the employers to recruit a suitable employee who is a South African citizen or permanent resident; and

(c) preparation of a skills transfer plan by employers in respect of any position in which a foreign national is employed

All of the above statements in their effort to play a regulatory role, play more of a exclusionary than inclusive role. They demonstrate how laws and policies include and exclude certain migrants; in this case permanent residents stand a better chance for employment as compared to temporary residents. This could be attributed to tax contribution but even so, some foreign workers on work permits contribute towards the country's revenue, as they also play a very meaningful role in the national economy. Clause 2c clearly suggests that foreign workers have to be employed as a short-term temporary measure as the country addresses its challenge of skills shortages. This raises the question of applicability as under no circumstances can employers recruit two employees for the same position with the aim of skills transfer, as their primary goal is to cut on wages and maximise profits.

Section 8 clause (3) says: A regulation made in terms of this section may:–

(a) Include any other requirement necessary to implement the provisions of this section which are consistent with the Immigration Act; and

(b) Differentiate between different categories of visas issued in terms of the Immigration Act and different categories of work.

Clause 3(a) underpins the power of the Immigration Act over labour laws and clause 3(b) categorises foreign workers based on their migration status which shows that the law benefits foreign workers selectively. Temporary residents are awarded short-term work permits which makes it impossible to focus more attention on bad labour practices as their primary aim is to get whatever they target to earn and leave the country.

Although it contradicts with the Immigration Act which does not allow any foreign national to work in the country without a work permit, a more positive statement is located in Section 8, clause 4 which contends that:

> An employee who is employed without a valid work permit is entitled to enforce any claim that the employee may have in terms of any statute or employment relationship against his or her employer or any person who is liable in terms of the law.

This seems to be the only progressive remedy to deal with dodgy employers who employ undocumented migrants for the purposes of exploitation or as a union busting strategy as revealed by some studies conducted in agriculture, hospitality and domestic sectors (see www.miworc.org). The above clause also contradicts the elements of the section which deals with Prohibited acts in respect of foreign nationals as illustrated below:

> An employer may not require or permit a foreign national:-
>
> (a) to perform any work which such foreign national is not authorised to perform in terms of his or her work permit; or
> (b) to engage in work contrary to the terms of their work permit

In practice, foreign workers find themselves involved in job mismatches because of the bureaucracies coupled with structural xenophobic tendencies experienced in certain sectors or government departments. For instance, in 2006, the South African Minister of Labour announced a call for critical skills in the form of Science and Maths teachers. Many teachers from the SADC region were awarded quota work permits which allowed one to enter the country even before they get a job, as is the usual norm. Unfortunately, a majority of these teachers did not get the anticipated employment and this was partly blamed on structural xenophobia within the Department of Education and also at local (school) level. As a result, job mismatches occurred and many defaulted on their work permits as they ended up seeking employment in domestic and hospitality sectors. Yet, one of the key conditions of the permit required holders to report on employment progress to the DHA every year. Again, one could not work in other sectors outside of the job category under which the work permit was granted. Some of the narratives are well presented in chapter 6 which presents findings in the hospitality sector. Consequently, job mismatches result in lower mobilisation levels as workers tend to perceive their employment in certain sectors as temporary which creates such attitudes like "why should one fight for better conditions in a sector" and they are capable of leaving at any given time as will be explained in Chapter 6. Lastly, Section 21 of the

Employment Service Act presents the composition of the Board and it appears that there are no foreign workers representatives to serve their interests on this platform. This results in issues not being presented as they occur in practice and thus migration law remains rigid and a huge barrier to foreign workers mobilisation. Another critical legislative framework to consider in our analysis is the Basic Condition of Employment Act (BCEA) and is discussed below.

4.5.5 The Basic Condition of Employment Act (BCEA) 1997 (Act 75 of 1997)

The BCEA was promulgated in line with the provisions of Section 23(1) of South Africa's National Constitution with the aim of advancing workers basic rights and also as part of compliance with the International Labour Conventions. The Act covers "all employees and employers except members of the National Defence Force, National Intelligence Agency, South African Secret Service and unpaid volunteers working for an organisation with a charitable purpose" (Section 3(1)). It provides varied definitions of an employee and prescribes various working conditions that bind employers to comply with statutory requirements although in practice, there a lot of breaches. In particular, it provides guidelines on the following key areas; working hours, overtime, resting times including Sunday and night work; various types of leave (maternity, annual, family responsibility and sick). However, it is silent on study leave aimed at career development. Further, it dictates that it is the responsibility of all employers to educate employees on their rights and that essential information related to this ought to be displayed in the language of communication officially used in a particular workplace.

A full database of employees needs to be in place including information on remuneration and benefits. given the flexible employment relations and casual hiring of undocumented migrants, including high turnover, for example, in the hospitality sector, it is difficult to keep such data. Moreover, it clearly outlines conditions and packages that workers are entitled to in the case of termination of employment for those who are covered by scope of the BCEA while it excludes those employed for less than 24 hours a week. In addition, it requires that workers whose employment is terminated on the grounds of a company's financial distress in terms of Section 38, be paid severance pay calculated in terms of one week for every year served. In my research, I never came across foreign workers who received severance payment after for instance, their companies closed down as a result of insolvency. In the mining sector, it so emerged out of a life history interview with one key informant that many of the retrenched foreign miners have to wait for long periods sometimes over five years to receive

their benefits after retrenchments. As a result, and as they wait for their packages, they find an economic safety net in abandoned mines where they could only be able to apply their skills (see Chapter 5).

The BCEA provides for exemptions in sectors that are governed by bargaining councils wherein collective agreements or sectoral determination take precedence. Thus, while workers in the hospitality sector are covered by the BCEA, they are still bound by collective agreements of their bargaining council as revealed in Chapter 6. Finally, it provides mechanisms for monitoring, enforcement through inspectors. Despite all efforts to protect workers; the BCEA is undermined by employers who continue to hire cheap labour especially undocumented migrants for purposes of exploitation. Again, as revealed in Chapter 6, many workers in vulnerable sectors like hospitality do not have contracts. While many companies have been found outside of the law and are required to pay fines, in many cases this does not happen due to corrupt activities between employers and inspectors and this results in perpetual violation of workers' rights. Again, many workers especially migrants do not understand their rights and for those who do, they fear deportation especially when they do not possess legal papers to work in the country.

4.6 State legislative and policy frameworks and their influence on business' responses to foreign labour

This section presents key findings emerging from the review which motivate or discourage employers from recruiting foreign labour in relation to migration laws and policies. Further, it argues that while huge penalty fees tend to discourage employers from recruiting undocumented immigrants, the Immigration Act of 2002 inherently bestows much power in employers in the workplace and thus creates a ripe environment for the exploitation of foreign labour as manifested in the Act. For instance, employers are obligated to report to DHA if an employee is no longer working for them even if their work permit is still valid. This in a sense creates a paternalistic employment relationship which subordinates foreign workers to the employer such that they would not engage in activities which pose as a threat to their employment relationship like joining trade unions or engaging in protests or strikes. This kind of relationship is exacerbated in cases where undocumented immigrants are employed as they tend to feel like the employer is doing them a favour. This was revealed in a study by Munakamwe and Jinnah (2015), where they noted that undocumented farm workers would be hidden every time inspectors visited their workplaces. Instead of reporting

abuse and exploitation at the hands of employers, the foreign farm workers would be threatened with deportation if ever they joined local workers in protests (see also Wilderman2014) or in severe cases were beaten up or even killed with impunity on the side of the employer.

Undeniably, restrictions as imposed by the South African Immigration Act limit migrants' collective bargaining power over their employers by enhancing foreign workers overdependence on their employer (see Alhorolle 2015). Furthermore, the laws and policies governing migration implicitly open up space for discrimination between locals and foreigners; documented and undocumented migrants. As Ryan (2014) claims:

> There are unresolved tensions between employers' duty not to discriminate and their obligations to subject prospective and current workers to checks to ensure that their migration status is in order (2014: 239).

The double and contradictory role (as 'monitor' and the 'monitored') played by the employers kind of shadow their own weaknesses in the main as power in the workplace is more tilted towards their own interests. For instance, they can hire and fire workers as a union busting strategy and the DHA can still incentivize them for reporting defaulting workers. The review of the South African Immigration Act of 2002, clearly reveals how in practice, employers can discriminate foreign workers based on their migration status through workplace monitoring on behalf of the DHA. By allowing locals to join unions and suppressing foreign workers from doing the same, employers play a discriminatory and divisive role among workers thereby dividing solidarity. In this way, employers create their own opportunity for exploiting foreign labour to maximize their profits, and are thus motivated to recruit foreigners. This point is supported by Menz (2014) who contends that employers proactively use and abuse migration as a tool to achieve more pronounced disparities in wages and working condition. Similarly, Dewhurst (2014) maintains that if the objective of migration law is principally to preclude irregular migration, then this may perversely create greater incentives for unscrupulous employer to hire migrant workers

Another key aspect which emerged from the review of the Immigration Act of 2002, Labour Relations Act and the Employment Services Act is that employers are represented on all Boards where they are able to influence development of immigration policies which in most cases are biased towards their interests. It is important to point out that employers advocacy

efforts to liberalise labour migration is, at a larger extent aimed at undermining labour law which is protective of workers in the context of South Africa.

While labour is also represented on the afore-mentioned boards, it serves more on bargaining for 'bread and butter' issues for their membership constituted predominantly by locals and not the extended responsibility of lobbying for documentation of foreign labour. In fact, unions do not view the challenge of undocumented migrants as their primary responsibility (see Alhorolle 2015); yet they would expect migrant workers to join their ranks as long as they are documented as they attempt to comply with the national immigration laws and policies. This will be explained further in Chapter 7. In response to inattention towards for example, their core problem of documentation, many foreign workers eschew from unions and alternatively seek assistance and representation through worker advice centres or private legal firms. This will be discussed more in Chapter 7.

4.6.1 The Mining Charter

This section looks at how the Mining Charter adopted in 2004, as a policy framework guiding business, labour and government in the recruitment process in the mining sector influence foreign workers mobilisation in post-apartheid South Africa. Important to note is the fact that the Charter was introduced as part of the transformation agenda aimed at redressing past apartheid inequalities which marginalised the majority of Black workers from benefiting from their country's mineral resources while at the same time excluding participation in economic activities. It outlines the nine elements of the Charter which include Human Resources Development; Employment Equity; Mine Community Development; Housing and Living Conditions; Procurement; Beneficiation; Ownership and Joint Venture and Reporting. Of these, the study is more interested in the Human Resources Development component of the charter, which deals with the question of skills, the main motivation for liberalisation of migration by employers.

The Charter acknowledges the challenge of relevant skills among South African citizens as a major challenge to achieving transformation in the mining sector. Stakeholders are encouraged to work together to respond to this challenge and in particular a statutory body, Mines Qualification Authority was established to monitor progress related to skills development of locals. This response is in line with the **policy objective** of the **Minerals and Petroleum Resources Development Bill** aimed at expanding opportunities for historically disadvantaged South Africans to enter the mining and minerals industry or benefit from the

exploitation of the nation's mineral resources. While the Charter acknowledges foreign labour as a critical component, it however does not openly indicate such as direct beneficiaries through the policy instruments such as the BBEE. In other words, it is not clear if foreign workers, who contributed immensely towards the development of this industry and the broader national economy, constitute part of the HDSAs. Subtly, the response does not seek alternative solutions in the form of foreign workers but desires instead to ensure as many South Africans are trained in skills relevant to the mining sector. In a way, this will minimise over-reliance on foreign labour in the mining sector. What this means is a reduction of migrant labour which ultimately result in low mobilisation levels. And above all, the figures speak for themselves. In other words, while the primary objective of the Mining Charter was to address historical inequalities in the mining sector, somehow, it also organised the phasing out of foreign labour on South African mines through its strong emphasis on "who is local?" (Forrest, 2013; Mujere, 2015)

Interestingly, the Charter only makes reference to migrant labour in a 'sweeping' statement in clause 4.3 which reads:

> Migrant Labour Stakeholders undertake to: Ensure non-discrimination against foreign migrant labour.

It is plausible that at least the Charter recognises migrant labour by establishing such a forum to oversee all migrant related issues. However, all key informants in the mining sector, were familiar with the notion but expressed ignorance about its existence. While the statement is cold, it nonetheless attempts to give the Charter an inclusive 'face' which presents all workers as equal although one is not sure of the composition of the Migrant Labour Stakeholders. Based on the same statement, an opportunity for mobilisation of foreign workers is created. The unionisation rate in the mining sector is very high which could mean trade unions in the sector do observe the above clause in their organising efforts. This could also be the reason why less xenophobic tensions have been observed in this sector over the years as will be demonstrated in Chapter 5. But some scholars like Crush and James (1997); Head (1997) predicted about the total phasing out of foreign labour and retrenchments (targeting locals) on the mines such that sooner or later, there will be no one left to organise in terms of foreign workers and the approach could be assimilation into the South African workforce for the few left.

The Charter also locates South Africa in the global village as it states that:

> In its bi-lateral relations with relevant countries, undertakes to secure training opportunities for HDSA companies' staff, as well as exchange opportunities with mining companies operating outside of South Africa;

As mentioned earlier, in its migration laws and policy development, South Africa is 'trapped' within the desire to protect its labour market for its citizens and the global market forces which agitate for the need to open up borders for free movement of labour and capital.

4.7 Institutional vs Associational Power:

This section explores the interaction between South Africa's state laws and policies (institutional power) in relation to trade unions (associational power) mobilisation efforts towards foreign workers. It reveals that unions are "sites of struggle between competing interests and visions, capable of shifting direction, strategies and tactics" (Castel –Branco, 2015: 99). Indeed, unions are confronted by the desire to comply with national laws to protect jobs for the natives while at the same time the obligation to satisfy the principles of international worker solidarity. According to Nel & van Rooyen (1993), the role of labour movements is "to give firm political direction to workers" (1993: 133). Unions are involved in the socio-political issues as a way of mobilizing workers. However, the new economic environment requires that trade unions expand their traditional roles and social functions and extend their collective bargaining demands to respond to foreign workers atypical needs such as documentation. In contrast to their socio-economic role, unions have played a backyard role in policy-making related to migration as noted by COSATU's Organisational Report of 2015:

> The poor state of unions in South Africa means that unions are unable to push forward the demands of workers, or even to successfully oppose policies that are detrimental to the lives of the working class (2015:12).

While unions have been credited for their role "in dismantling apartheid legislation and practices in the workplace" (*SAinfo* reporter, 2015:1) and for ensuring progressive labour market and industrial relations policies, they have however, failed foreign workers who require their interventions with regard to immigration laws and policies.

In addition, unions have been criticised for clinging to traditional ways of organising yet the workforce is dynamic calling for the need for unions to shift strategies and tactics to suit the

peculiarities of migrant workers. Thus, it is reasonable to think that as every sector of the economy is being forced to change due to globalization, trade unions need to shift their demographic focus and traditional ways of organising.

A worrying issue is that trade unions in South Africa have paid little attention to the challenge of labour migration and as such have not yet developed clear policies on how they deal with the question of migrant labour which is one of the major challenges confronting the movement today. While some unions are making efforts to address this challenge, the major hindrance resides in the manner in which the Immigration Act is designed. One of the key challenges facing trade unions in their efforts to mobilising migrant workers is that of undocumented or circular migrants. Circular migrants are those who episodically come and work in South Africa temporarily and go back to their countries of origin. While some work under very hard and exploitative situation, it is usually difficult to reach out and organise them into trade unions as they do not foresee themselves working permanently in South Africa. Surprisingly, labour representatives sit on the Immigration Board yet we know less about their input in such platforms.

Before 1994, South Africa relied on the Aliens Control Act, which allowed for bilateral treaties which were meant to govern the entry of contract workers to work in the agriculture and mining sectors. Today, the Immigration Act of 2002 provides direction on the movement of contract labour into South Africa. This type of arrangement however, (like it was initially designed to do under apartheid), limits workers in particular contract workers from the option of becoming either permanent residents or full citizens of the country and thus fall into the category of casual workers, working under precarious conditions (see Standing, 2011). Circular migrants pose a huge challenge to trade unions in their efforts to organise those in non- standard employment relations. This will be explained in chapter 5, whereby cross-border migrants prefer to engage in informal mining activities to circumvent bureaucratic immigration requirements for one to get a work permit to work in formal mines. While some work under very hard and exploitative situation, it is usually difficult to reach out and organise them into trade unions as they do not foresee themselves working permanently in South Africa (see Alhorolle 2015).

The following section interrogates trade union policies and positions on foreign workers mobilisation and representation. As mentioned earlier, unions in South Africa have not yet developed policies to respond to migrant labour but rely on their constitutions and

programmes to address the issue of labour migration within their ranks. The unions are presented in order of membership size.

4.7.1 COSATU Policy and responses

The Congress of South African Trade Unions (COSATU) was launched in 1985 at the height of anti-apartheid struggles when workers still forged unity based on class and a high affinity to end the suppressive political dispensation. The National Union of Mineworkers (NUM) and cross-border migrants were at the fore of its formation. According to statistical data presented at the 12th Congress of COSATU in October 2015, the membership figures were recorded as 1 868 193 (Organisational Report, 2015), making it the largest national federation in South Africa comprising of 18 affiliates. Before the expulsion of the National Union of Metal Workers of South Africa (NUMSA), the Federation boasted of a total membership of approximately 2.2 million members organised by 19 affiliates.

Having a strong programme on international solidarity and as an affiliate to the International Trade Union Confederation (ITUC), the question of a clear policy on migrant labour has haunted the Federation for many decades. In 2008/2009 there were proposals to develop such but it seems this fell off as more attention was required to address emerging challenges stimulated by the global economic recession. In 2011, the COSATU developed a policy on international solidarity, an area that implicitly expounds the Federation's position on migrant workers. The policy clearly demonstrates the union's commitment to further the interests of workers in Southern Africa and emphasises that Southern African states need to play a meaningful enforcement role in ensuring compliance to labour standards across the region guided by the decent work discourse. COSATU is a member of the Southern African trade Union Coordinating Council (SATUCC) and assumed the presidency of the organisation in 2017.

The policy denounced the hiring of undocumented migrants by employers for purposes of exploitation thus pitying workers against each other. The right to join unions by migrants is well spelt out in the policy including the right to portability of wages and social rights (for example, medical insurance for foreign miners who contract occupational diseases) to their countries of origin. This is compatible with what Fine (2014) views as a "broader regional economic development plan, to attempt to address the legacy of poverty, insecurity and skewed development" (2014).

Nonetheless, conflicting statements are also enshrined in the policy as there is strong emphasis on the need to introduce quotas to regulate employment of immigrants while also advocating for strict penalty proposals for employers of undocumented migrants. Furthermore, the policy cautions that the hiring of skilled migrants need not impede the skills development revolution aimed at empowering citizens in those sectors where critical skills are scarce.

At the 11th National Congress in 2012, the Food and Allied Workers Union (FAWU) sponsored a resolution to organise migrant workers and this was adopted by the Federation. This came out of the realisation that many farm workers were from outside of South Africa's borders; Zimbabwe in the Limpopo province while Mozambicans and Swazi were concentrated in the Mpumalanga province (Munakamwe and Jinnah, 2015). This observation could also explain the low unionisation rate in agriculture sector as many of these cross-border farm workers were employed as seasonal and casuals (ibid). In late 2012, FAWU began to organise foreign workers beginning with a pilot in the Limpopo province tomato farms dominated by the largest commercial farm; ZZ2. [29]

In September 2012, the 11th National Congress of COSATU adopted the International Policy; in which provided guidelines on how to respond to migrant workers. Furthermore, in 2015, the Federation developed a Shop Stewards Manual on International Work, a very comprehensive document aimed at educating shop stewards on international work. Following the resolution of the 11th National Congress, the Vulnerable Workers Task team (VWTT) was established in 2014 as a structure within the federation to specifically implement the resolution to organise vulnerable workers which also included migrant workers. Before the establishment of the task team, the Federation relied on international solidarity programmes which culminated in the development of an international policy mentioned above. While the policy addresses some aspects related to migrant labour such as xenophobia, it is not really explicit on how to mobilise foreign workers within their ranks. Thus, it is critical to interrogate the Federation's constitution and how it might provide guidance on the question under discussion.

In its preamble, the federation states that:

[29] Interview with the then FAWU national organiser –Howard Mbana.08.12.12. Johannesburg: FAWU offices.

> We, the Trade Union representatives here present firmly commit ourselves to a unified democratic South Africa, free of oppression and economic exploitation. We believe that this could only be achieved under the leadership of a united working class.

Its opening statement appreciates unity of the working class irrespective of nationality and origins, which partly explained why foreign workers participated in the struggles against apartheid. Nonetheless, it is important to point out that what brought together solidarity among these workers were the harsh conditions under which they were exposed to as the Black working class as we shall see in Chapter 5.

The Federation was founded on six principles which are listed below:

1. To organise the unorganised workers and build effective trade unions based on the democratic organisation of workers in the factories, mines, shops, farms and other workplaces.

2. To organise national industrial trade unions, financed and controlled by their worker members through democratically elected committees.

3. To unify national industrial trade unions, under COSATU's leadership.

4. To combat the divisions amongst the workers of South Africa and unite them into strong and confident working class formations.

5. To encourage democratic worker organisation and leadership in all spheres of our society together with other progressive sectors of the community.

6. To reinforce and encourage progressive international worker contact and solidarity so as to assist one another in our struggles.

Of these, principles 1, 4 and 6 partly address the organisation's attitude towards all workers wherein unity and international worker solidarity are viewed as paramount in workers struggles. Interestingly, none of the principles creates any binaries between citizens and non-citizens. This implicitly appreciates the universality of workers' rights and the fact that South Africa's struggle against apartheid was won through international solidarity. Accordingly, membership is based on one's ability to pay subscription fees not on nationality except that one needs a "Green book" (national ID) to be a member. A quick survey of union recruitment forms still show that the only documentation which is recognised is the national ID. Some

respondents reported that they assumed that only locals were eligible to join unions as there was no space on the recruitment form to accommodate refugees and passport holders.

The Federation also identifies with the universal slogan of working class solidarity: "***An injury to one is an injury to all***". This calls for unity among workers as a distinct class such that if one is exploited, then all workers are affected. However, in light of xenophobic attacks where foreign workers have been blamed for stealing jobs, what is on paper does not really resonate with what occurs on the ground. While some scholars argue from the standpoint of Pan Africanism, that South Africa needs to reciprocate the hospitality it received from other African countries in its struggle against apartheid, history does not ring a bell in the current generation and xenophobic discourse.

Other than the above mentioned statements, a review of the entire Constitution of the Federation does not reflect any biases based on nationality or citizenship. For instance, leadership is drawn from all shop stewards irrespective of their origin as long as they have been nominated by their affiliates; it is not up to the Federation to question who becomes a leader. This could partly explain the reason why some very senior leaders of the Federation are foreign workers. Be that as it may, the fact that COSATU is not explicit on its position on foreign workers could constrain or facilitate mobilisation, participation and representation of foreign workers in its structures. More in-depth analysis based on empirical data is provided in Chapter 7.

While efforts have been made by the federation and its three affiliates; the NUM, SACCAWU and FAWU[30], COSATU much like other national federations has not yet developed any specific policies on migrant labour. As mentioned earlier, the federation somewhat addresses the issue of migrant workers issue through programmes offered by its international solidarity department although relying more on GUF driven and funded projects. This is not enough considering the federation's principle of "One industry, one union; one federation". The question is how the federation could implement the international policy while on the side-lines it indirectly excluded some workers. At the same time, the federation views those who contravene this principle as rivals yet it failed to reach out to all workers such that foreign workers are compelled to self-organise in silos.

[30] Before leaving the federation in 2015

4.7.2 FEDUSA policy and responses

The second largest national federation is the Federation of Unions of South Africa (FEDUSA) which was founded in 1997 and comprises of 18 affiliates and approximately 375 000 members. Affiliated to the International Trade Union Confederation (ITUC), little is known about its efforts to mobilise migrant workers or those vulnerable categories of workers falling outside of standard employment. It seems much criticism of trade unions is centred on COSATU as the largest national centre. Although non-discrimination clauses in its constitution tend to assume a homogenous working class, there is an acute absence of foreign workers language in the union's policy documents in particular its constitution as shown in the statements below drawn from its guiding document.

Clause 3.6: of the Mission statement reads to:

> Promote a democratic labour environment and society, free from any unfair discrimination against gender, religion, race, culture or political beliefs or any other form of unfair discrimination against any individual or group of people

Clearly, the statement demonstrates that the Federation denounces any form of discrimination although it is not explicit on discrimination based on nationality, which kind of treat all workers as homogenous in the labour market.

Again, in Section 4 there is no mention of nationality or foreigners in as far as membership is concerned where emphasis is placed on affiliates as recruiters on the ground. Also, nothing is mentioned in relation to nationality or citizenship in as far as election of National Office Bearers (NOBs) or any positions in constitutional structures is concerned. To some extent, this silence allows space for participation of foreign workers in its ranks.

Section 19 focuses on Equity Forum and Clause 19.3 reads:

> Strive for the elimination of discriminatory practices and to ensure equality in the workplace;

However, the clause is not very clear about the kind of discrimination it censures considering the various forms of discrimination that exist. However, this loophole in the Federation's constitution could create a good opportunity for mobilisation, participation of foreign workers

in its rank and file. In his presentation at a workshop on organising vulnerable workers[31], the media and research officer for the federation – Frank Nxumalo, indicated that the union fully supports all workers including those working in vulnerable sectors like informal economy, ZamaZama, street trades, sculptors (whom he said could take 3 months to sell their wares yet they need food on the table) including migrant workers. In this regard, the Federation played a very pivotal role in lobbying for the adoption of an ILO instrument – Recommendation 204 adopted in 2015 and is aimed at formalising the informal. Nonetheless, he cautioned that immigrants need to be responsible and have the obligation to pay taxes in the same way as locals.

4.7.3 NACTU Policy and Responses

Formed in 1986, the National Council of Trade Unions (NACTU) is the third largest national trade union centre in the country consisting of 19 affiliates and there is no clear statistical data on its membership. It is affiliated to the International Trade Union Confederation. Not much is known about the federation's position and policy framework on migrant labour. This is further complicated by the fact that its constitution is not readily available to the public. The researcher made various efforts to access it but in vain.

4.7.4 CONSAWU Policy and Responses

Launched on the 8th of March 2003, the fourth national labour centre is the Confederation of South African Workers Union (CONSAWU) comprising 20 affiliates, although no statistical data on membership is available to the public. The Federation is not aligned to any political party. Internationally, the Federation is affiliated to Democratic Organisation of African Workers' Trade Union (DOAWTU), World Confederation of Labour (WCL) and International Trade Union Congress (ITUC) as acknowledged it its preamble that:

> Whereas, we, the representatives of Federations, Trade Unions, Social and other organisations here present accept, commit and subscribe to the principles adhered to by DOAWTU and the ITUC, which are to:
>
> (a) organise all workers employed and unemployed to build effective trade unions and other organisations based on the principles and programmes subscribed to by all workers in any circumstances and workplaces;

[31] Frank Nxumalo. Workshop Presentation: A Consultative workshop on organising strategies and tools. African Centre for Migration & Society (ACMS). Johannesburg: University of the Witwatersrand

(b) organise Federations, Trade Unions, Unemployed and Community-based Organisations, financed and controlled by their members through democratically elected committees;

(c) combat the divisions amongst the workers of South Africa and unite them into a strong and confident work force;

(d) encourage all workers' organisations and their leadership in all spheres of our society together with other progressive sectors of the community to strive for unity;

(e)reinforce and encourage progressive continental and international worker contact and solidarity; and

(f) strengthen the activities of Democratic Organisation of African Workers' Trade Union (DOAWTU) and the ITUC in Southern Africa.

Evidently, like the other three Federations, the statements above are nationality blind and also open to the assumption that the working class is homogenous hence the issue of migrant labour cannot be isolated from the general workers' struggles. In fact, the organisation emphasises unity amongst all workers and has a strong grounding in international solidarity as indicated by this expression in its constitution:

> To this end, we, as this Confederation, shall determinedly seek to further and protect the interests of all workers in South Africa and Internationally

How the federation will undertake the responsibility of protecting all workers internationally is not well spelt out. This seems to be a huge responsibility given the fact that at home (in South Africa) foreign workers are not fully organised. However, the clause opens up an opportunity to organise foreign workers considering statement (e) which promotes worker contact and solidarity. This objective could stand as a starting point for organising workers along the production chain irrespective of borders (see Webster et al, 2009) and could also serve to ground a much clearer policy development process. While these objectives are enticing, it still remains to analyse their practicality on the ground. Statement (f) undoubtedly demonstrates that the federation is guided by the Global Union Federations (DOAWTU and ITUC) which it is affiliated to, rendering itself to criticism that their international solidarity programmes are influenced or driven at international level. In other words, the federation's policy on migrant labour could be donor-driven (see Castel –Branco, 2015: 99). In section 3, Clause 3.3 which covers aims and objectives of the constitution, states:

> To strive for the building of a united working force regardless of race, colour, creed, gender, individual affiliation or origin.

This is the only trade union constitution which includes origin as a factor not to be discriminated against and implicitly mean country of origin as is not confined to South Africa. Origin could be anywhere outside of the country where a worker comes from.

Also in clause 3.4, it says:

> To encourage all workers to join trade unions and to develop a spirit of solidarity among all workers on the principles of equality, peace and justice for all workers.

And in 3.19 it also reads:

> To strengthen and advance the activities of Democratic Organisation of African Workers' Trade Unions (DOAWTU), ITUC, independent trade union action and solidarity.

And 3.20 states:

> To affiliate with like-minded organisations; both regionally and internationally.

All the three objectives appreciate the need for regional and international integration and at the same time, implicitly create a n enabling environment for mobilising workers irrespective of nationality.

In Section 4, Clause 4.4, a "member" means an affiliate/association that pays membership dues and is in good standing as prescribed by this Constitution. Considering the objectives of the organisation, it is the prerogative of affiliates to organise foreign workers as guided by the Federation and foreign workers can only come through affiliates. This is dangerous in the sense that if an affiliate decides to shut down membership at shop floor level on nationality grounds, even if the mother body accommodates them, they cannot jump protocol and affiliate as individuals. Thus, it is up to the Federation to educate and sensitise its membership to avoid non-adherence to its principles and objectives on regionalism and international solidarity. These concepts should not only be applicable to South African trade unions when it is suitable for them, but that solidarity is expected to be reciprocal.

Section 5; Clause 5.2 speaks of associate membership as alternative routes into the Federation and recites:

> Associate membership shall be open to any organisation with labour-based programmes. Criteria for admission and benefits of membership shall be determined by the NEC subject to the condition that they shall pay only the registration fees set by the NEC.

Also Clause 5.3 says:

> Membership shall be open to all unions, associations and social organisations that subscribe to and conform to the requirements of the Constitution of the Confederation subject to the acceptance of their application in terms of this clause. A provision can be made for any other organisation, with labour programmes, not named herein

And 5.9 read:

> Applications for membership by non-registered organisations may be considered by the National Executive Committee, subject to granting the said applicant a three month window period, after which the applicant shall have finalised its registration.

The three clauses create an opportunity for mobilisation of foreign workers through labour community partnerships (see von Holdt 2002) in which trade unions partner with community –based organisations or worker advice offices to address labour related challenges as will be explained in chapter 7. This hybrid model allows for each partner to address problems within their areas of speciality. For instance migrant rights organisations might assist foreign workers to acquire documentation and also refer such workers to trade unions whose mandate is to negotiate on behalf of workers at the collective bargaining table through the statutory tripartite NEDLAC process.

4.8 The Cases of NUM and SACCAWU

The study focuses on two cases of mining and hospitality sectors and it is critical to interrogate the constitutions of the two unions under study – the National Union of Mine workers (NUM) and South African Commercial, Catering & Allied Workers Union (SACCAWU) in order to understand the constrains and opportunities for organising foreign workers created through their policy frameworks.

4.8.1 NUM Constitution

The National Union of Mineworkers was founded through collective efforts of local and foreign workers. Class consciousness in response to poor working conditions characterised

workers collective action against apartheid albeit divisions along ethnic lines. The union is well known for its open door policy which embraces all workers irrespective of nationality. Further, in the early years of democracy, the union played a very instrumental role in shaping legal and policy development related to migrant labour. In particular, it fought for the regularisation of mine workers and ensured that those foreign workers who had worked for five years or more were granted amnesty in the form of permanent residence or citizenship of South Africa. This to a greater extent facilitated mobilisation and today, the mining sector is highly unionised recorded at more than 70% unionisation rate. Surprisingly, the union has not yet developed specific policy on migrant labour although its constitution allows for mobilisation of foreign workers within the union rank as illustrated below.

The first aim of the NUM as reflected in clause 1.7.1 is:

> to recruit and unite into a single labour organisation all workers employed in the mining, energy, construction and allied industries in order to enhance their economic and social welfare;

In clause 1.7.6 the constitution encourages "unity and co-operation amongst all workers in the mining, construction and energy industries and allied industries" and this is not conditioned on citizenship. As noted in the constitutions of national federations, this is problematic as this overshadows the special needs of foreign workers which partly constrain their integration and mobilisation. It is also important to note that the current workforce has been fragmented as a result of globalisation and the competition attached to it. Most importantly, economic restructuring in the sector has resulted in precarious and casual employment relations. As a result, intense competition for job opportunities has occurred thus dividing solidarity among workers based on nationality and employment contracts.

And in Clause 1.7.7, the constitution aims to establish contacts and relationships with other trade unions, trade union federations and labour organisations nationally and internationally for the benefit of members. This demonstrates the union's strong belief in international solidarity and the practicality of this is expected to begin at home by embracing and representing workers coming from other countries who work in the three sectors organised by the union.

According to the constitution, membership is open to all workers employed in mining, energy and construction and allied sectors but this is dependent on approval by Branch Committee. This approach is problematic if those at the grassroots level have not been educated and

conscientised on the importance of embracing migrant workers into their structures. Union leadership and benefits are open to all as long as a member is in good standing in line with the constitution of the union.

Associate membership is open to those not employed in any of the sectors organised by the union but have professional expertise or qualifications in respect of professions, trades or occupations, including students studying in relevant sectors. Honorary members can be conferred posthumously. Both associate and honorary members attend official union proceedings as observers. However, they cannot vote on union matters or stand for election for any union position. A review of the union's archival documents shows that foreign workers are among those honorary members who were conferred posthumously, demonstrating the union's appreciation of foreign workers role and contribution towards the organisation. Ex-foreign miners and leaders of the first Black mineworkers unions who were cross-border migrants are recognised in the same way as their local counterparts and some union boardrooms are named after them.

4.8.2 SACCAWU Constitution

The South Africa Commercial, Catering and Allied Workers Union (SACCAWU), is the largest union organising in the hospitality sector, comprising of 120 352 members (COSATU Organisational Report, 2015). The union is involved in organising casual and migrant workers. It is critical to understand the gaps and opportunities presented by its constitution and policies.

Some of its objectives which are relevant to this study include:

1.2. to build a democratic, just, non-racial and non-sexist society free of all forms of exploitation and oppression;
1.3. to struggle for the abolition of the Capitalist System and for the establishment of a classless Society.
1.6. uniting all Workers in the Trades/Industries in which we operate into one strong National Union;
1.8. participate actively in the mobilisation of the broader Working Class.

1.16. to oppose any policy, practice or measure which will cause division or disunity amongst Members or Workers;
1.17 to promote or oppose any laws or administrative measures that affect the interests of workers

Interestingly, all the objectives listed above are nationality or citizenship blind and are grounded on a common class consciousness against capitalism (clause 1.3), non-racial and non-sexist which resonate very well with the union's constituency which is predominantly black women (clause 1.2). Emphasis is placed on unity and solidarity amongst workers in all sectors organised by the union. The objectives seem very ambitious as they go beyond the union's own jurisdiction which is to fight for all workers' rights and also to oppose legislative and policy frameworks which are not worker- friendly (clause 1.17). From the aforementioned objectives, it is clear that the constitution of SACCAWU implicitly allows for the mobilisation, participation and representation of foreign workers in its ranks. However, it is still important for the union to develop objectives which speak directly to its position on foreign workers and of course develop a clear policy on migrant labour. The practical application of the union's constitution will be discussed in Chapters 5, 6 and 7, based on analysis of data gathered in the field through workplace census, life histories, interviews and observations. In these chapters, an analysis of internal discussions, motions, circulars, workshops, guidelines is discussed in more detail.

4.9 Summary

This chapter explored how state laws and policies on migration and labour shape foreign workers mobilisation, participation and representation in a post-migrant labour regime. Key findings that emerged are that migration laws, in particular the Immigration Act of 2002 and the Employment Service Act, metaphorically are 'violent' towards foreign workers in particular those possessing low skills. Further, these two pieces of legislation, in a way tend to undermine the objects of labour law thereby impede mobilisation. For example, various categories of migration status attached to foreign workers including the length of time permissible to work in South Africa exposes them to different levels of vulnerability and paternalistic relationships with their employers. As discussed before, legislative and policy gaps result in increasing precarity, low wages, and unchecked safety hazards for foreign workers.

The chapter revealed that significantly, migration laws tend to benefit highly skilled migrant workers (see Ryan 2005) and employers. Indeed, highly- skilled migrant workers tend to benefit from long term contract regimes while employers would prefer employment of temporary migrants with the idea of under-cutting on social security responsibilities like pensions (see Menz and Ruhs, 2014: Ryan, 2014). In other words, the chapter suggests that

migration laws and policies are highly employer-driven to maximise profits and for government, it serves the purpose of including and excluding certain categories of migrants.

As it stands, South Africa's migration law places the obligation of monitoring foreign workers at the workplace on employers which makes it difficult to report cases of unfair labour practices to the Department of Labour as workers are threatened with dismissal or deportation as the Department of Home Affairs (DHA) places its trust on employers. In this way, migration law conflicts with the objectives of labour law whereby priority is given to employer interests for labour over protection of workers (see Costello and Freedland 2014). This, as revealed by the review, could be attributed to a lack of foreign workers representation on DHA board which develops laws and policies but includes only tripartite partners – government, organised labour and employer representatives. It is difficult to find a foreign representative among the three partners as few migrants are unionised and for those within the union ranks, none of them assume top leadership positions to be eligible to represent labour on the Board (see Chapter 7).

As this chapter demonstrated, migration policies create an enabling environment for exploitation as it is the prerogative of employers to monitor foreign workers at their workplaces on behalf of the state. Also the work permit regime is very short-time-framed such that foreign workers are discouraged from exercising their worker power and rights as granted by labour law, which is crafted to protect all workers irrespective of their migration status. In this case, labour law is subordinated to migration law and one cannot fully exercise their labour rights unless they have the right to work in the country. But even so, the short contracts and precarious nature of employment make it difficult to mobilise foreign workers into trade unions or any other worker collectives. Failure to join unions or other workplace committees ultimately translates into a representation gap for these workers. However, the chapter shows that while South Africa does not have specific binding instruments to specifically address foreign labour and where gaps exist within the national laws, foreign workers could seek recourse through the national Constitution, universal human rights law, international labour instruments; conventions, protocols and recommendations or regional frameworks governing migration and labour. The challenge is the acute lack of knowledge of migration and labour laws and policies among migrants as will be shown in Chapters 5 and 6. In her study of the British law, Bernard (2014) noted that the labour law was designed to protect migrants as well although gaps existed coupled with ignorance of labour rights by migrant workers themselves.

Unions in South Africa have been criticised for neglecting local vulnerable workers like contract, out-sourced and casual workers as they still confine themselves to traditional ways of organising which prefer permanent to those outside of standard employment relationships. Nonetheless, some unions have realised the reality of the current workforce and the fact that excluding vulnerable workers like foreign and casual workers will in fact water down some of their efforts through undercutting of wages and as such have begun to seek ways of integrating foreign workers into their ranks as demonstrated in Chapter 7. While COSATU and CONSAWU dependent on international programmes to respond to the issue of migrant workers, at least, this is somehow an expression of political will in contrast to FEDUSA and NACTU, who seem to pay a 'blind eye' towards the entire discourse around cross-border migrant workers. At the same time, there is colossal hypocrisy related to international solidarity as unions attempt to strategically position themselves at global level while they shun immigrants within their borders back home (see Hlatshwayo, 2017). If unions are truly unpretentious, then the starting point ought to be embracing vulnerable migrants who continue to be exploited by unscrupulous employers simply because they are overwhelmingly under-represented.

The review of the Immigration Act of 2002, Employment Services Act, Labour Relations Act and the Mining Charter reveal that the state is usually biased towards business interest such that laws and policies are crafted in such a way that they respond to the labour market needs of employers. In the same vein, there is a huge contestation between the purpose of labour law which is to protect workers labour rights versus that of migration law which operates on the principle of demand and supply, whilst at the same time with the objective to satisfy the needs of business.

The review of legislative and policy frameworks of South Africa also reflects the standard assumption that it is pre-dominantly the receiving state that regulates migration (Costello and Freedland, 2014: 3) and this is reflected through the contestations of the SADC Protocol on Free Movement of People. Further, the review shows some contradictions and tension between the South African government's commitment to global market forces and its protectionist attitude which restricts job opportunities to its own citizens as enforced by its Immigration Act of 2002. Most importantly, the Immigration Act of 2002 inherently gives top priority to South Africa citizens and permanent residents' interests in the labour market (see also Budlender, 2014: Fauvelle Aymar, 2014). It seems also that South Africa's

migration laws and policies tend to create a hierarchy based on skills as it seeks to include and exclude certain migrants.

While South Africa possesses some of the most progressive labour laws and policy frameworks for protecting workers, other than playing a regulatory role on employers and foreign workers entry and employment in the labour market, they are however silent on how these workers can fully participate in industrial relations. Data gathered through key informant interviews, in chapters 5, 6 and 7, reveals a common consensus among policy-makers which holds the view that they see no need to exclusively mention foreign workers in the labour law as a special category as they constitute part of the working class. Devious employers take advantage of such loopholes in labour legislations and policies to exploit foreign workers. At the same time, foreign workers feel alienated and not protected by the law hence they are reluctant to join unions and even participate in workplace processes which affect them as revealed by workplace census data and in-depth interviews as we shall see in subsequent chapters. The chapter suggests that where deficiencies to protect foreign workers are noted in migration and labour laws; international human rights, equality laws, regional and ILO instruments take precedence. However, the challenge is that these international laws are voluntary in nature and poorly enforced. Again, the beneficiaries, in most cases are not conscientised and educated about international human rights and labour instruments which makes it difficult to seek recourse through that route.

The review also unpacked the contradictions between South African government's commitments to international solidarity principles (manifested through ANC policies although not discussed in this chapter). In contrast, migration laws are used as tactics against 'social dumping' although the skills –shortage still stands out as motivation for attracting foreign labour to the country. Similarly, trade unions are guided by strong international solidarity principles (through their Global Union Federations (GUFs) but seem reluctant to develop specific policies on migrant labour. In a way, international solidarity programmes serve the purpose of positioning local unions at international level to benefit their local membership and not to service foreign workers within their ranks. In the same vein, the question is why unions' hypocrisy of 'caring' about foreign workers outside the borders while neglecting those who are already within the country. It is the culture of South Africa unions to support 'sister' unions and their members in other countries by providing both material and solidarity support in times of crises. Thus, from the documentary review, it seems reasonable to conclude that South African trade union culture does not develop in a

vacuum; rather it develops against the laws and policies of a country. In the final analysis, the review revealed that an absence of clear policies on foreign labour from both sides; government and trade unions, to a greater degree result in immobilisation, poor participation and representation gap of workers.

Chapter 5: Workplace restructuring and foreign workers' mobilisation in formal and informal mining sectors

5.0 Introduction

> We would need to appreciate that the NUM was started by migrants from Lesotho and Eastern Cape in the 1980's … and the first leaders of our movement were migrant workers. In fact, we should remember that the economy of South Africa was built by migrant workers from Africa and Europe plus South African migrants from the Bantustans. With respect to this history, we are making efforts to integrate migrant mineworkers into local communities working with SANCO[32] and ANC[33] to educate members and communities around the mines … about the history of South African economy and the role that migrant workers played … If you look at what migrants bring, some bring skills that are not locally here and the NUM lobbied the government that mineworkers who have a certain number of years should be given South African citizenship through amnesty. All this was in recognition of the role that migrants played in contributing towards the economy of this country and shaping the political landscape. Some of the shop stewards then were people in the liberation movement trained politically and otherwise. Some of them had political experience from their countries of origin and liberation movements like FRELIMO, ZAPU, ZANU[34] and some even participated in ANC, PAC and so forth so those were the people who were giving political direction to the union (Thomas Ketsise, the then National Union of Mineworkers (NUM) Head of Research and Policy Pillar in 2012).

This chapter seeks to cultivate an understanding of the mobilisation trajectories among foreign mineworkers from the early years of industrialisation to the complexities created by the profound restructuring of the sector in the 1990's In particular, the chapter attempts to develop a deeper insight into how such restructuring and reflective change in the nature of the mining labour market with the growth of informal migration, informalisation and illegal mining have shaped mobilisation of the contemporary foreign mineworkers. Further, the

[32] South African National Civic Organisation
[33] African National Congress
[34] See acronym and abbreviations section

chapter demonstrates that rigid immigration laws promulgated during apartheid and in the post-apartheid periods; workplace restructuring and retrenchments including the lack of any accompanying social measures by mine corporates compel foreign workers to enter South Africa illegally and ultimately engage in informal mining activities. This, to a great extent has resulted in poor mobilisation as miners become double "offenders" herein as 'illegal' migrants and 'illegal' miners). While the employment of contract migrant workers in the mining industry has declined, clandestine or illegal migration has escalated and correspondingly clandestine economic migration to South Africa continues, driven by poverty and unemployment in home countries and fuelled by expectations that democracy in South Africa might create a more accommodating environment (Davies and Head, 1995:205). In addition, the chapter shows how historically the state has colluded with business to supress workers' labour rights while at the same time maximising profits by exploiting cheap foreign workers through the migrant labour system. During apartheid, mining companies had the privilege to hire labour from within (homelands) and cross-border migrants without any immigration restrictions and also, the recruitment process was supported by government to government bilateral agreements.

One of the key findings from this chapter is consistent with the Marxist theory which contends that class conflict is a central component of industrial relations regardless of race (see also Wocke and Marais, 2016). This is manifested by the violent and 'bloody' strike by White mineworkers in 1922 and we also witness such violent strikes in the post migrant labour regime whereby 34 miners were brutally massacred by police at Marikana while protesting for wage increment (see Alexander, et al 2012; Alexander, 2013). In other words, exploitation of workers does not take into account racial divides although in the context of South Africa, the level of prejudice and exploitation was worse among Black workers, who, at that time, were also denied the right to join trade unions. Despite the fact that White miners benefited from white supremacy and did not forge solidarity with the super-exploited Black miners, still they were also prone to the dictates of capitalism whose tenets are to extract the cheapest labour power in order to gain maximum profits. Thus, a class analysis in relation to dialectical social relations (race, gender and other social factors) is critical in our understanding of mobilisation of mineworkers in general and foreign workers in particular; where in there is need to further deepen our understanding of how migrancy shapes political subjectivities. An analysis of workers mobilisation trajectories, therefore, must proceed from "the recognition of the primary causal importance of the capitalist mode of production which

divides societies into two basic irreconcilably opposed classes, namely employers or those who can subsist only if they sell their labour power on the other hand" (Allen,1992:4). In other words, in terms of workers mobilisation, participation and representation, it is important that workers are conscientised of their class position and interests in general and migration status for foreign workers.

In terms of methodology, it is important to point out that of the three unions organising in the mining sector, I only managed to access the NUM, although after much effort. While I made efforts to contact the other unions organising in the mining sector such as AMCU and Solidarity in order to triangulate data sources, this proved to be a futile task. As a result, much of the views presented in this chapter and the entire thesis are predominantly from the NUM and need not be read as a bias or targeting of the union. Again, given the amount of time and resources dedicated to the fieldwork, including the choice of ethnographic methods, it was difficult for a single researcher to focus on all unions organising in the mining sector as ethnography requires one to spend a substantial amount of time at a particular fieldwork site (see Chapter 2). Nonetheless, I made several attempts to contact other relevant unions for in-depth interviews without success. Since the devastating incident which occurred at Marikana in 2012, where 34 miners were killed during a wage strike (Alexander, et al, 2012), it has been very difficult to access unions or formal mines for research purposes. In 2012 and 2013, I was involved in a research project popularly known as MiWORC (Migrating for Work Research Consortium), which was co-ordinated by the African Centre for Migration and Society (ACMS) at the University of the Witwatersrand whereby we also faced access constraints We conducted sectoral studies in four economic sectors; domestic, agriculture, hospitality and mining. While the four sectors presented some challenges in terms of access to the workplace, we only succeeded in accessing the first three but dismally failed to gain access in formal mines. By then, my assumption was that we needed ample time to negotiate but adding together the total time I spent trying to access the formal mines beyond the MiWORC project and then working on my PhD fieldwork, it proved to have taken me almost full five years to gain access.

Using data from archival material, life histories, key informant interviews, focus group discussions and participant observation, this chapter examines mobilisation trajectories among foreign mine workers in formal and informal mining in the period between 1980 - 2015 although reference will also be made to the spontaneous resistance by mineworkers

during colonial times. It reveals the genesis and expansion of trade unionism and worker resistance in Africa since the importation of British, Indian and Chinese indentured foreign labour in the early years of industrialisation in South Africa. While the researcher succeeded in triangulating data sources through varied methods, the major limitation of this study is the over-reliance on primary data gathered through access to NUM archival material as well as participants drawn from the same unions as other trade unions organising in this sector were not available to participate. Even so, it took me two years to secure access to the NUM who later negotiated for my access to formal mines in early 2016. The chapter is organised into various sections as follows; introduction, background, various sub-themes based on empirical data categorised into two: Part 1, based on the formal mining sector and Part 2 focuses on informal mining popularly referred to as 'illegal' mining in South Africa. Finally, a summary of major points which emerged from the discussions is provided.

5.1 Background

The mining sector in South Africa has and continues to play a very central role in providing employment and livelihoods to thousands of domestic and international households over the last century. In its most overt form, the labour migration regime supplied male migrants to the country's primary gold mines. Alongside this, a number of small-scale artisanal miners, and parallel economic activities related to mining have created work and income for many in the region through the migrant labour system.

The migrant labour regime was a system established by the apartheid government to control and manage cross border labour migration through government-to-government bilateral with sending governments, and was characterised by corruption, racial double-standards and special privileges for certain employers (Reitzes, 1998, 1995a; Dolan, 1995; Sinclair, 1996; Crush, 1998a,b). The primary goal of the migrant labour system was to ensure relentless and reliable supplies of labour to the mines. Burawoy (1976:1) maintains that:

> For a capitalist economy to function its labour force must be maintained; that is, workers must receive a historically determined minimal day-to-day subsistence. It must also be renewed; that is, vacancies must be filled. A system of migrant labour is characterized by the institutional differentiation and physical separation of the processes of renewal and maintenance. These mechanisms in turn are made possible by the migrant workers' powerlessness in the place of employment, in the labour market, and under the legal and political systems where they are employed. (Burawoy, 1976)

As mentioned in the above statement, the migrant labour system relied on extraction of labour power from men who came to work in the mines and at the same time social reproduction which was borne by women in the rural areas or countries of origin through subsistence farming (Burawoy, 1976). The deliberate physical separation assured business of maximum profits as migrant miners meagre wages were primarily used to subsidize subsistence farming activities to ensure social reproduction for the system to continue. Also, mining companies managed to circumvent social security responsibilities such as provision of accommodation to miners and their family (see Head 1995; Seidman, 1995). In his thesis, Arrighi, (1973) show how the disconnection between points of social reproduction and industrial production allowed maximum profit. This could be the reason why mining companies even till today are reluctant to provide accommodation, an issue which was also at the core of the Marikana labour dispute. This contradicts some of the key objectives of the Mining Charter, which clearly highlighted the importance of dismantling hostels and accommodating families of miners on compounds. Mine A has begun the process of converting hostels into family apartments so that miners will be able to reunite with their families.

According to Dibwe dia Mwembu (1993; 2001)[35], in Katanga in the Democratic Republic of Congo (DRC), Belgian mining companies facilitated marriage and expansion of medical services of their workers as a way of stabilising their workforce. In this regard, policies were introduced to incentivise social reproduction (including maternity gifts and tax exemption for monogamously married men with more than four children) as the Belgian believed that protection of Congolese children, the future of work, while abortions, prostitutions, polygamy were prohibited and thus it was necessary to ensure quality social benefits for workers. In the post migrant labour regime, aside occupational related diseases, sexually transmitted diseases have become prevalent such that mining companies need to seriously consider providing family accommodation for workers especially migrants so that they could bring along their families. As it is, migrant miners sometimes only go back home for visits twice a year and spend little time with their wives and children. Thus, foreign workers could be mobilised around the issue of accommodation and family re-unification.

[35] Dibwe dia Mwembu, Donatien. *Bana Shaba abandonnés par leur père: structures de l'autorité et histoire sociale de la famille ouvrière au Katanga 1910–1997*. Paris: L'Harmattan, 2001.———. "Les fonctions des femmes africaines dans les camps des travailleurs de l'U.M.H.K. (1925–1960)." *Zaire-Afrique* (1993): 105–18. Djungu-Simba, Charles. "La figure de Patrice Lumumba dans les letters

While migrant labour to the mines may no longer be the most significant form of migration, it is still, nevertheless, very important in terms of the income it generates for the labour supplying states and as a source of employment for their citizens. Mine labour is well pronounced among certain countries and in particular, it is claimed to be central to the experiences of people living in southern Mozambique and Lesotho (CEA 1987a &b; de Vletter 1998; Head 1995; Manghezi, 1980; Nshimbi and Fioramonti, 2013). Generations of fathers and sons have worked underground, and some scholars in particular de Vletter (1998), writing about migrant Mozambican miners claims that there is hardly a family from which someone has not migrated to the mines. Today, many women are entering the mining industry and foreign migrant women are not an exception. In the post migrant labour regime, highly-skilled women are also migrating to work in the formal mines as geologist or engineers while those with low skills engage in livelihood activities in abandoned mines as will be explained later. Furthermore, foreign migrant women began to enter the mines working underground as substitutes when their fathers die where there are no sons to replace them. This was revealed through an interview with one of the veteran ex-miners as expressed below:

> As long as girls have turned eighteen and are keen to work in the mines, they can be employed in the same way as South Africa currently allows women to be employed to work underground against the apartheid law (Interview with Tata Moises AMIMO 06.07.2016).

The introduction and later institutionalisation of migrant labour disrupted both the patterns of peasant production and its social organisation. Undeniably, the absence of men for twelve or eighteen months at a time effectively separated them from their normal social reproduction and productive tasks in their homes. Gradually many of these tasks were taken over by artisans who would be paid out of remitted migrant wages (Roesch, 1986: Migueis Lopes Junior, 1980: Head, 1995). At the same time, the length of stay on the mines, averaging between 12–18 months to some extent rendered migrant miners very submissive to authorities as postulated by Allen (1992:14) who writes:

> The South African mineworkers rarely left the compounds within which they worked and lived for the whole duration of their 12 -18months contracts. At that time I could never have imagined them resisting managerial authority and organising a trade union.

> For them, work in the mines was like a prison sentence imposed, not by a magistrate, but by poverty.

The above statement points to space and boundaries which locked out Black migrant workers from mobilisation and this was exacerbated by hostel rules including paternalistic relationship whereby miners viewed hostels as their homes and mine management as doing them a favour through provision of accommodation. Also poverty forced them to submit. African mine workers were impoverished by the proletarianisation process and the introduction of taxes such as the hut tax otherwise. Before the arrival of settlers and the introduction of capitalism, they used to rely on subsistence farming to generate food for their own families and barter trading of surplus from their harvests. Poverty was brought in by the capitalist system which forced them to seek employment in the mines and work under very hard conditions in order to meet the political and economic demands.

Aside, mining gave rise to an upsurge in demand for skills such as engineering which was relevant to extract minerals. Unfortunately, the locals did not possess such skills and artisans were recruited from overseas mainly from the United Kingdom. In addition to their skills, the British artisans imported trade unionism, which is to a large extent associated with the migrant labour system. In other words, mobilisation of mineworkers in South Africa has a long history stretching back from the discovery of diamonds in Kimberly in 1870 and gold in 1882 (although official gold mining began in 1886) in the Witwatersrand. When the British mineworkers came to work in the mines; they imported their trade union experience, which they used to influence decisions and to demand for better working conditions. This point is supported by Allen (1993:55) in the statement below:

> These artisans brought with them not only the knowledge and skills necessary for mining, but also British trade unionism which provided them with a power base in the work environment when interacting with their employer (Allen, 1993:55).

By then, laws were selective and only allowed white mineworkers to establish and join trade unions thereby dividing class-based solidarity of workers along racial lines (Allen, 1992). Until 1930, African workers who included among them foreigners from neighbouring countries were denied the right to join unions and to fully participate in industrial relations in the workplace. Today, while the law in particular the national Constitution guarantees labour

rights to all workers, it is however depressing that the immigration laws are still rigid and suppressive towards foreign workers mobilisation as shown in the previous Chapter 4.
White immigrants from overseas were usually more skilled than local white Afrikaners and African workers (see Nel and van Rooney, 1993). However, as the mining industry expanded, more labour was required as White labour became insufficient. This resulted in the recruitment of more Black labour from within South Africa and countries in the southern African region including imported indentured Chinese labour, and these were often positioned in skilled jobs but paid rates of unskilled workers. Chinese and Asian workers on the mine brought in an absolute multi-racial and complex population which resulted in racial friction and discrimination. Interestingly, the Asian workers were militant enough to challenge and defy any injustice by management in the workplace and as such many were fired and deported. African workers were paid to police Asian workers in the township and this created huge rifts among workers (Allen, 1992) themselves thereby dividing class solidarity.

At the same time, White categorised jobs were allocated to Blacks as mining activities expanded. White workers were not happy with the hiring of Black labour to fulfil their racially defined tasks and this resulted in industrial relations conflict (Allen, 1992). As the collusion between the state and business became stronger, the latter promulgated an Act known as Ordinance No. 17 of 1904, a discriminatory legislative against non-South African and non-White workers especially Chinese (Nel and van Rooney, 1993). This piece of legislation barred Black workers from joining trade unions and at the same time "maintained job standards which prevented dilution and fragmentation and thus depriving other workers (Africans) of the opportunity to acquire the relevant skills" (Allen, 1992: 56).

In the post-migrant labour regime and according to de Vletter (1998), the ushering in of democracy shifted the age and racial dynamics on the mines skewed towards the Black labour drawn locally and from countries in the southern African region. While more African men entered the mines, contrariwise, Dodson (1998) claims that the gender question was not fully addressed as shown by the continuous recruitment of male foreign migrant workers and as reflected by bilateral labour agreements between South Africa and neighbouring Mozambique, Lesotho and Swaziland. This meant that men would remain the primary migrants with legal access to the labour market in South Africa as dictated by bilateral agreements, and this constitutes gender discrimination (Dodson; 1998:37) as opposed to the

spirit and dictates of the new national Constitution. In the post migrant labour regime, we have witnessed feminization of labour migration whereby many foreign migrant women workers are employed in the hospitality sector as will be discussed in Chapter 6. Interestingly, the gender dynamics assists us to understand the shaping of political subjectivities in a post migrant labour regime.

5.2 The Political Economy of Mining: A Historical Context

Gold mining has been at the core of South Africa's economic growth and the country is one of the major producers of the mineral in the world (Nattrass, 1995). Accordingly, the sector has been the main magnet of migrant labour to the country. Thus, the sector has not solely benefited South Africa but the southern African sub-continent as a whole. Tylor (1981:14) upholds that:

> Southern African countries constitute a reserve army of cheap labour as the social security costs of labour are passed onto the rural economy on the false assumption made by the mining industry that migrant labour is a means of supplementing a self – sufficient rural sector through circular migration (1981: 14).

As a major contributor to the country's GDP, the gold mining sector is labour intensive and currently employs approximately 120, 000 people 2016 (Chamber of Mines, 2016). According to Jeeves and Crush (1995), "the economics of mining required the continuous operation of expensive ore-reduction works, which demanded, in turn, reliable supplies of labour" (1995:3). And as a solution, the early commercial miners found a remedy in foreign labour from the southern African region to work first in diamond fields and later at the discovery of gold in the Witwatersrand area in 1884 and its subsequent mining in 1886, to work in gold mines. When the white settlers came to South Africa, Africans had their own way of economic livelihoods as they practised subsistence farming. When diamond was discovered in Kimberly in 1870, the demand for labour intensified yet most locals were reluctant to leave their tribal lands to work in the mines. As a result, the early diggers, as an immediate response to labour shortages, introduced taxes such as 'hut tax' in order to force able bodied men to work in the mines, leaving the responsibility of subsistence farming to women and children.

Aside, labour migration to the mines was also a collective tribal decision whereby young Pedi men, in particular, were sent by tribal chiefs to go and work for guns so as to defend

themselves against the enemy. Other tribes like the Tsonga were forced to work as mine labourers because of natural disasters such as feminine. With increasing shortages of local labour, the settlers were forced to recruit migrant labour from neighbouring countries such as Botswana, Lesotho, Mozambique, Malawi and Swaziland. According to Allen (1992), in 1941 there were 300, 000 African workers and half were foreigners and Mozambicans constituted the majority. Of a total of 85, 377 mineworkers in 1903, Mozambicans were 45, 158 compared to 33, 563 South Africans, 2, 008 Basotho while other nationalities constituted 4,648 and the total share of foreign workers stood at 61.3% (Allen, 1992). Accordingly, between 1904 and 1906, approximately 63, 000 Chinese indentured workers were recruited (ibid). The number of Mozambican mineworkers was at its peak in 1927 with a total of 107, 672 out of a total of 215, 000 mineworkers although the overall percentage share of foreign workers had declined to 60.7 in the same year after the banning of recruitment of those from tropical Africa.

The percentage share of foreign workers was at its peak in 1908 and recorded at 85.4%. In the period between 1909 and 1939, the number of Basotho in the mines escalated from 3,895 in 1909 to a high of 48, 385 in 1939 (Allen, 1992). Unfortunately, the numbers began to decline in 1946 to 38, 200 and 35,700 in 1951. Also between 1931 and 1951, the number of Mozambicans in the mines fluctuated while more locals entered the mines between 1909 (61,135) and a peak in 1945 with a total of 210, 485. In 1951, the percentage share of foreign mineworkers increased again and stood at 64, 7% (Allen, 1992:xx). Indentured labour was also hired from Northern China and between 1904 and 1911, 60 000 Chinese workers were supplied to South African mines (Jeeves and Crush, 1995). Reliable labour supply was also guaranteed from Mozambique through South Africa's bilateral agreement with the Portuguese colonial government (Jeeves, 1985: Richardson, 1982). There is evidence to show that both groups of foreign workers were militant and mobilised against poor working conditions although the Portuguese colonial government intervened and deterred Mozambicans from participating in workers political struggles such as protests or strikes (Allen, 1992). This point was also raised in a life history interview with a very prominent ex-miner – Tata Mabea. White miners were also very militant and in 1907 and embarked on a very brutal and militant strike. Although, they were denied the right to join unions, African workers learnt a lot about mobilisation through the white mine workers' strike. It is important to point out that while mine owners really valued migrant labour, for political reasons, the British imperial government under the leadership of Smuts from 1919, was against

recruitment from outside as a means to reduce remittances through mine earnings which sustained the Portuguese colonial masters in Mozambique and imposed their hegemony and power as a strategy to force other imperial powers to surrender territories to them (Jeeves and Crush, 1995: 6).

5.2.1 The macro and micro political economy of mining in a post-apartheid labour regime

Over the past twenty years, structural changes have taken place in most economic sectors of South Africa. These changes have posed huge challenges to the mode in which work is organised including recruitment strategies. For instance, the mining sector has witnessed economic and labour restructuring in its core sectors relying mostly on outsourcing and sub-contracting labour to execute its core business. The mining sector in South Africa has shed hundreds of thousands of jobs, and the composition of its workforce has also radically changed. From 70% foreign migrant labour in the 1970s originating from neighbouring countries (Lesotho, Mozambique, Zimbabwe), the workforce is now predominantly (foreign workers currently represent less than 20% of the workforce), following a political agreement (the Mining Charter) signed in 2004 by the ANC-led government. This agreement was reached after years of negotiations and with the hope, from a business perspective, that the ANC's close ties with unions (the ANC officially belongs to the Tripartite Alliance, a political alliance between the South Africa Communist Party and COSATU since the early 1990s) would guarantee a degree of social peace (Segatti and Munakamwe 2014). The Mining Charter committed the mining conglomerates to two historically new policy trends which were imposed by the ruling party: the progressive elimination of foreign labour through non-replacement and prioritisation of recruitment among local communities for new operations[36]. This political decision in addition to large scale reductions in the mining labour force due to downscaling, particularly in gold and coal, has affected the distribution of the foreign workforce in a way that is unprecedented in South African history. Mines have closed leading to job losses and today both locals and foreigners rely on illegal mining which involve identification of old mining dumps and scraping residual traces of gold left behind by huge mining companies (see Munakamwe, 2015).

[36] Interview with Mr Heynes, Anglo-gold Ashanti, 10/02/2014 (see www.miworc.org)

Policy and legislative reforms, in particular the Mining Charter of 2004, have resulted in dwindling numbers of foreign workers in the sector (see Forrest 2013) and this could be connected to the outcome of demands put to employers by ex-trade unionists (Motlanthe, Ramaphosa) turned government officials and business players. Today, Ramaphosa who has become one of the business moguls in the country does not represent the interests and principles of the working class. This is reflected by the role he played in the Marikana massacre in which he was fingered as having influenced police responses to striking mine workers at Marikana in 2012[37]. Motlanthe represents government interests as a former Head of State (Acting President), a position conferred to him after Thabo Mbeki was recalled in 2008. In other words, the two ex-NUM leaders' behaviour is at variance with that of the constituency which made them who they are today. While the Charter emphasises the need "to ensure non-discrimination against foreign migrant labour" (Mining Charter: 2004: 3), local labour remains a recruitment priority. The most recent available data confirm this shift from mining to other sectors of the South African economy. Firstly, the dwindling of foreign labour in mining is neat after 2003. Whereas the share of foreign labour on the mines stood at 57% in 2000, it fell to 47% in 2005 and was only 22% in 2012.

The negative structural economic transformation in the mining sector is part of the explanation for the proliferation of illegal mining in post-apartheid South Africa coupled with independent, individual clandestine mobility of migrant labour into South Africa. Further, while free mobility across the borders increased with the ushering in of democracy, however, rigid immigration policies in particular related to the work permit regime persist unabated. For instance, in my study, I came across a qualified geologist who is in possession of a degree but failed to secure a job in the formal market because of the bureaucratic requirements and policies which require one to be affiliated to a professional body for their sector in order to secure a work permit. All this is compounded by structural xenophobic tendencies within the very institutions meant to service foreign workers (see Chapter 4).

The aspect of immigration policy has to a greater extent contributed to lack of mobilisation of foreign labour in the informal mining sector as trade unions are of the view that they need to comply with national immigration laws if ever they are to organise cross-border migrant

[37] However, this is a contested issue as the Marikana Commission of Inquiry absolved him of this allegation

workers[38]. This is despite the fact that foreign miners played a very pivotal role to establish the very union which they are excluding the contemporary miner from joining today. One would also wonder if migration status really mattered by then when mineworkers of various nationalities converged to dismantle apartheid. Again, recently there have calls for unions to accommodate and organise informal workers who fall within their respective workers and vulnerable workers outside of standard employment relations. The problem is that efforts have been made at international level and mostly driven and coordinated by the ILO. But as we witnessed in Chapter 4, the rate of ratification of international conventions which protect migrant workers has been very slow and it seems unions have not given fair attention to the issue of migrancy as it relates to new organising strategies as will be discussed in Chapter 7.

In contemporary South Africa, the major structural changes in the global economy such as recessions, economic restructuring (in the 1990s) and casualisation (See Dickinson, 2017) resulted in fluctuation in demand for labour. Consequently, this led to retrenchments, casualization, subcontracting and out-sourcing. Furthermore, government legislations such as the MPRDA, and tax laws (see Golding 1995) including the Mining Charter of 2004 which emphasises and prioritises recruitment of locals have also contributed to declining numbers of foreign workers in the sector (see also Forrest, 2013; Mujere 2014). A recent study by the African Centre for Migration & Society (ACMS) through its MiWORC project revealed that recruitment of foreign labour in the mines had indeed declined (Budlender, 2013). According to Crush (1995:18) "only 20 years ago, almost 80% of the gold mines' migrant workforce came from outside South Africa. Within a few years in the mid-70s the proportion of foreign miners on the gold mines dramatically plummeted to 40%" (1995:18). Glencor mining company was one of the first companies to downsize while others continued to retain foreign labour for strategic reasons and to maximise their profits (ibid). This could be attributed to incentives offered by government as the rate of unemployment steadily increased. This according to Crush (1995) paved way for systematic replacement of unskilled foreign workers with only minimal disruption to production and profits. Certainly, it would now be even easier, with retrenched South African miners waiting for jobs in large numbers (Crush 1995:18). These negative developments in the mining industry, as articulated by one ex-

[38] Interview with two NUM shop stewards. 16.10.14. NUM Head Office

miner[39] in a life history interview, in a way, demobilised foreign workers mobilisation and participation in trade unions as rivalry for jobs between locals and migrants became overt.

5.3 Role of migrant labour in the mining sector: The Past and Present

They contributed a lot and the question is what is it that South Africa has done to these people from outside who contributed a lot to its economy? The history of the migrant workers is very important mostly the role they played in the formation of the first Black union – the Industrial and Commercial Workers' Union (ICU) under the leadership of Clements Kadalie who was from Malawi shows the role played by migrant workers in the hospitality and commercial sector (Interview with Tata Mabea. 15.03.2016).

The above is an extract from an interview conducted with one of the veteran ex-miners originally from Lesotho, reveals the role that foreign migrants have and continue to play in the economic development of South Africa. Further, it identifies foreign migrants as being at the fore of the formation of the first Black unions in South Africa. On the contrary, not all foreign migrants are familiar with their role in South Africa as illustrated by the statement below:

> It is difficult to talk about South Africa…there is a huge problem in the context of South Africa. What South Africa was before is not what it is today and this is all about migrant labour. Let me say, the only thing we know is to get transport, come here and work and then leave! (Interview with Tata Nxumalo, 17.03.2016)

The above contradiction is also supported by the statement below:

> We don't have a lot to say as foreign workers because we just come and work and go back; it is up to South Africans and the mine bosses to say what they think about our role. We can't praise ourselves (Interview with Tata Moses, 06/07/2016).

For over a century, the South African mining industry has depended on migrant labour from southern Africa (Davies and Head, 1995) and the industry developed over the years through the contribution of migrant workers from southern Africa who facilitated capital's rapid economic growth and needs (Jooste, 1970). Indeed, the mining industry required a constant

[39] Life History Interview. 15.03.2016 with Tata Mabea an ex-miner from Lesotho who was part of the pioneering team to defy the highly exploitative labour laws in the mining industry and worked with other migrant workers from all over southern Africa – Mozambique, Botswana, Lesotho, Swaziland, Malawi and a few from Zimbabwe who only began to trickle in the post '94 period

supply of cheap labour which could only be provided through the migrant labour system (Allen, 1992).

In 1870, diamond was discovered in Northern Cape and gave rise to a demand in cheap migrant labour in order to maximise profits (Tylor, 1981: 57) and thus African workers were recruited from outside of South Africa (Tylor, 1981: 15). Prior to this discovery, African migrants worked in the labour intensive agriculture sector on a cyclical basis. So, the developments in the more lucrative mining sector resulted in a deficiency in the agriculture sector as mine wages were higher compared to those of the latter (see Allen, 1992; Nel and van Rooyen, 1993).

5.4 The paradox of skills deficiency and the shrinking labour market

In its 1995 Congress, the ANC government in recognition of the history of how foreign workers had contributed towards democratisation of South Africa, and precipitated by the country's needs in terms of critical skills, reiterated the need to attract highly skilled migrant labourers to work in the country's key industries of the economy (Kabwe-Segatti & Landau, 2008: 29). Incongruously, in the same address, the ANC further outlined the need to protect "national interests" "of their own citizens" (Kate, 2005: 10) in the process. Thus, paradoxically two main aspects emerged; assumed security concerns about migrants and the government's position to attract highly skilled migrants and these contradictions present a problem for South Africa's policies on migrants. Further, the desire to give preference to South Africans (which is the priority for all labour policies across the globe), in the labour market as well as attend to the government's proposal of attracting skilled migrants reflects difficulties in trying to strike a balance between the interests of immigrants versus national interests.

In contradiction to the policies of the country, local miners are of the view that their foreign counterparts play a very important role in the economy of the country. One participant in the FGD[40] conducted with local miners at a formal Mine A, acknowledged that foreign workers played a pronounced role in many ways; both at the workplace and community. He also commented that the mines were a large contributor to the South African economy and in that way foreign workers contribute tremendously towards the economy of the country. This

[40] FGD conducted with foreign miners. 15.07.2016. Mine A, south west of Johannesburg

acknowledgement of the role of foreign miners in the country's economy to some extent assists in their integration and mobilisation into trade unions.

From a political stand point, migrant workers in collaboration with locals fought against apartheid and its destructive racial domination where they were denied their basic right to sell their labour through discriminatory policies. (see Coplan and Thoahlane, 1995). Because of the critical role played by foreigners in support of the ANC's armed struggle (Centro de Estudos Aricanos, 1987a), in 1986, PW Botha, the then President of South Africa declared his position against foreign workers particularly targeting Mozambicans and threatened to expel them. However, the government of Mozambique, gold mining houses and workers themselves contested against this move (Crush and James, 1995,:219). Paradoxically, at democracy, the new government of South Africa appreciated the role played by foreign workers in the country's liberation struggle. Subsequently, with the advocacy of the NUM, the Mandela government awarded amnesty in the form of permanent residence permit to those foreign workers who had worked in the country for five years or more (de Vletter, 1998). Inopportunely, the new government was confronted by a new scourge of high unemployment and grappled with the dilemma of addressing the issue of foreign labour in the labour market (see Crush and James, 1995). As a consequence, we have witnessed xenophobic attacks attributed to competition for jobs (see Hayem, 2013; Misago, 2016) whilst at the same time, "foreign workers would continue to be vulnerable, exploitable and disposable set of labour units that they were under apartheid" (Crush and James, 1995,:221).
In an FGD[41] with foreign miners, one participant acknowledged that foreign migrant workers play a very significant role in the mines because of their affiliation to the worker's unions thus boosting the number of members for COSATU and NUM. Foreign miners are very much involved in union decision-making processes as members and worker leaders (shop stewards). The chairman of Branch C is a foreign national from Lesotho and a rock engineer at shop floor. Participants in both FGDs claimed that there was strong unity and interdependence between them. They believed that the union treats all employees as equals and looks after the welfare of employees who become its members without discrimination. In contradiction, participants in an all foreign miners FGD, pointed out that their long standing demand for long-term contracts and work permits was still to be realised as the majority were required to renew annually. As a result, foreign miners' employment statuses remain

[41] FGD conducted with foreign miners. 15.07.2016. Mine A, south west of Johannesburg

precarious and insecure which is problematic especially when they retire or are retrenched as they might not be able to receive social security benefits.

5.5 The Changing Demographics in the formal mines

The chapter attempts to locate foreign miners within the context of mobilisation in both the formal and informal mining sectors and draws on two labour traditions – the informal political culture of hostels and the new tradition of organised labour representation (see McNamara, 1995). It maintains that the proliferation of informal mining activities is directly linked to changing migration and labour-supply policies and trends. For example, in 1960, there were 101.733 Mozambican miners working in the formal mines; 97.200 in 1975; 55.034 in 1995; 46.900 in 2005 and the number plummeted to 32.147 in 2015[42]. According to AMIMO (2016)[43], today there are 32.147 Mozambican miners working in the formal mines against a total of 104.532 Ex-miners. Nonetheless, these figures need to be read taking into account that some Mozambicans acquired South African citizenship through amnesty dispensations which took place in 1996 and 1997.

The decline in foreign labour on the mines could be explained in four ways; changes in legislative and policy framework; depreciation in mineral ores such as gold and platinum resulting in retrenchments; workplace restructuring and technological advancement which has resulted in "a shift from labour intensive to capital intensive mining methods"[44] including labour flexibility, where mines currently rely on out-sourcing of non-core operations and also labour brokers in terms of recruitment. However, some analysts blamed unions for the loss of jobs as a result of wage demands as illustrated in a statement which featured in AllAfrica News (2015) which stated that "The militancy of the South African mining unions has won wage increases for miners - but among the employers' responses has been a reduction in the number of workers employed"[45]. According to the Chamber of Mines (2016), cited in an online news article by Adrian Frey; gold and mining companies in South Africa claimed not to be generating profits as a result of price depreciation at international markets and this

[42] AMIMO Formal Introduction to Solidarity. Johannesburg, South Africa. 29 July 2016.
[43] AMIMO Formal Introduction to Solidarity. Johannesburg, South Africa. 29 July 2016.
[44] Article featured in AllAfrica News. "Mozambique: Fewer Mozambicans Employed On South African Mines". 26 June 2015
[45] Article featured in AllAfrica News. "Mozambique: Fewer Mozambicans Employed On South African Mines". 26 June 2015

threatened approximately 32, 000 jobs, which would result in further retrenchments for both local and foreign miners.

5. 6 Mineral deposits and the demise of migrant labour in the formal mines

In 2004, South Africa adopted the Mining Charter whose aim was to redress racial inequalities as designed under apartheid and to ensure economic justice and access to mineral resources for all within the spirit of the national constitution. In addition, unions in the sector demanded an end to the migrant labour system. The call for the phasing out of migrant labour coincided with depletion of minerals in existing mines as (Crush, 1995:14) notes that mineral deposits have depleted over the years and this has affected "the economics of mineral production and supply" (1995:14; see also Chamber of Mines 2016). In the post migrant labour regime, a profound shift in recruitment patterns including high rate of unemployment in South Africa have forced local migrants to seek jobs in the mines especially in the gold sector. As a result, labour can easily be recruited at the mine gates (see Head, 1995). Retrenchments in the mining sector also exacerbate the situation as foreign workers opt to migrate informally, clandestinely and individually independent of the state, and because of limited skills to seek jobs in other sectors, they rather utilise their mining skills in the abandoned and closed shafts (see Munakamwe, 2015).

Findings from the study also point to unresolved and protracted retrenchment disputes as adding on to the challenges of illegal miners who in turn seek temporary sources of income in South Africa while patiently waiting for their retrenchment packages[46]. Through precedent cases, ex-miners learnt that they cannot leave South Africa and wait for their retrenchment packages in their home countries because of two main reasons. First, permission to live and work in the country is only guaranteed if there is proof of employment in accordance with the immigration laws and because they would have lost their jobs, the employer cannot endorse their application to enter the country and so could perhaps enter on a visitor' visa which is very often time-framed (30-90days per year) yet it might take longer to process social benefit such as pension funds.

[46] Interview with Tata Moises. 06/07/2016. AMIMO Offices, Braamfontein

The other reason is that once miners go back to their home countries, their meagre resources become depleted such that they cannot sustain back and forth mobility in pursuit of their packages (see Coplan and Thoahlane, 1995), which in most cases, could be a very protracted and arduous process. These problems have a profound effect on mobilisation of such workers engaging in what they would view as temporary livelihood strategies where the long term goal would be to invest in small business back in their countries of origin[47]. In addition, some would have lost confidence in institutionalised form of representation especially in cases where unions have lost retrenchment cases[48]. At the same time, individual and clandestine movement to some extent has divided class –based solidarity, as the primary goal of today's migrant worker is to meet economic goals even under harsh conditions and little attention is paid towards transforming their working conditions. Importantly, this shows the competing interests and contradictions related to class-based mobilisation and solidarity among mine workers historically and in post-apartheid South Africa.

While foreign workers contributed to the democratisation of South Africa, with some having voted in the 1994 elections (for those who had been in the country before November 1988) (see McNamara (1995), the xenophobic tendencies experienced in contemporary times tend to undermine workers' solidarity. Although most Black workers elicited some kind of militancy during apartheid, Malawians were known to be very obedient while Mozambicans used to be very militant but were ultimately deterred from participating in the struggle against apartheid by their colonial Portuguese government[49] (see also Head 1995). In contemporary South Africa, foreign miners are demobilised by the rigid immigration laws (fixed short-term work permits and sophisticated requirements and conditions) which dictate and somehow limit their full participation and engagement in precarious informal economic livelihood activities, the study revealed.

Life history in-depth interviews revealed that in colonial times, there was no overt distinction between Black foreigners and Black citizens as solidarity was forged alongside the struggle against poor working conditions, low wages, repression against black trade unions and the desire to end the apartheid system (see Allen, 1992: von Holdt, 2002). Needless to say, micro-political struggles such as tribal factional violence or ethnicity (see McNamara (1995) ,

[47] Interview with Fernando 04.09.2014. Abandoned shaft, Westrand
[48] Interview with James 04. 09.2014. Abandoned illegal shaft, Westrand
[49] Interview with Tata Mabea 2016. MDA Offices

race, and language as instigated by employers, aggravated divisions amongst workers struggles as opposed to nationality[50] and were thus divisive to workers' struggles. Today, workers are divided along employment contracts and nationality lines as evidenced by a recurrence in xenophobic attacks. In his thesis, Misago (2016) claims that "xenophobic violence in South Africa is just 'politics by other means and by doing so brings to the fore the often missed centrality of micro-politics and localised political economy factors as key drivers of collective violence particularly communal violence" (2016: vi). Economic factors such as competition for jobs have triggered xenophobic violence in South Africa.

5.6.1 Migratory routes

Various routes, which form an indispensable component of the migration process, have been used by foreign labour to enter South Africa to work in the mines. These take the form of either formal or informal routes. Formal and informal cross-border migration to South Africa has always been closely linked. For instance, when job opportunities in the mines dried up, clandestine migration inevitably increased (Jeeves, 1986). Formal contract migration to the mines is, in fact, no longer the main form of mobility to South Africa as many more people are now more involved in clandestine and illegal migration and much of the latter remains largely undocumented. Other than available statistical data on deportations, little is known about those involved and where they go (Davies and Head, 1995:203). As the employment of documented foreign workers in the mining industry declines, clandestine or illegal migration has escalated as ex-miners use their skills in informal abandoned (Munakamwe, 2017). The informal routes used to enter the country means that those involved automatically become undocumented of which with reference to Chapter 4, anyone from outside needs to be in possession of a work permit in order to work. Instead, they would engage in informal economic activities which are easy to enter without documentation and also relevant to their skills. Because of their migration status, there a possibility of them opting to become 'invisible' hence they shun unions and also avoid participating in workplace related matters which affect them.

5.6.2 Migration channels then and in contemporary South Arica

During the early days of migrant labour, before borders were introduced, migrant workers used to travel long distances on foot from within and countries beyond the South African borders. In their long and arduous journeys, they risked their lives to wild animal attacks,

[50] Interview with Tata Mabea. 2016. MDA Offices

robbers or were subjected to forced labour by white farmers whose wages had become unappealing as compared to those earned in the mining industry and also as a way of paying tribute for passage through the Boer farmers' territories for those migrants from northern Natal, Lesotho and Mozambique (Allen, 1992). Today, improvements in transport networks and communication technology facilitate safe movement of cross border migrants into South Africa. Miners also make use of technology to establish social networks based on nationality and ethnicity and these spaces are often used for educating members on their rights and also to spread word on the importance of joining unions or private legal aid societies or insurance. The most popular social media platform among participants was WhatsApp, which they claim is easier to establish groups and keep in touch with both their families back home and their fellow countrymen also working in the mines in South Africa.

After the demarcation of Africa into various territories, migration policies were thus introduced aimed at governing and managing mobility across borders. This meant that the movement of labour across borders had to be formalised. As such, bilateral agreements were signed between labour supplying countries and South Africa. at the same time, the Chamber of Mines established a recruitment agency – The Employment Bureau Agency (TEBA) to hire labour on behalf of business in both South Africa (migrants from former homelands) and within the southern African region. However, TEBA, according to one ex-miner interviewed through life histories, deterred workers contracted through them from participating in the struggle against apartheid:

> Workers were told - Don't involve yourself in politics…also the role of induna was to brainwash migrant workers contracted through TEBA as they integrated with others in hostels; migrants from Ciskei also taken as migrants[51]

Migrant workers were required to sign short term contracts to work in the mines and their governments were responsible for their formal movement to work in the mines. Participants in the afore-mentioned foreign miners FGD at Mine A, suggested that there is need for concerted efforts between the hosting and labour supplying countries to address the problems of documentation and short term contracts a very daunting task which requires annual renewal of work permits. Another worry is that a penalty fee is paid at the boarder if the workers have overstayed yet both governments benefit from these miners labour. Foreign

[51] Interview with Tata Mabea. 15.03.2016. MDA Head Offices

miners were also not happy about the Mining Charter which restricts on boundaries and emphasises recruitment of locals; a policy which also affects internal migrants from former homelands.

In the 1970s, the mines had more labour reserves to draw from within and outside of the country and consequently, this led to the internalisation debate. This situation was further intensified in the 1990s with the introduction of global economic policies such as the Economic Structural Adjustment Programme (ESAP) and the introduction of the Mining Charter in 2004. The bilateral agreements fell apart as South African mining houses by then relied on local labour partly because of the incentives to hire such and also simply because they could hire labour by their mine gates (Head 1995). This in the long run resulted in a proliferation of clandestine and informal migration to the mines as predicted by Seidman (1995:183) when she speculated that "the effects of down-scaling are likely to leak across the border, in the form of illegal immigration" (Seidman, 1995:183). Indeed, in the post migrant labour regime, we witness increasing informal migration across borders which also coincidentally corresponds with a rise in informal economic livelihood activities such as informal mining in abandoned mines. The proliferation of informal mining activities which will be explained in a later section and needs to be read in the context in which the share of jobs is progressively shrinking and foreign miners become the primary targets for retrenchments and thus would only exploit their acquired skills from formal mines in abandoned shafts. Moreover, many foreign miners' families have depended on remittances from the mines and for those who get retrenched, it is difficult to reintegrate into the labour market of their countries of origin; which in many case, face high unemployment challenges. In abandoned mines, retrenched miners (foreign) tend to shift focus from collective struggles which they were involved in before, perhaps, through the unions towards individual struggles as they do not have employers. Competition for economic opportunities increase which are divisive to workers' struggles. This is supported by Coplan and Thoahlane (1995) who contend that:

> Illegal migration exacerbates class conflict, ethnic divisiveness, worker factionalism, illegal settlement, undocumented employment, employer abuse and exploitation and disrespect for the law. It also undercuts legal wages, unionisation, solidarity, collective bargaining and rights of all workers. It is not just migrants who are better off when they are legal: so their industries and fellow workers (1995:150)

The above statement demonstrates the demerits of illegal migration as it relates to workplace solidarity and also how employer's strategy of hiring undocumented foreign workers tends to undermine collective bargaining agreements and workers' rights in general. Indeed, as revealed in Chapter 4, employers prefer undocumented migrants for purposes of exploitation. This creates unnecessary competition between local and foreign nationals in the workplace and thus divides solidarity while at the same time undercutting wages. By virtue of its illegal nature, it is difficult to obtain reliable information on this movement. According to Davies and Head (1995):

> No reliable data on clandestine migration is available, except figures for deportations of "illegal immigrants". This is confusing, however, because it includes genuine refugees and some people who have been living illegally in South Africa for years, and are effectively domiciled there … Unofficial estimates have suggested that the total number of illegal immigrants in the Witwatersrand alone has reached more than a million (1995:206)

Today, foreign labour migrants use various ways to enter and work in South Africa. For instance in the agriculture sector, employers formally register illegal immigrants through the DHA facility of seasonal work permits and pass system. In the mining sector, according to Davies and Head (1995) the key function of is to "facilitate the legalisation of labour for contractors to the mines although it presents only about two percent of its business at present, it seems that this is a growing trend" (1995:206). The importance of Teba's reorganisation cannot be overemphasised as its role has dramatically shifted as Head (1995), notes that:

> Teba is no longer simply the recruiting arm of the Chamber of Mines. On the contrary, it is now a "stand –alone" company which no longer survives on subsidies from the industry. It now has to charge for services rendered. Its labour processing activities are now only one of its functions (1995: 131).

Thus, it is important to reflect and analyse the contemporary trends in relation to mobilisation of foreign workers. In an FGD conducted at Mine A, foreign miners grumbled that it is very difficult for them to commit to trade unions as there is no guarantee that their work permits would be renewed either through direct engagement or Teba. Further, they were not satisfied

with the manner in which the union neglected their key demand for long term work permits or even permanent residence for those who deserve such a dispensation. In fact, the issue of immigration policy which affects migrant miners working lives and commitment to mobilisation is at the periphery of the unions as foreign miners lamented that over the years, thy made submissions related to documentation as their key demand but it seems like top priority is given to broader 'bread and butter' issues which are universal demands for all workers. As a result, foreign miners were of the view that they are being under-represented in special matters specific to migration status in the work place. This in away has to some extent demoralised their full participation in union matters as on the one hand they have to face the documentation problems individually and on the other hand they have to collectively fight for bread and butter issues.

These contradictions evidently show that trade unions are not sincerely dedicated to address the core challenges of foreign workers yet they are ready to benefit from subscriptions and political critical mass. One senior participant in the FGD suggested that the issue of documentation forms part of the demands for collective bargaining although others sounded very pessimistic considering the fact that foreigners do not form part of the negotiation team. This observation could explain the reason why some foreign miners have worked for over twenty five and some up to thirty years and yet are still renewing their permits annually. To add on to this, is the question of numbers which relates to the percentage share of foreign miners in the sector generally and union in particular. Participants in the foreign miners FGD pointed out that they have raised this issue time and again but it seems it is traded off on the collective bargaining table.

5.6.3 Labour Demand, Supply and Recruitment Trends

As mentioned earlier, the emergence of the mining industry in South Africa upon discovery of diamond in 1870 and the subsequent discovery of gold in the Witwatersrand in 1884 exacerbated the demand for cheap black labour (Tylor, 1981: 22). Before the emergence of institutionalised and formal structures of recruitment, tribal chiefs particularly in Southern Africa and later colonial administrators, labour recruiters and traders were involved in the recruitment process of migrant labour. Because of competition related to heterogeneous wages which created competition, gold mining houses came together and established a recruitment agency known as The Employment Bureau of Africa popularly known as Teba. Part of Teba's mandate was to ensure cutting down wages to maximise profits and this it

succeeded by raising a black labour force of 99, 000 men at a wage rate considerably lower than it had been ten years previously (see Wilson, 1972:4; Taylor, 1981: 28). In 1901, however, the average number of mine workers had fallen to as little as 18, 177 (Robertson, 1935; Taylor, 1981) although no clear explanation is provided for such a significant decline. Similarly, Tylor (1981) contends that the use of foreign labour in the mining industry has declined over the years and posits that:

> Changing patterns of labour supply to the South African mines are traced and seen as a consequence of the mining industry's attempts to obtain sufficient but cheap labour supplies and their ability to control extensive recruitment networks (Tylor, 1981:1)

In the mid-1970s, migration to the mines declined as the mining industry had efficaciously localised its labour supply. Various measures were put in place; for example, in April 1974 the Malawian government prohibited further recruitment of Malawian labour which at the time constituted almost one third of the African labour force on the mines and coincidentally, Mozambique attained its independence as the Portuguese rule in Mozambique collapsed. As such, in 1975, there was a dramatic decline of the foreign labour force from tropical areas to as low as 4.2% and massive labour shortages were experienced prompting the hiring of foreign workers from Zimbabwe, Botswana, Lesotho and Swaziland as well as in South Africa and combined, the share of foreign miners accounted for 73.8 percent in the coal and gold mines owned by the Chamber of Mines (COM) (Davies and Head, 1995; Tylor, 1981). Unexpectedly due to retrenchments, in 1982, statistics showed a sharp decline of foreign labour force and record it at 42, 8 percent (Davies and Head, 1995). Accordingly, a steady decline occurred as the average number of SADCC citizens employed in 1991 dropped from 222 621 in 1986 to a low of 165 825 (COM, 1991). However, the presence of foreign labour plummeted until 1987 when many foreign workers particularly Basotho lost their jobs after the 21 days protracted strike mobilised by the NUM. The sacking of Basotho workers dampened the spirits of foreign workers and at the same time demobilised them from active participation in the union[52].

Many scholars, for example.Crush and James, (1995) contend that massive retrenchments have occurred in the mining industry over the years and foreign labour has been constantly replaced by locals thereby mitigating any disruption to production and productivity. Since

[52] Interview with Tshepo, an ex-miner from Lesotho. 15.07.2016. Mine A, south west of Johannesburg

1986, the job losses in the mining industry has resulted in the retrenchment of 95 000 South African miners resulting in a reduction of foreign miners on the mines. Mining houses believe that replacing the foreign miners with unemployed South African miners would go a long way towards mitigating any disruption to production and productivity. At the same time, retrenchments have had a very negative impact on those countries like Mozambique and Lesotho, who historically are economically dependent on remittances from the mines (Guy and Thabane, 1988; Crush and James, 1995).

After 1987, a steady decline of foreign labour on Chamber of Mines (COM) owned mines from other countries was noted (see Allen, 1992). In the five years between 1987 and 1992 a total of 173, 957 jobs were lost in gold and coal mining industry. Of these, 52, 154 were foreign migrants (COM, 1992). This decline is somewhat attributed to deteriorating gold price as well as "inflation and increased competition from low-cost producers elsewhere" (COM, 1993: 2). Be that as it may, it is important to note that while unions have gained institutional power (see Webster, Britwum and Bhowmik, 2017) through the amended LRA of 1995, inopportunely, wages have gone through a steady decline while profits have constantly increased over the past 20 years. As argued by Dickinson (2017), while unions' influence has increased in post-apartheid South Africa, however, they have been emasculated by flexible labour arrangement such as casual and labour broking - which they have failed to respond to in a meaningful way. As a result, workers (both locals and immigrants) who feel excluded are beginning to organise in various models like casual workers committees as "casual workers were now fighting their own battles" (ibid).

It is important to point out that labour downsizing and limitations on the recruitment of foreign labour in the mines not only affect workers but also the sending countries whose economies are in a crisis and cannot afford to absorb these ex-mine workers. Indeed, we have witnessed an upsurge of unemployment in various countries in the region which stimulates informal and illegal migration into South Africa. These undocumented immigrants are confronted by the effects of a deteriorating labour market and as such, some find an economic net in abandoned gold mines as will be shown in a later section.

To respond to its unemployment plague, the South African government devised ways of ensuring limited importation of foreign labour to the mines and thus offered incentives to business in order to encourage recruitment of local labour. In addition, it devised other

dubious strategies while various measures were taken. The South African government also introduced rewarding of incentives to encourage mine houses to recruit local labour (Head, 1995) and to business, recruitment of locals in a way assisted in circumventing the demand for better housing out of compounds (see Crush 1995:16) and this they were keen to adopt. Historically, mining companies in South Africa have never invested much into housing as part of social security requirements. Instead, they relied on the hostel system, whereby Black miners were housed under squalid conditions. Their families were denied access to the compounds although some miners lived together with their sons whom they had also lured to work on the mines as explained by one participant:

> Eish, life in the hostels was very tough. Can you imagine dressing up in front of your son…even when we went for medical testing (nodded his head)…yes, we wanted our sons to come and work with us but not to stay in the same hostel …there was no privacy at all. These are some of the problems which made us to fight against the apartheid system!

It seems the dispute related to poor housing for mine workers has spilled over into the democratic dispensation. At the core of the Marikana labour dispute was the issue of housing, which mining companies had committed to provide in accordance with the requirements of the Mining Charter. While some companies had begun the processes of phasing out the hostel system by offering living out allowances, still the nearby townships were also not conducive for human settlement as a result of ANC governed municipalities failure to deliver services let alone to upgrade the informal settlements as those in Marikana. In other words, living out allowances offered by the mining companies did not make much of a difference in poor miners' lives although some mining houses like Mine A in Carletonville, South West of Johannesburg, have begun the process of renovating hostels into family units.

An interview with one shop steward at the mine revealed that the company has begun to appreciate the importance of family reunion although foreign miners are still restricted from bringing their families to the compounds. Foreign miners also complained about their long physical separation with their own families whom they are not allowed to bring along as contracts workers. They are forced to travel long distances to see their families but however expressed that they were somehow making satisfied that at least the NUM is fighting some of

the irregular laws being practiced and are supporting contract migrant workers with other social security benefits like pensions (FGD with foreign workers, 15.07.2016).

One foreign miner from Lesotho complained that time restrictions are imposed and one has to request for permission and are only admitted to bring their wives to stay for up to 30 days. Again, at least two foreign miners share one two-bedroomed apartment which makes it difficult to bring in children. The company also built houses in a nearby township but according to foreign miners who participated in the afore-mentioned FGD, it seems like the houses are allocated only to locals and a few foreign miners who occupy senior managerial positions like supervisors or shaft managers. I also observed that some foreign miners seem to be well integrated in both the workplace and communities as revealed by the lifestyle of one miner from Lesotho, who is also a supervisor at Mine A. By the time of my visit to the mine, he was driving a brand new Mercedes Benz and also claimed that he was allocated a very large apartment in the nearby affluent suburb. He has access to bank financing (for any car or asset that he wishes to purchase here in South Africa). From our conversation, I later realised why some of his colleagues were reluctant to speak out in his presence during the FGD and I recalled one elderly miner from Swaziland reiterating this statement:

> The problem is that we are not all united…some will go and report everything that we say here to the bosses. *Inkinga le* (meaning it is a problem)…we have seen people losing jobs … I started working here since 1983 and I have seen a lot. Young people without experience come and take over and we begin to wonder what is it they know (after this statement he stayed for a while and excused himself).

From an outsider's perspective, my first thoughts were that the old man might be just jealous and envious about the young workforce joining them on the mine. But after my conversation with the young supervisor, I realised some kind of generational gap as a problem dividing the current workforce irrespective of nationality; and also the desire to pursue personal interests as opposed to collective and solidarity efforts. The young man seemed very satisfied with what he has achieved this far although he did not possess any technical skills like engineering, which would not make me a bit apprehensive of his current status. For me, this young man seemed more of 'an eye' on behalf of management although he pretends to 'blend' with his colleagues as with the picture he portrayed in the FGD discussion. While it is not fair to make judgements and conclusions on individual participants of my study, the scenario pointed by the two characters manifests generation divisions and conflicting

priorities and interests as major hindrance to mobilisation of workers in general and foreigners in particular in the post migrant labour regime.

At the same time, employers also took advantage of this policy to pit local and foreign workers against each other in order to deny both categories of their labour rights in order "to undercut unity within organised labour" (Coplan, 1995:34). Employers use the strategy of hiring and firing whereby permanent workers are converted into contract workers and paid very low wages and in addition, are deprived of social security benefits. Further, these workers are exploited to undermine workers collective bargaining power and agreements previously won through the NUM efforts (Coplan, 1995:34). According to Head (1995) contract workers are "not covered by union agreements and are paid less than Chamber of Mines contracted workers" (Head, 1995: 133). At the same time, if foreign workers join unions, they are most likely to be deported such that they fail to press charges against the employer as revealed in chapter 4. It is unfortunate that unions have failed to address this union-bursting strategy by employers over the years.

An interview with one ex-miner revealed that there is a strong possibility to engage in informal mining activities in between contracts as currently miners are employed on short contract basis dependent on the type of skill they offer. For instance, mechanisation has reduced the number of employees require to work at a particular time and thus some foreign workers are employed on fixed contracts. Yet, their work permits are renewed annually. So, instead of going back home during the liminal period, they would rather engage in livelihood activities in abandoned mines. Shop stewards who are also responsible for recruiting members on the shop floor cited contract breaks as making it difficult to recruit both casual and foreign miners as this also affect union subscriptions which emphasise that only members in good standing stand to participate in union decision-making processes.

5.7 Remittances

Historically, labour migration served as a source of wage income for sending countries and thus both sending countries and workers have developed an attitude of overdependence on remittances to meet their economic needs as well as for social mobility (Tyler, 1981). For instance, in the 1970s, the South African government suspended the recruitment of Malawians. In 1987, the South African government resolved to suspend recruitment of

Malawian labour claiming that they were HIV/ AIDS carriers. Unfortunately, the majority of those who were already in South Africa tested HIV positive and according to Chirwa (1995:120), in February 1988, 101 Malawians were ultimately deported and a month later, the Chamber of Mines stopped importing labour from Malawi altogether (Chirwa, 1995:120). This policy coincided with escalating unemployment rate in Malawi and a political decision by the then Malawian government under Kamuzu Banda to suspend migrant labour supply to South Africa by Malawi after 74 workers died in a plane crash in Francistown, Botswana in 1974 (ibid). The ramifications of such action were that many families who depended on remittances from the mines through the migrant labour system suffered economically as ex-miners could also not integrate into the labour market back home. In response to this crisis, clandestine and individualistic migration ensued as ex-foreign miners entered the country through informal channels. While in South Africa, these ex-miners preferred to remain 'invisible' (see Segatti and Munakamwe, 2014) and rather seek economic safety net in abandoned mines to avoid immigration bureaucracies associated with recruitment in formal mines.

At the same time, over-dependency on remittances was also motivated by the fact that sending governments, in particular Lesotho (see Cobbe, 1995) and Mozambique (see Head, 1995) failed creating job opportunities for their citizens as their economies depend more on remittances through the systematic deferred pay system. In a way, South Africa's neighbouring countries have exported their unemployment problems to the host country as enunciated by Davies and Head (1995: 209):

> In the period since the mid -1970s, supplier states have found themselves subjected to policies, imposed unilaterally by employers, which have rendered impractical any strategy of phased withdrawal from the migrant labour system. Instead of being able to progressively disengage at a pace determined by the development of alternative income and employment opportunities at home, levels of recruitment from SADCC-member supplier states have been cut at a rate far in excess of the capacity to create new employment opportunities. This has meant that unemployment, has in effect, been exported to neighbouring states in the context where the scope for domestic survival strategies has become increasingly restricted. All of this has created a powerful incentive to clandestine migration (Davies and Head, 1995:209).

The point raised above is very critical as it points to the complete lack of corporate responsibility on the one hand, and non-functional bilateral relations on the other. It is unfortunate that sending governments have relaxed in creating job opportunities for their citizens as they became over dependent on remittances paid through the formal channels in particular the deferred pay system. Indeed, countries like Mozambique and Lesotho are strongly dependent on remittances from gold mine wages in South Africa such that the country's migrant labour recruitment policy has deleteriously affected recipients of such remittances and at the same time created a powerful incentive to clandestine migration" (Crush and James, 1995:221; Davies and Head, 1995:209).

This, to a greater extent explains the strong presence of Mozambicans and Basotho in abandoned mines today although Zimbabweans are also fairly present due to retrenchments which occurred in the mines over the years including a harsh political - economic crisis since the introduction of Economic Structural Adjustment Programme (ESAP) in the 1990s. Workers take advantage of the skills gained in the mines to develop new economic livelihoods in abandoned mines. It is at this point that this study provides an analysis of mobilisation trajectories thereof foreign workers in both formal and informal and thus argue that the low levels of mobilization in formal mines could be attributed to fear of retrenchments as clearly articulated through life histories conducted in this study. Since the introduction of the Mining Charter of 2003, foreign miners are most likely to be targeted first in the workplace relegating them to the informal economy while locals increasingly mobilise and join unions for protection against retrenchments.

Ironically, while the NUM appreciated the role played by cross-border miners in realising a democratic political and industrial democracy, part of its demands in the negotiations and development of the Mining Charter was to call for the phasing out of foreign labour on the mines (see de Vletter, 1998) . While the demand came out strongly as a way of denouncing the dehumanising and exploitative system, one would wonder if the negotiators were fully aware of the unintended effects this would impact on the future working lives of foreign miners. As a result, as shown by Budlender (2013), a drastic drop in foreign labour on the mine as from 2004 was noted.

The labour migration system is intricately connected to the dominant process of proletarianisation whereby "poor peasants continue to rely on migrant labour to sustain their

production as well as to buy food (Wuyts, 1986:32). In support of this, Manghezi (1983; 38) notes that mineworkers invest their earnings in tools, corrugated iron roofing sheets, sewing machines, bicycles and motorbikes. Similarly, in bad years of famine, Head (1995) accentuates that remittances are spent on purchasing food (Head, 1995: 135).

As mentioned before, remittances play a very central role for both sending countries and foreign migrant labourers households. Historically, wages earned through the migrant labour system have assisted in sustaining the reproduction of peasant households including sending countries gross domestic product (GDP) and southern Mozambique is a good case in point (CEA, 1987; Wuys, 1989). According to de Vletter (1998), Mozambique has been the main supplier of labour to South African gold mines from inception of the migrant labour to the mines until the 1970s. Mozambican miners play(ed) an important role in the development of their country through the foreign exchange earnings of their deferred pay (processed through TEBA) and through productive investment in rural Southern Mozambique. Further, de Vletter (1998) contends that "despite the poor education levels and low skills of most miners, they are the wage elite of Mozambique; averaging a monthly wage five times that of industrial workers" (1998:37). According to Tylor (1981:222), "miners repatriate their earnings in one, or a combination of the following ways: money and goods sent home during the contract period (remittances): stop order saving schemes (deferred pay); money and goods in the possession of migrants on their return home" (1981: 222). In contrast, a more recent study by Mercandali (2014) shows that the impact of 100 years of migrant labour to South Africa from Mozambique is almost nil in terms of developmental dynamics and very marginal on poverty alleviation in communities of origin.

For many years, workers from within the southern African region have migrated to work in gold mines in South Africa through bilateral arrangements. While the migrant labour system has been strongly criticised for thrusting all social reproductive responsibilities to families back home, women and children in particular, however, many families are consoled by the monetary remittances generated out of the system to further sustain their subsistence farming and small-scale entrepreneurial activities. In countries like Mozambique, Lesotho and Zimbabwe, remittances , if channelled through reliable means, contribute towards household consumption, health, education, accommodation (rents) including investment such as acquiring assets (Mukwedeya, 2012:51). In contrast, Vidal (2010) contends that one of the 'push' factors for Mozambican migrant workers was the desire "to earn enough to build a

house and marry (that is to achieve full manhood in urban Mozambique)" (2010: 56; see also, First, CEA 1977).

From a sociological stand point, such wages have the potential to elevate individuals to higher levels of social echelon. In other words, wages earned through labour migration if well managed are most likely to lead to social mobility (see Thernstrome, 1964; Bian, 2002). Social mobility here is defined as the movement of individuals positively or negatively on a social ladder; that is across various classes within the socially stratified systems of society and individuals are classified through the status and roles they play. However, there is no robust empirical evidence and only few cases could testify to this.

Mining is a very much intergenerational phenomenon hence in sociological terms if they manage to move positively within the social mobility ladder, then they qualify to have crossed the intergenerational mobility. A study conducted by SAMP in 1998 amongst wives of miners in Mozambique revealed that 69% of miners' wives who were interviewed indicated that their fathers in law were or once worked for the mines. 12, 5% in the same study, stated that their own sons had also joined their fathers in South Africa to work in the mines and 80% of the wives living in rural provinces of Inhambane and Gaza predicted that their sons would most likely work on the mines (de Vletter, 1998; Madsen, 2004).

Family members play a very critical role in the migrant labour process as they are the primary beneficiaries of remittances send through formal and informal channels. Interviews with foreign miners showed evidence that their primary target for remittances are channelled towards their families in their countries of origin. These remittances assist families in other economic activities such as farming as "rural production for a majority of rural households is not self –sustaining and requires continual inputs from migrant earnings" (Taylor 1981:11).

In general, wages earned through the process of labour migration benefit not only the individual family of the migrant labourer but the entire community. Nevertheless, it is important to point out that in most cases, the use of remittances earned through labour migration is determined at household level. Tylor, (1981: 269) asserts that:

> The consequences of mobility for sending communities are clearly determined at the micro-scale. The issue of dependency upon migrant earnings at the household level is paradoxical. In general terms, cash inputs from labour migration are essential in order to sustain rural production, but dependency upon migrant earnings varies according to

> the domestic development cycle and is greatest amongst those households with the least capacity to engage in rural production (1981: 269).

However, life history participants in my study lamented that their governments benefitted or continue to benefit a lot out of remittances in particular for those countries like Mozambique and Lesotho where the deferred pay system is still in practice and all remittances except for Mozambicans are taxed. In other words, the truth is that governments have been the main beneficiaries from the migrant labour system although not much development has occurred in many labour sending countries.

The statement below illustrates some of the sentiments raised:

> **Tata Mohle[53]:** I have been working in the mines since 1985. I came from Lesotho as a young man and was trained to work underground. Every year, I sign a contract and get a one year work permit from Home Affairs which I have to renew every year once the employer confirms that they still need me. At other times during busy seasons queues were separated to distinguish workers from visitors but nowadays its only one long queue and workers are reporting for duty late and are facing challenges with management. What makes me unhappy is that our government is robbing us. We get paid part of our wages this side and the rest is send to Lesotho and tax is deducted
>
> **Janet:** So, do you have an idea of where exactly your money goes to?
>
> **Tata Mohle:** No. they say they keep it for us. And we can only withdraw when we go for our annual leave. If I go now, they won't pay it to me! Only when I'm on official leave. So the government is making profits out of my money!
>
> **Janet:** So, what do you think should be done?
>
> **Tata Mohle:** They should just pay us our money and keep it ourselves. The funny thing is that they leave us to suffer when we apply for work permits at the border but want to budget our money for us. They don't help us to get permits but want to control our money.

An interview conducted during the MiWORC project in early 2013 with the Mozambican Delegate of Labour based in Braamfontein, Johannesburg, also confirmed some of the issues raised by Tata Mohle. The delegate acknowledged the role played by his government through

[53] Tata Mohle is a foreign mine worker from Lesotho. He participated in a focus group discussion conducted at a formal Mine A in south west Johannesburg on the 15th of July 2016.

the deferred pay system. The unique case of Mozambique as compared with other sending countries is that they play a very proactive role in ensuring that their citizens working in South African mines are well documented and no tax is deducted from remittances. They assist them in acquiring passports including work permits. This, to some extent explained why Mozambican nationals who participated in the focus group discussion were very satisfied with the deferred pay systems as illustrated below:

> I'm very happy with the current system of payment because it allows me to save money to use when I get home for my annual holiday. You know, it is very difficult to save money this side and to run two families. Obviously, one will be biased and use most of the money and send little back home. So at least this payment system controls my expenditure so that I'm able to develop back home[54].

Be that as it may, the statement seems more patronising than empowering as it tends to take away foreign miners agency to determine how they should use their hard earned wages. Most importantly to note is the role of the current government party and also there may be other reasons such as fear of reprisals linked to FRELIMO's intimidation tactics. Kerven (1979) identifies several positive and negative social and economic consequences of mine labour migration. Because of some of the negative effects of the system like mine accident injuries and contracting of tuberculosis and silicosis of which the care work responsibilities are borne by those in the sending countries, "individual countries have repeatedly expressed their desire to disengage from it, but this has proved impossible because of the continuing high level of dependence of many households on miners' remittances" (Davies and Head, 1995:209). Yet, employment opportunities in formal mines continue to shrink as the sector continues to shed jobs.

While unions launched various actions to protest against retrenchments, as mentioned before, labour flexibility coincided with certain natural events like depleting mineral resources. Yet, the LRA affords both employers and unions' fair opportunities to defend their actions. It is also the case that employers very often have the resources to hire the best legal minds to defend their interests, and so, unions lost the battle. Until today, the long –standing campaign

[54] Interview with Fernand at a focus group discussion conducted at a formal mine in south west Johannesburg on the date. He is from Mozambique and was the youngest of the participants and has worked in the mines for over 9 years.

against labour broking seems to be losing momentum and slowly becoming absolute since the last amendment of the LRA which prescribed regulation of labour brokers as opposed to a total ban. This is one of the major weaknesses of unions which employers exploit to their own advantage. At regional level, through the Southern African Trade Union Coordinating Council (SATUCC) trade unions hosted solidarity workshops which culminated into a book publication "Alternative to Neoliberalism in Southern Africa (ANSA)" although not much practical action was done on the ground. Beyond the retrenchments in the formal mines and confronted with the challenge of a constrained labour market, ex-mine workers seek economic survival opportunities in abandoned gold mines as will be shown in a later section. This is because, the majority are not well educated and the only skill they are familiar with is underground mining.

In relation to the question at hand, foreign miners' overdependence on mine wages tends to influence their decision to mobilise and participate in industrial action. Paradoxically, in a context where rural African households have become reliant on remittances, foreign mine workers are prepared to endure hardships and poor working conditions such that the call for a "shift to a more humane labour policy may be to create a deepening crisis for the very people who suffered the most from the migrant labour system … The gold mines' changing labour relations policies may ultimately create a more humane set of work relations but in the absence of any alternatives the shift leaves people who have become dependent on migrant remittances with few resources and fewer prospects" (Seidman, 1995:177 & 183).

Observations made through this study revealed that it was really difficult to get participants in an exclusively foreign miners' focus group discussion[55] to speak, even though they were worker leaders (shop stewards). I had to reassure them that their safety was guaranteed by producing my ethics clearance certificate which clearly outlined my responsibility as a researcher. Some even requested for the copy which I gladly shared with my contact details in case they faced any problems after our conversations. The miners over-emphasised the need to economically survive in this harsh economic climate as opposed to participating in protests. They narrated to me how their friends back home have become idle and some just wandering around after losing their jobs to retrenchments which have taken place in the mines. Many believe that their colleagues were targeted because they were too vocal or

[55] This FGD was conducted at a formal Mine A in south west Johannesburg

actively involved in the union. On further probing as to what then is their responsibility in the mines as worker leaders today, they mentioned that their core business was that of monitoring health and safety as opposed to recruitment on behalf of the union. All appreciated the need to recruit more members into the union but felt that this responsibility should be left to organisers who in most cases are South African citizens in order to avoid victimisation.

5.8 Business responses to unionisation of workers historically and in contemporary South Africa

As mentioned in the section above, during apartheid and even in democratic South Africa, the primary goal of hiring cheap foreign migrant labour was to ensure maximisation of profits and the state supported this position. In his classic analysis of the political economy of migrant labour in South Africa and in particular, the 'cheap labour thesis', Harold Wolpe (1972) depicts how cheap migrant labour plays a central role in maximisation of profits for business. During apartheid, this was achieved through the collusion of the state and business whereby the former promulgated laws and policies aimed at suppressing unionisation of African labour. White miners had the privilege to organise into trade unions through a corporatist union arrangement (yellow union) facilitated by collusion between business and the state. However, this barrier was broken when the first African trade union; African Mine Workers Union (AMWU) was established in 1930. While the union managed to sustain itself for some time, its efforts were thwarted by the suppressive apartheid regime and as a result, workers were demobilised. Similarly, according to Allen (1992) when the apartheid government realised the inevitable rise and expansion of Black trade unions, it promulgated laws aimed at controlling the union. The Communist Party made efforts to resuscitate the workers movement in 1940 under the leadership of J.B Marks and also galvanised support from the African National Congress (ANC) and this was the genesis of the tripartite alliance (Allen, 1992). The tripartite alliance culminated in the formation the National Union of Mineworkers in 1982 followed by the formation of the Congress of South African Trade Unions (COSATU) in 1985.

Inopportunely, the establishment of Black trade unions came at a time when gold prices were fluctuating and thus unions were confronted by a huge challenge of massive retrenchments. In order to address its economic challenges and also the power of trade unions, business

devised new strategies such as re-organisation of underground work through retrenchments, outsourcing and subcontracting and mechanisation (Davie and Head, 1995). In a way, the mining industry quietly reorganised its labour supply and labour process in its efforts to maximise profits and at the same time, evade social security responsibilities like pensions, medical aid and housing. An additional advantage is that there existed a huge reserve army of local labour unlike before when locals were not prepared to work underground for uncompetitive wages. This new shift in labour demand and supply was expedited by the adoption of neoliberal policies (called for by Brettonwoods institutions which advised governments to cut down on public expenditure on the pretext that this would entail economic growth) coupled with growing unemployment in the country. Today, retired, dead or injured foreign mine workers are replaced by novice locals while foreign workers still migrate illegally and in most cases, work for contractors. While the Mining Charter introduced incentives to encourage mining companies to recruit locals, cheap migrant labour is still relevant to their profit-making and cost-cutting strategy as they could simply evade social security responsibilities and also undercut wages.

While mining houses already had a good local supply of labour, still they were cautious of the need to diversify their workforce by including foreign labour, which to them was more reliable than the former (Davies and Head, 1995). At the same time, the Chamber of Mines intensified its lobbying to ensure minimal state intervention in the sourcing policies of the industry whereby according to (Crush and James, 1995):

> Mining companies would continue with their monopolistic hiring practices; enjoy 'special statuses' in their ability to recruit, employ and dismiss foreign labour outside the conditions that govern other employers… The mining industry would be viewed as a major contributor to state revenue (and social reconstruction) through taxation, but the state would allow the employers free reign in the regional labour market to source labour where they wished (1995:220).

The statement above resonates with the prevailing current situation where there is an oversupply of labour from both locals and foreign workers from the region which has degenerated into what Standing 2011 refers to as a precariat class which manifests itself in the form of casual, fixed-term contracts, informalised and outsourced workers (Standing 2011). Certainly, the existence of a huge reserve army of unemployed local graduates and cross-border migrants creates a fertile ground and opportunity for exploitation of workers as

the race to the bottom intensifies. Business maximises profits and the state benefits through revenue. This partly explains why the state's response to labour brokering was to regulate as opposed to a total ban of such a lethal labour practice (see COSATU, 2016)[56].

In his study of casual workers in the South African Post Office (SAPO), Dickinson (2017) argues that while on paper, the post-apartheid labour legislation as enshrined in the national constitution, grants all workers the right to fair practices, still the question of implementation remains (2017: 3), as many of the casual and foreign workers fall outside union, they are not covered by collective bargaining agreements which further questions the relevance of such a process (see Godfrey, et al, 2007). According to Bhorat, van der Westhuizen and Goga (2009), collective bargaining in South Africa only cover less than a third of workers, who at the same time, are only located in the fomal economy. For example, in 2005, only 30% of workers in the formal economy were covered (ibid). in the case of SAPO mentioned above, casual workers (postmen and post women) were not covered by collective agreements while the Communication Workers Union (CWU) continued to bargain on behalf of permanent workers only while making false promises to casual workers (Dickinson, 2017). As a result, casual workers resolved to take up their own struggles by establishing casual workers committees and also to exercise their agency. It is within this context that we need to understand mobilisation trajectories of workers in general in particular migrants and casuals and the following section discusses workers agency and mobilisation trajectories.

5.9 Workers' agency and mobilisation trajectories of mineworkers – a historical and contemporary perspective

This section reflects on the history of mobilization among mine workers irrespective of race, colour, ethnicity and origin. As mentioned before, trade unionism was introduced into the South African industrial relations by the British artisans who were hired to undertake highly skilled technical jobs in the early days of industrialisation in South Africa. However, the law at that time was tilted towards White workers and accordingly discriminated against Blacks and therefore limited them from joining trade unions. Thus, the lack of participation in labour related matters by Black workers during apartheid was not because they were docile but was

[56] Paper presented by COSATU Gauteng Chairman at the Public Service International (PSI) Youth Summit. 11 - 13 August 2016. Reef Hotel, Johannesburg

as a result of the adverse institutionalisation of labour rights by the repressive state. Despite suppressive laws, Black Miners formed their first union in 1930 known as the African Mine Workers Union (AMWU) under the leadership of William Thibedi (the first organiser) and Motsupfunyane (secretary) who was originally from Lesotho.

Operating under very high risky conditions, the African Mine Workers Union (AMWU) gradually grew in numbers such that in 1941 the union had a total membership of 300 000 African workers of which half were foreigners. Allen, (1992) mentions that the Communist Party played a key role in the formation of Black - African trade unions which could explain why till today; the Party is referred to as the vanguard of the working class. Life history interviews with veteran ex-miners also shared the same views as they mentioned the strong collaboration between the Communist Party and trade unions. However, the movement faced some challenges with the then apartheid government as trade unionists were not allowed to be members of the Communist Party. The first Black trade union confronted numerous challenges which were related to "subscription collection due to limited access to compounds for union officials; harassment of union officials and members by police (interview with Tata Mabea); migrant workers complex experience of insecurity and hopelessness, at times utter despair (Allen, 1992:352) including lack of solidarity from their white co-workers. In a popular publication for workers known as Inkululeko, the newsletter described the arduous process of organising African workers as follows:

> The task of organising a union of African mine workers…is a hard one. But we sometimes have to do hard things, and the time has come to organise such a union. Africans from different tribes will have to learn to work together in a common organisation, just as they have been forced to make profits for their bosses (Inkululeko 1941:8 cited in Allen, 1992:347).

While Black mineworkers exercised agency, there are certain aspects of the apartheid system they would not defy. For instance, one ex-miner pointed out that the recruitment process was the starting point of humiliation and submission to mine management as the statement below demonstrates:

> Our children today ask why we didn't fight by then and my answer to this is that we were exposed to very harsh conditions, can you imagine as a father standing naked for

> medical check-ups next to your child at TEBA recruitment agency?... no privacy–this was really dehumanising. We were packed like sardines with dirty clothes hanged in the room. We used to eat in one single room and this also posed as a health hazard. Toilet – holes… ablution blocks where we used to relieve ourselves facing each other (Interview with Tata Nxumalo 17.03.2016).

It is clear from the statement above that Black workers would not defy the rules of recruitment as they were keen to secure employment and also at this point, it was more of individualism as opposed to collective action and again was a temporary passing phase. This acquiescence could also have been limited by language barriers and anxiety about their medical examination outcome. Tata Mabea appreciates how collective action through the work of the union assisted in transforming this very dehumanising system as he says: "The NUM managed to liberate us" (Interview with Tata Mabea 15.03.2016). Further, he narrates his activism which he traces back to his home country and his role as one of the founding members of the union. He related his working life history and how as a young activist he mobilised the workers to break the chain of slavery. In the pre-1982 period, miners accepted the dehumanising conditions as 'normal', says Tata Mabea "and we united together as the working class to ensure we fight against this dehumanisation, discrimination and poor working conditions"[57]. Because of his activism, he was blacklisted and threatened to be eliminated or assassinated (Interview with Tata Mabea. 15.03.2016). This narrative also resonates with Tata Moises's, also a foreign ex-miner from Mozambique who indicates that "We participated in the struggles against apartheid for us to be able to sit where we are today" (Interview with Tata Moises. 06.07.2016) referring to the democratic South Africa whereby one has the freedom to move around; live and work at anyplace of their choice.

These working life histories clearly demonstrate the agency of foreign mine workers in the history of South African mineworkers' struggles. But what is disturbing is that the current foreign miner's role in both the workplace and union is quite inconspicuous. Tata Mabea attributes this to increasing individualism as jobs dwindle and efforts are invested in economic gains as opposed to improving their working environment, although much of the struggles were won at democracy through law reforms. This crisis is exacerbated by the immigration laws which still awards one year contracts to miners in the formal economy as

[57] Interview with Tata Mabea. 15.03.2016. MDA Offices

highlighted by some participants in a focus group discussion with foreign miners at one of the formal mines. Surprisingly, while they appreciate the need to secure long-term work permits or permanent residence, they were cynic about acquiring citizenship as they feel that in their countries of origin, they have access to land for subsistence farming of which they would not get such privilege in South Africa[58]. Participants claim that working in a foreign country is not by choice but it is due to the situations in their respective countries that have made them to leave their families behind. The participants also agreed that it is difficult to acquire land here in South Africa than in other African countries. According to foreign miners, communalism is still flourishing in Swaziland, Mozambique, Lesotho and other African countries. In their study of Basotho miners, Coplan and Thoahlane (1995) also observed the same responses.

5.9.1 What happened to Black worker solidarity?

All Black mineworkers were denied the right of association and to join and to be represented by trade unions as Black unions were not recognized during apartheid until the outcomes of the Wieham Commission which allowed only Black South African citizens to form and join unions of their choice. Laws and policies were promulgated to ensure suppression of African miners and thus dissuaded their participation in labour related grievances that affected them in the workplace other than productivity related responsibilities. In other words, the Black mineworker was bounded by the law from exercising their agency as illustrated by Crush and James (1995) who assert that:

> While all African workers were suppressed from exercising their collective power in the workplace, it was even worse for foreign migrant mine workers as still reflected today. Throughout his working life, the mine migrant confronts a series of boundaries that he must choose to observe, cross or ignore. For foreign miners the most obvious boundaries are the international borders between South Africa and the surrounding states. Although illegal migrants are now crossing these boundaries in large numbers, mine migrants may still cross legally, provided that they have valid contracts and passports in hand. While many have spent all of their working lives in South Africa, their boundary crossing is always temporary and never permanent. They remain in South Africa as temporary residents without their families and without rights and

[58] FGD with foreign mineworkers. Mine A. South West, Johannesburg

> privileges accorded to normal immigrants. For retrenched and repatriated foreign miners, the borders now present a more formidable barrier. Their dilemma is whether to wait for the remote chance of a legal crossing or to join the border jumpers and cross into South Africa to look for other work or wait at the mine gate (Crush and James, 1995: x -xi).

While mobility conditions under apartheid were homogenous across all Africans through the enforced homeland boundaries and pass laws, in post-apartheid South Africa, foreign mineworkers are confronted with immigration bureaucracies which to a greater extent shape their responses to mobilisation by trade unions. Yet, freedom of movement and space was at the core of the struggles they collectively fought for with their local counterparts. During apartheid, African mineworkers were treated in a very homogenous way irrespective of their origin; those Ciskei, the Transkei, Lesotho, Malawi, Mozambique or Botswana. Allen (1992) supports this point as he asserts that:

> All of the strangers speaking different languages from tribes which in the past had sometimes experienced hostile relationships were forced into a common mould. They all had the same relationship of degrading subordination to white miners. No black mineworker was ever allowed to forget the fact. The stories, therefore, which they told about their lives, had a monotonously similar tone about them (1992:30).

However, binaries have been created between local and foreign mineworkers in the post migrant labour regime based on nationality; employment contracts (see Munakamwe and Jinnah, 2015)[59] and language which have culminated into gross xenophobic tendencies. According to Crush and James (1995), "the democratic era in South Africa collapsed influx controls, reincorporated homelands and eradicated boundaries and provided people with new freedom of movement" (1995:xi) but of course for cross border migrants, boundaries still exist. In their attempt to contest boundaries, mine workers respond either individually or collectively through their unions.

[59] In a study conducted in the agriculture in Mpumalanga under the MiWORC project, Munakamwe and Jinnah (2015) observed that farm workers were divided along employment contracts as opposed to nationality (see www.miworc.org)

It is important to contest such boundaries but the problem is that the majority of foreign migrants have remained invisible (see Segatti and Munakamwe, 2014) because of physical boundaries which are enforced by the state through immigration policies as was demonstrated in chapter 4. Rather, foreign workers prefer to bypass immigration barriers by entering and working illegally in the country. Many find themselves using their mining skills in abandoned mines or engage in other informal activities where little inspection and monitoring of their immigration status occurs as revealed through in-depth interviews with foreign Zama-Zama.
Over the years, there has been a proliferation of small-scale illegal mining in abandoned gold mines in Johannesburg in the post-migrant labour regime. Unlike before, when various tribes migrated in groups to the mines, today's migrant worker moves individually and clandestinely. There is a rich body of scholarship on migration and migrant labour (see Castree, 2007). However, the agency of workers as individuals and as a collective has been underplayed in most of this literature. For instance, "structuralist approaches to the geography of labour (as opposed to labour geography), fail to see workers as active agents" (Herod 2001:257. This notion is also supported by Castree (2007:858) cited in Bezuidenhout and Buhlungu (2009), as he points out that:

> …while a focus on worker agency defines labour geography, the notion is "both are undertheorised and underspecified in most labour geographers' analyses of it. It has become a catch all for *any* instance in which some group of workers undertake *any* sort of action on behalf of themselves or others" (Castree 2007:858).

According to Bezuidenhout and Buhlungu (2009), conventional studies of labour collective action and mobilization prioritize economic exploitation as a trigger for worker agency. However, in the context of South African workers struggles in the 1980s, economic grievances were not always a stimulant for mobilisation as there existed other non- financial factors like the struggle against the apartheid system. Of course, the classical analysis of the southern African migrant labour system by Wolpe (1972) emphasises the exploitative nature of the system.

Bezuidenhout and Buhlungu (2009) argue that mineworkers did not only respond to their exploitation at the point of production, but also to the indignity of living in a racially despotic state. Through the union, worker resistance became formal, collective, goal directed, sustained, and moved beyond individual mines and compounds (Allen, 1992). The case of

mineworkers illustrates how workers' collective agency shapes and re-shapes landscapes (see Nel and van Rooney, 1993). Furthermore, the role of state in shaping worker agency during colonial, apartheid state as well as the post-apartheid state cannot be overemphasized. Informal and localized worker agency necessitated a structural response from mining companies, and indeed the state (Bezuidenhout and Buhlungu 2009). Despite repressive laws against industrial action, White workers were at a more privileged side and led strikes against poor working conditions and low wages as evidenced by protests which occurred throughout South Africa between 1973 and 1975 (Leys, 1975).

Struggles for recognition and dignity formed part of workers' demands. This could be illustrated by Moodie (1986) analysis of the limits of racial despotism set by local moral economies where he argues that "there were "*imithetho*" or informal laws set by workers in response to racial abuse. They often acted collectively when these "laws" were transgressed by white workers and managers" (1986). This perspective adds notions of justice and integrity to the structural analysis of the neo –Marxists. Again, labour historian, Thompson (1963) has shown how workers mobilize notions of dignity in order to assert their agency. According to Herod (2001:xiii; Herod and Wright 2002; Harvey 2006; Castree 2007) cited in bezuidenhout and Buhlungu (2009) argue that in order to see workers and their organisations as active agents, there is a need to "understand how various groups of workers went about constructing spatial fixes in pursuit of their varied political and economic objectives". A study conducted by Jinnah and Holladay in 2010 revealed that:

> Migrants generally do not mobilize for rights, citing lack of documentation, discrimination and language barriers as key obstacles to claiming rights. Migrants also have minimal interaction with state institutions, NGOs and migrant-led organisations, minimal trust and reliance on institutions and organisations (2010:139)

While challenges exist that hinder mobilization of migrant workers, it is significant to note that opportunities also exist or could be created out of some of the existing barriers. Bezuidenhout and Buhlungu (2009) examined the way in which the NUM captured the compound system in South Africa and subverted the logic of the employers by using these places of residences and labour control as sites of mobilization. In their findings, Bezuidenhout and Buhlungu (2009) argue that though the compound system was meant to benefit only racist employers to achieve their goal of controlling mine workers, it however, created positive space for mobilization of the workers by trade unions. Indeed, the National

Union of Mineworkers (NUM) managed to capture the compound space, used the economies of scale of mines to their advantage and was able to grow a workers' organisation at a rapid pace and turned the logic of control on its head, a strategy that explains the union's success in organizing the industry (Bezuidenhout and Buhlungu, 2009).

To emphasise the importance of space as a key mobilising factor, Bezuidenhout and Buhlungu (2009) argue that the demise of the compound system at the advent of democracy poses a challenge to the mobilising strategy of the NUM as it has to "adapt to the new spatial order to which workers themselves contributed. This challenges the union's notion of what constitutes a branch, how union meetings are called, and how union democracy is structured. As the spatial order is reconfigured, old divisions of ethnicity and nationality come back to haunt the NUM, as well as newer fissures around gender" Bezuidenhout and Buhlungu (2009).

In terms of opportunities for mobilisation, sport and religious organisations provided for spaces where workers could cope , but as consciousness evolved over time, these became the bedrock of collective organisation when the indignity of having to cope led to action (Van Onselen 1976; Gordon 1978; Cohen 1980). Often such resistance led to full-scale strikes or protests, which were crushed by the industry and the state like the mineworkers strike of 1946 (Allen, 1992). Accordingly, the NUM used spatial control to put pressure on non-members to join and to control strikes (Crush and James 1991:306). The union's membership expanded phenomenally, thus enabling it to jump to the national scale. Important to note is the fact that the mining industry, the migrant labour system and the compound have by no means ended. However, Bezuidenhout and Buhlungu (2009) view the spatial distribution of workers as a threat to solidarity and existing ways of organising.

The new economic environment requires a reorganization of trade union structures to suit the needs of all workers. Thus, the inception of liberal economic policies has developed a common trend whereby we witness the rise of smaller geographically dispersed migrants being incorporated into trade unions (Jose, 2000:2-3). As a result, the role of unions has changed to provide services such as skills improvement, unemployment insurance, social security and employment exchanges. Unions have been changing to enhance workers' perception of the effectiveness of unionism, and have ensured their continued loyalty over the years (Jose, 2000:2-3). The impact of broadening the activities of the labour movement to

capture foreign workers and vulnerable groups has been received with new challenges. These challenges are witnessed when unions attempt to strategize to cover new constituencies. For instance, trade unions face a huge challenge when attempting to organise local low-skilled workers in sectors like domestic, farm, cleaners or security guards, and it is even worse for foreign labourers working in these sectors (see Ndungu, 2011).

Labour legislation in South Africa is somehow selective. On the one hand there are some categories of workers who enjoy the benefits of the law such as those working in the formal economy including those engaging in highly–skilled jobs. On the other hand, besides Sectoral Determination coverage as prescribed by the Minister of Labour to protect vulnerable workers, those working in the informal economy predominantly women, contracted and outsourced workers in the mines are excluded from the full coverage and protection of the labour law. The majority of foreign miners working in South Africa are still limited by the immigration laws through the short term annual twelve-month permits[60]. Nonetheless, on paper, all workers including foreign nationals are covered by labour legislation although there are multiple practical challenges to this.

As noted in Chapter 4, the immigration law to some extent adversely impact on union efforts to organise and also makes it difficult if not impossible, to encourage foreign workers to participate in union ranks. For instance, in a focus group discussion conducted at Mine A with foreign workers, initially they were reluctant to speak out because they feared losing their jobs. Some who have been working in the mines and were union members since its formation, mentioned their bad memories with strikes as some of them lost their jobs and went back home. According to Nel & Rooyen (1993: 34), when a worker participates in a particular enterprise, the worker needs to have a say in decisions regarding such activities. Hence, mobilising such workers to participate in potentially problematic areas is difficult where "migrants [themselves] do not necessarily share the same needs, interests and demands" with locals (Parsley & Everatt, 2009: 20). Further, Nel & Rooyen (1993: 35), assert that mobilisation and "participation require three interrelated elements, namely, influence, interaction and information sharing". These elements are virtually impossible to fulfill given the fact that many foreign workers still sign short-term annual contracts. The study revealed that the issue of work permits for foreign workers still remain an individual

[60] FGD with foreign workers, 15.07.2016. Mine A, south west of Johannesburg

burden as opposed to a collective bargaining issue considering the role played by foreign workers towards the democratization of South Africa, of which the assumption was that once South Africa is free, then they would have the liberty to work for as long a time as they wished[61].

In 1997, Mozambican workers were offered amnesty on the grounds that they had served at least 5 years working on the mines in South Africa though the majority was not willing to acquire citizenship under the amnesty. However, the amnesty offered to long-serving migrant miners was viewed by some critics as "an obvious measure to hasten "normalization "of the mine labour system, allowing miners to opt out of the system" (de Vletter, 1998). This is because "the amnesty provisions were the result of the NUM pressurising the new government to treat foreign miners in the same manner as their South African counterparts with the assumption that immigrant workers from poor neighbouring countries would prefer to live in South Africa and that the amnesty was their incentive provided via the good thoughts of the NUM" (de Vletter, 1998). One can also argue that the NUM had realised that the majority of its potential membership were immigrants, who could be limited from mobilisation and representation on citizenship grounds (see Sachikonye, 1998). So, the amnesty was meant to benefit both the union (NUM) and foreign miners at the same time.
In the view of migrant workers themselves, in contrast to the NUM, acquiring citizenship was enunciated by one ex-miner as follows:

> What influenced citizenship for Mozambicans is because of the long 16 years civil war in the country; so it was wise for one to get an I.D. so that they could bring their families than to sleep in the bush every time we went home to visit our families[62].

So to ordinary Mozambican citizens, the acquisition of an identity book assisted them in two ways. First they would not be forced to go back home at the end of the year to renew their contracts and second, their physical security and that of their families was guaranteed from the civil war as they were then eligible to bring their families to South Africa. The assumption could also mean the miners would fully participate in workplace struggles as South Africa becomes their permanent home unlike before when they felt that their stay and working life in South Africa was temporary. Rather than empowering them, this development

[61] Interview with Mpho, a foreign miner from Swaziland. Mine A, south west of Johannesburg
[62] Interview with Tata Moises. 06.07.2016. Amimo Offices, Braamfontein

somehow in a way seemed to have produced antagonistic political subjectivities and further subjugated them to a state of acquiescence perhaps because of fear to have their citizenship revoked[63]. This would result in them and their families who had joined them become homeless and also taking into account that if they lost their jobs, they had no other economic alternatives back home.

Contrary to the assumption above, the most worrying factor is that while Mozambicans constitute a majority of foreign miners in South Africa and have managed to acquire citizenship through the amnesty process; their response to unionization is much weaker as compared to other nationals such as those from Lesotho (de Vletter, 1998). The findings of a study by Polzer and Segatti has also confirmed that the level of socio-political mobilisation amongst Mozambicans is very low (Polzer and Segatti, 2012). To support this point, in an interview with an ex-miner from Mozambique who chose to remain anonymous, he had this to say:

> What we have learnt as Mozambicans is that respect begins at home and when we come here workers only think of respecting their managers, work, get paid and go back home. Also we have learnt a lot from the long civil war such that we are tired of fighting…Owners themselves know our role in the economy! [Interview with Tata Hosea. 06.07.2016)
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> .

A deeper analysis of the statement above brings to the fore a very interesting and important factor which shape political subjectivities of foreign miners –civil war. It is very difficult to persuade victims of war or refugees[64] (Brochmann, 1985) to participate in protests or strikes whether peaceful or violent and even associate themselves with militant organisations in their country of refugee. This is supported by Vidal (2010) who interprets that:

> …absence of political organisation and the weakness of social links among Mozambican migrants, probably the major characteristic that distinguishes them from

[63] FGD with foreign mineworkers at Mine A. South West Johannesburg

[64] In general, Mozambican civilians were plagued by the Mozambican National Resistance (MNR) terrorist grouping which was supported by the apartheid government of South Africa to unleash terror and rebellion against the socialist Frelimo government. In this regard, 1984, a spurious Peace Accord known as the Nkomati Accord was signed between South Africa and Mozambique with the aim of bringing peace between the two countries. While Mozambique was against the apartheid government, the country still depended on remittances from migrant labour (Brochmann, 1985).

> other African migrants in Johannesburg… is primarily a consequence of specific form of individualism that was generated by an extended period of political domination experienced by many of Mozambique's poor (2010:56-57).

Again, the political control exerted by the post socialist Mozambican ruling party, Frelimo and the main opposition party over Mozambicans in general within the country and this is further imported into host countries need not be undermined as Vidal (2010) also contends that:

> Even in today's democratic Mozambique, political participation remains weak, and groups of political militants (from FRELIMO or RENAMO) closely watch the population and try to prevent any attempt at self-organising. For the vast majority of people living in Maputo, the world of politics is a very distant world, and this is due, in my opinion, to what politics has historically been for them. There is no strong identification to political parties. Poor people will typically prefer FRELIMO to RENAMO, but they do not identify themselves with the parties and are not waiting for politicians to improve their living conditions. To achieve this, they need to make money in doing business or in working in South Africa or elsewhere. (2010: 61).

However, because of xenophobic attacks which have targeted African migrants, particularly in the major cities of South Africa, according to Vidal (2010), Mozambicans have begun to mobilise and unite in order to collectively respond to various challenges they face in their everyday lives.

5.10 Opportunities, challenges and solidarity in organising foreign mine workers: A historical and contemporary perspective

As mentioned earlier, it is important to analyse workers' responses as a critical component of the mobilisation matrix. The mining sector has the privilege to be well-documented in terms of foreign workers mobilisation trajectories since this sector was the first to attract foreign workers in the early years of the country's industrialisation post the agrarian based economy. While African mineworkers were actively involved in workers' struggles, very little was documented and the seminal work of Professor Vic Allen through his three volumes of "*The History of Black Mine Workers*" is highly commended and the works of the Witwatersrand

Mine Natives' Wage Commission[65] (Lansdown Commission) (Allen, 1992:358), accelerated public knowledge on the mining sector and Black mine workers involvement in workers struggles. Yet, we read more about white workers privilege and involvement in trade unions during apartheid, with the unions being hostile towards African miners. As such, Black mineworkers strikes and resistance were declared illegal by the apartheid government (Allen, 1992:359). In the post migrant labour regime, various challenges have been identified as shaping mobilisation of foreign workers in South Africa. The major challenges include the profound shift in demand and labour supply; recruitment trends and gold production processes.

In making choices about joining trade unions or not, workers are influenced by previous experiences. For instance, the protracted 1987 mineworkers' strike which was called for by the NUM resulted in the loss of many jobs and foreign miners were affected the most and close to 10 000 miners from Lesotho were dismissed (Coplan and, Thoahlane (1995). This marked a turning point in the history of the union's commitment towards foreign workers grievances. According to Thabane, (1995) while the union was able to secure the reinstatement of some of the workers, many did not get the jobs back and returned home to joblessness and bleak survival prospects. This event coincided with the subsequent restructuring in the mines which resulted in more foreign miners losing jobs. The crisis was further exacerbated by the failure of companies to respect the union and industry agreement on seniority by retrenching senior foreign miners and replacing them with novices with the aim of undercutting wages and maximising profits. Despite the principle of "last in, first out", Philip (1995) asserts that "NUM militants are invariably targeted for retrenchments and at the De Beers –owned Finsch mine in 1992, 93/95 elected shop stewards were retrenched (Philip, 1995:186).

To make matters worse, retrenched foreign mine workers did not receive their full retrenchment packages and as Coplan and Thoahlane (1995:142) put it:

> Migrants with many years of experience were retrenched in preference to relative novices, violating union and industry agreement on seniority. Inquiring after their service pay-out, veterans were offered sums far below the approximately R1000 per

[65] Also part of the archival material reviewed

> year of service to which the NUM informed them they were entitled. Excuses given were that they had changed mines or changed job categories at some point (Coplan and Thoahlane, 1995:142).

The statement above illustrates the union's insensitivity and betrayal of foreign workers and this was raised many times in life history interviews. Some felt that they were neglected based on nationality while some were suspicious of some collusion between mining companies and some union officials. These challenges coupled with immigration bureaucracies have resulted in the gradual decline and low level of unionisation amongst foreign miners[66].

Racial divides between white and black mine workers under apartheid posed as a huge barrier to unity and solidarity. Indeed, white miners benefited from the white supremacy agenda. Nonetheless, this did not dampen African workers' militancy as Allen (1992) notes that "between 1939 and 1945 there were 304 officially recorded strikes by African workers" (1992:361). Because of racial divisions, various races responded at different levels as illustrated through the workers newsletter - Inkululeko (1943) cited in Allen (1992:360):

> Indians and Coloureds became more militant in the post war period. Indians, who were influenced by Gandhi's stand against British imperialism during the war, radicalised the Transvaal Indian Congress. During the war, there were marked changes in the political responses of black South Africans. On an individual level, they defied the Pass Laws on an unprecedented scale … During the space of ten days in April 1943, 12 000 Africans were arrested on the Witwatersrand for offences relating to passes, the non-payment of taxes and living outside the locations contrary to the regulations (1992:360).

It is important to point out that the apartheid system categorised workers into a hierarchy to ensure racial divisions were maintained and also as a means to divide working class solidarity. Despite, sanctions imposed on Black workers not to unionise, they exercised their political agency by participating in national politics through the structures of the African National Congress (ANC) and the Communist Party in their endeavour to end racial

[66] Life History Interview with Tata Tumisho, an ex-miner from Lesotho. 15.07.2016. Johannesburg

discrimination in the work place. Today, workers are still divided along nationality and work contracts in the work place.

As part of their strategy, mining companies accommodated mineworkers in compounds along tribal and ethnicity lines and to a greater extent instigated factional violence (McNamara, 1980: McNamara 1995). Ethnic tensions, in particular Zulus against Xhosa divided workers on the grounds of competition for jobs. Adding on to this, Minnaar (1995) claims that:

> Political parties propagated dissent among Xhosa-speaking and Zulu –speaking miners to score their own political goals and millage. For example, the clashes at Durnacol and Hlabane were as a result of the instructions by local IFP leaders, as most of the Zulu-speaking miners had refused to participate in the strike for wage demands at Sishen, Thabazimbi and Grootegeluk mines. This refusal was in line with the IFP's well published opposition to economic disruptions such as work stay aways, strikes and consumer boycotts (Minnaar, 1995:49). In October 1990, fighting between Xhosas and Basotho left nine miners dead and 42 injured at Harmony gold mine hostel No. 2 near Virginia in the Orange Free State (Minnaar, 1995:49).

In August and September 1991, fighting broke out at Wildebeestfontein North and Bafokeng North hostels of Impala Platinum's Bafokeng mine in what was then the homeland of Bophuthatswana. This fighting between Tswana and Basotho left nineteen (19) miners dead and twenty-six (26) injured. According to a mine spokesperson the fighting had started when some miners wanted to continue striking while others wanted to return to work. By housing mineworkers along ethnic lines, management believed that this would not only prevent factional fights but would also prevent the mineworkers from forming a united front against management to enforce future demands. Furthermore, some mine managements still appointed *induna* or tribal headman as members of hostel or liaison committees, thereby entrenching aspects of tribalism. The result has been a continuation of ethnically–driven conflict and a number of such faction fights erupted at various mine hostels during the 1990s (Minnaar, 1995). During this period, significant tensions also grew between local and foreign miners as the former begrudged the latter for taking scarce jobs away from Zulu locals including "ongoing political competition, the struggle for resources, criminal activity and ethnic/ tribal differences (Minnaar, 1995:43). Besides, the categorisation of mineworkers as "urban natives" and "tribal natives" according to (Allen, 1992) further created rifts among

African miners. Mineworkers were distinguished as tribal natives and this in a way justified mine owners' policies on cheap labour as explained below:

> The distinction between the two types of Africans was crucial for the mine owners' case for, in order to justify their cheap black labour policy, they had to show that low wages did not adversely affect the living standards of those who received them. They could only do that if they were employing people whose subsistence was primarily and satisfactorily provided by means other than wage labour, that is those they described as 'tribal natives' whose families lived in the reserves (Allen, 1992:366).

This demonstrates how subsistence farming as undertaken by families of migrant mineworkers in former homelands and neighbouring countries overwhelmingly benefitted monopoly capital. Business argued that migrant workers did not exclusively depend on wage work but in fact the wages were a means of subsidising their (migrant workers) subsistence farming activities back home which generated food and extra income and as such employers claimed that they were paying fair wages. In a way, this vindicated wage disparities between the two categories of workers.

Employers, according to (Golding, 1985; Moodie, 1992) also engaged micro-politics of ethnic divide-and-rule by playing workers against each other. For instance, they preferred to hire migrants based on the supposition that they were submissive and prone to dismissal and deportation if ever they defied workplace rules (see Crush, 1989; Crush 1995).
Conversely, the NUM strategically capitalised on the negative tactics employed by the employer and converted these to their own advantage. For example, while workers were housed in ethnically aligned squalid and hostile compounds [67] for easier control by employers through *induna*, the union used the hostels as organising spaces and as such could easily reach out to workers through collaborating with ethnic *induna* (see Webster, 1985; von Holdt, 2002). However, a good number or respondents described the role of the induna as that of 'brainwashing' migrant workers contracted through Teba on behalf of the employer and deter amicable integration.

[67] Lie history interview with Tata Mabea. 15.03.2016. MDA Offices

At the same time, some claimed that Teba, as a recruiting agency also played a significant role in deterring workers contracted through them from participating in the struggle against apartheid as workers were warned "Don't involve yourself in politics[68]". This was further reinforced by rules of the hostels as workers were subjected to high discipline enforced by Indunas. For instance absenteeism was not allowed. The sick were arrested and sent to court as the laws were very oppressive. Cross-border migrants were punished by magistrates and sent to jail for three months and could only return back to hostels if lucky or in the worst cases would be deported. This resulted in many migrant workers not participating in both political and workers struggles. In addition, Consulates from labour supplying countries advised their citizens not to participate in political activities of South Africa or else they would lose their jobs[69]. The diagram below summarises the various factors and players in the shaping of Black mine workers' mobilisation during apartheid.

Table 3: Factors and actors constraining mobilisation of workers during apartheid

Factors	Players
Law	**State**
Warnings not to participate in workers and political struggles	TEBA and respective sending governments' Consulates
Brainwashing migrants contracted through Teba from participating in workers struggles	Induna + Hostel Rules
Punishing and facilitating jailing and deportation of migrants involved in politics	Magistrates

Source: Interview with Tata Mabea. 05.07.2016. MDA Offices

Workers were united underground but separated on the surface in hostels where they lived along ethnic and language binaries, for example, amaZulu clicked with amaNdebele while amaXhosa were on their own. This in the long run degenerated into tribal fights related violence. In other words, the system divided workers in order to sustain itself and made it difficult to bring all workers together as hatred had been sown among them.

[68] Life History interview with Tata Masego. 15.07.2016. Mine A
[69] Life history interview with Tata Mabea. 15.03.2016. MDA Offices

Another deterrent strategy used by the employer to frustrate Black workers' unions was the imposition of sanctioning of mass meetings whereby unions had to first apply to convene mass meetings. If employer endorsed the meeting proposal, a confirmation letter would be issued out by the magistrate but if not approved, all participants would be arrested by the South African Police (SAP) or dismissed and foreigners would be deported. So, it was very risky for workers to join and participate in union activities as this was also compounded by a representation gap as Black unions were not recognised by most mining companies. Meetings were recorded and Special Branch spies (SB) would attend the meetings to ensure workers discussed work-related matters and nothing about the general national political struggle[70]. Pressure also mounted with families back home as they discouraged their spouses and sons from participating in politics as they received news about Black workers being arrested or murdered as the statement below shows:

> My parents were informed that I was causing trouble and they intervened and pressure mounted but I couldn't retreat because of my political activism; working class consciousness drove me then they later on supported. To be a leader you choose life or death and if you choose death then you will be elected as a leader and be prepared to die; one has to be selfless for the future generation. I was still single but ready to die. Colleagues from my own country were not happy why I was in leadership role when I'm not a South African' but my wish was to advance the rights of others and mine and this was like a call[71]

The above statement illuminates us on how the family, friends and countrymen also played an instrumental role in shaping political subjectivities of foreign mine workers during apartheid. This point is also echoed by Tata Moises who admits that he never knew about unions from his country of origin – Mozambique as he had never worked before migrating to the mines and as such was influenced by his friends to join the union. In other words, the family plays both an impeding and facilitating role in foreign miners' mobilisation. For instance, most of the Mozambicans interviewed reported that they were recommended by their fathers or uncles already working on the mines (see Head 1995; de Vletter 1998) to work in the mines. This referral system presents some opportunities and at the same time present problems. For instance, if the novice's fathers or uncles are actively involved in the

[70] Interview with Tata Masocha. 15.07.2016. Mine A
[71] Interview with Tata Mabea 15.03.2016. MDA Offices

union, they might encourage the young ones to join but if they are anti-unions, and then it is more likely that they might discourage participation in workers' struggles.

The democratic dispensation presented a good opportunity for mobilisation beginning with the repealing of draconian laws and amendment of the Labour Relations Act (LRA) in 1995. However, as mentioned in the previous chapter, the LRA does not exclusively mention foreign workers and allow them to fully enjoy the fruits of democracy which their forefathers fought for in solidarity with their local brothers and sisters as revealed through life histories with ex-miners. The struggle against apartheid was strongly rooted in workers struggles as Black workers were determined to change their poor working conditions and meagre wages if they could change the racist government. Their assumption was that if a Black government could assume power then, perhaps it could be sympathetic towards workers' problems (see von Holdt, 2002; Barchiesi, 2011). In other words, Black workers expected social redress from the new ANC government. This was somehow addressed during the first years of democracy although the euphoria was short-lived. Trade unions played a very central role in the development of both the national constitution and the amendment of the LRA and were granted a stake at– NEDLAC. Yet, they did not pay attention to the crafting of immigration laws which is why the long-standing problem of documentation for foreign miners persists today. This shows an acute lack of political will by trade unions and the democratic government to absorb foreign workers in the mainstream and this will be discussed in greater detail in Chapter 7.

When asked to compare his experiences of trade unionism during the formal migrant system, and in the post-migrant labour regime, Tata Mabea described today's challenges as two-fold as shown in the statement below:

> The new generation of mine workers lack consciousness … They are self-centred and they think they know a lot such that they believe there is no need for collective thinking and action. Honestly, you can't win workers struggles as individuals or else one is prone to dismissal[72].

[72] Interview with Tata Mabea 15.03.2016. MDA Offices

His sentiments resonate with that of an elderly miner who participated in an FGD at Mine A, who also felt that the current young workforce in the mines seem to be driven by egoistic interests at the expense collectivism and unity. There is also endemic mistrust among workers unlike before as competition for jobs continues to escalate. Other ex-miners who were interviewed observed that the new miners have little faith in trade unions, with approximately seventy percent of all workers in South Africa falling outside of unions. Some believe that today's workers have become too materialistic and at the same time are too demanding. As a result, both workers and trade unions have become too fragmented paving the way for opportunists like labour brokers to manipulate the laws which the former workers have fought for to exploit workers; foreign workers in particular. While today South Africa boasts very progressive labour statutes, the major challenge is how to utilise such statutes to workers' advantage; for instance, to organise and join trade unions. Virtually, all participants in the life histories, having experienced the old and new dispensations, suggested that workers need to unite irrespective of nationality; join the unions and fight together as a united force.[73]. Some call for amendment of union constitutions as reflected in this statement:

> But NUM has to open a clause in its constitution to accommodate us …I remember the international officer saying we can't have relationship because AMIMO (referring to Associação de Mineiros Moçambicanos - Association of Mozambican Mineworkers) is an association which can disintegrate any time as members leave the mines but still today, we stand and still they cannot open up their doors.[74]

Interestingly, the above statement is consistent with my findings in Chapter 4 whereby trade union constitutions imperceptibly close out foreign workers from joining their ranks as the review of relevant union constitutions revealed that none of them categorically mention foreign workers. Some trade union leaders who were interviewed in this study acknowledged omissions and gaps in their union policies and constitutions although they were quick to defend their position as being guided by the principle of class consciousness. To them, when they go out to organise workers, they see no need of identifying them through various social groups or nationality but as a homogeneous social category which is exploited by the capitalist system[75]. In a way, they do not want view state crafted restrictive immigration laws

[73] Sources: Interview with Tata Mabea, Tata Moises, Tata Masocha and FGD at Mine A
[74] Interview with Tata Moises. 05.07.2016. Amimo Offices, Braamfontein
[75] Interview with a former national union organiser of FAWU. 08/12/2013. FAWU Head Office

as standing in the way and as interfering with their efforts to organise and render representation services to all workers as given in the labour laws irrespective of nationality.

5.11 Trade unions and Mobilisation of Mine Workers

Trade unionism in South Africa was introduced by the British under the guidance of British colonialists including trade union advisers from the British Trades Union Congress who believed that "the British way of doing things was universalistic" (Allen, 1992: 10). Ironically, the "Western model prevented unions in Africa from becoming mass organisations which were vehicles for social protest and instead made them mere shadows of organisations which could be manipulated by employers and governments alike" (ibid). Important to note is the fact that the indoctrination of trade unionism seemed such a contested terrain considering the different contexts and labour conditions experienced in the two dissimilar parts of the globe (see Allen, 1992). Despite the repression against African mineworkers, it is important to point out that they were not always acquiesced or threatened by their white bosses and thus rebelled or resisted against harsh working conditions and treatment in the mines and this could be manifested either individually (through such actions like false sickness, sabotage or breaking the contracts) or as a collective (Allen, 1992: 30).

Thus, an analysis of foreign workers' mobilisation needs to take into consideration their Black miners' agency and resistance in general (taking into account that by then all Black workers were treated as migrants) strategies during apartheid. This analysis needs to include the "capitalist mode of production which divides societies into two basic irreconcilably opposed classes, namely employers or those who can subsist only if they sell their labour power on the other hand" (Allen, 1992:4). Again, it is important to note that workers' association to trade unions is determined by individual choices in response to poor working conditions as Allen (1992: 10) asserts that:

> The value of individualism meant that workers voluntarily joined unions as individuals and regularly contributed to their upkeep, just as they subscribed to an insurance society to protect themselves against unemployment, accidents, disease or death at some in determinant time in the future. The willingness to do that was not a natural intrinsic human reaction but a culturally determined reflex to adverse conditions (1992: 10)

This was also confirmed in a mixed FGD at Mine A, whereby one of the participants pointed out that that "Belonging to a workers' union is not automatic but by choice". Thus, a prerequisite for mobilisation according to the above statement by Allen (1992) is the realisation of social injustices at the workplace. Indeed, it is the recognition of injustice at the workplace and fear of the unknown which coerce workers to join trade unions or fully participate in other processes which have the potential to emancipate them. The notion of trade unionism cuts across both periods of this study although new forms of worker collectives are emerging in the post migrant labour regime prompted by the current realities. Therefore, it is discernible that in order to consolidate their positions, unions "aim at securing a minimum income, universal access to social security, and improved working conditions for all in the labour market" (Jose 2000). Despite these aspirations, trade unions are continuously fighting issues of retrenchment and unemployment because of interdependence and globalisation which is forcing the services of companies to downsize. Hlatshwayo (2008: 11) argues that the effects of globalization hound the efforts of labour movements, especially at the time when redressing inequalities that were the order of the day in the apartheid era.

This chapter attempted to make an analysis of the formal and informal mining activities in relation to mobilisation. Immigration policies and the profound restructuring which has occurred in the mining sector have given birth to a new kind of precariat (Standing, 2011); illegal miners also popularly known as *Zama-Zama*. At the same time, new forms of resistance and mobilisation strategies have emerged within the mining sector. Historically, African mineworkers resisted against the apartheid regime as a collective but today solidarity has been fragmented and foreign workers are left to champion their own struggles against unfavourable immigration laws and police brutality as they attempt to earn a livelihood in the margins of the mining sector as 'illegal miners' popularly known as *Zama-Zama*. The subsequent sections present findings based on empirical data which interrogates mobilisation strategies in and outside of the formal mines.

5.12 Part 1: Mobilisation in the formal mining sector

5.12.1 An overview of unionisation of mineworkers: Trade unions in the mining sector

Following the 2012 Marikana tragedy, it is difficult to access reliable statistical data of union membership although there were claims that the AMCU had surpassed the NUM in terms of numbers. The dearth on membership data is further compounded by workplace restructuring and precarious employment relations in which workers are subjected to job losses at any given time. As the primary focus of my study is the gold sector, I made efforts to establish facts around unionisation in this sector. In 2015, the NUM was the largest union organising in the gold sector with a total workers of 119,000 with a total unionisation rate of 67% by then[76]. Nonetheless, AMCU is the largest union organising in the platinum sector and was claimed to have majority in some gold shafts.

The unionisation rate in the mining sector has escalated in the post-apartheid period as the new dispensation and laws promoted the right to join unions which was previously made difficult during apartheid as African miners were denied the right to establish or join unions even though they constituted a large share of the overall workforce by then. In their organising efforts during apartheid, unions were faced with the challenge of access to private property and this continues in post –apartheid era as the Constitution of South Africa "secures and guarantees private property and , at the same time, guarantees a range of rights" (Golding 1995:viii). Accordingly, this creates conflict between the right to organise and the right to private property and freedom of speech and thus impede mobilisation.

5.12.2 Profiling the National Union of Mineworkers (NUM)

The largest trade union in the mining sector in South Africa is the National Union of Mineworkers (NUM) which was established in 1982 to represent Black workers' rights through the established collective bargaining structures. At the helm of its formation were foreign workers drawn from across the southern African region. In his book, *The History of*

[76] Andrew England — Johannesburg October 2, 2015 South Africa's biggest mining union agrees gold wage offer: Deal that sees salary hikes from 9% to 13% a year over 3 years boosts struggling sector. Financial Times online

Black Mineworkers Volume 1, Allen (1992) mentions some of the founding fathers of the union as James Motlatsi from Lesotho then President NUM; Cyril Ramaphosa –the General Secretary; Jerry Majatladi, Kgalema Motlanthe and Habofanoe Thomas Katsise from Lesotho. These names also appear in the archival material which I reviewed and it is important to mention them so as to show how by then nationality of union leadership was not really an issue. However, it seemed the cohort of the first union leaders comprised of two nationalities; South Africans and Basotho. My own observation is that there seems to be a thin line between the borders of Lesotho and those of South Africa such that it is very difficult to make a distinction between local and those Basotho who originate from Lesotho. Even today, a sizable number of Basotho originally from Lesotho occupy strategic government positions in government and private sector and easily assimilate unlike migrants from other countries such as Zimbabwe and Mozambique. Founded in 1982, the NUM expanded from a membership of 6 000 members to 187 000 in 1987 on mines belonging to the COM (COM, 1988; Nattrass, 1995:170). In the first five years according to Philip (1995), the union comprised of 280 000 paid up members but lost 180 000 workers in the subsequent five years (Philip, 1995:185) due to retrenchments and regained again in the post-apartheid period.

In 1995, through the NUM's advocacy and interventions, the democratic government awarded amnesty to all foreign mineworkers who had provided at least ten years of service (see Crush, 1997; de Vletter, 1998). It seems like not all foreign miners had an opportunity to apply for amnesty as some claim that they have worked in the mines for twenty five to thirty years on contracts whose conditions require them to renew their work permits annually as revealed in an FGD with foreign miners at Mine A. be that as it may, a good number of Mozambicans and Basotho migrant mineworkers took up the amnesty offer. Nonetheless, this act of goodwill was interpreted in various ways as several explanations were speculated. Some claimed that the majority of NUM membership was predominantly migrants yet citizenship concerns were being raised as far as mobilisation, participation and representation of workers was concerned. So, amnesty was a means to legitimize all foreign workers as citizens of the country thus creating a good organising opportunity for the union.

Acknowledging the role played by foreign miners in its formation and as members and as a way of preparing for the phasing out of foreign workers that NUM would increasingly advocate for in the late 1990s and early 2000s, the union expanded its social responsibility

beyond South Africa to support exit alternative livelihoods for its former members. As such, the union assisted ex-miners to establish agriculture co-operatives in countries like Lesotho (Philip, 1995:189) and most recently in Mozambique[77] (see Chapter 7).

The study revealed that a good number of foreign mineworkers occupy leadership positions as shop stewards and senior union leaders (national office bearers – NOBs) or union officials. This could be attributed to class identity formation since apartheid and which reinforced through union political education programmes in contemporary South Africa. This is supported by an interview excerpt below:

> **Janet:** Who is eligible to be elected as a leader?
>
> **Tata Mabea:** In NUM, we don't check your ethnicity; as long as you are a worker in any of the three sectors we organise, you are eligible as a leader… Green book doesn't matter as long as you work in the sector, you have the right to associate; you can contest and workers will vote for you! (Tata Mabea. 05.03.2016).

Foreign shop stewards who were also interviewed separately at one of the formal mines also confirmed the above claim as they unanimously agreed that they had been elected as union leaders irrespective of their nationality or ethnic groupings and this has been the tradition of the union since its establishment. They pointed out both local and foreign workers respected them without questioning their origins but as elected worker leaders and irrespective of their migration status as some of them still work under fixed work permits which are renewable annually[78]. The case of the NUM undoubtedly demonstrates that the union has managed to unite all workers irrespective of nationality as Tata Mabea mentions that "the NUM managed to unite all workers irrespective of nationality"[79]. Be that as it may, the shortfalls of the NUM with regards to foreign workers will be elaborated in a later section below.

5.12.2.1 Employee Benefits

NUM fought for the emancipation of workers in the mining sector. Aside, it is however important to mention that in addition to political liberation, the union also struggled to win bread and butter issues. One of the greatest achievements of NUM is that anyone can stay anywhere within the mines. Both local and foreign workers are still accommodated in mine

[77] Interview with Tata Moises. 06.07.2016. Amimo Office, Braamfontein
[78] Mixed FGD with miners. 15.07.2016. Mine A, south west of Johannesburg
[79] Interview with Tata Mabea. 15.03.2016. MDA Offices

hostels. Part of the demands of the union at the attainment of democracy was to ensure the improvement of accommodation and as such mine workers are residing there including foreign miners. Renovations are currently taking place at Mine A to convert hostels into family units in order to accommodate families on the mines. Foreign nationals also get accommodation not only in the hostels but around communities for example in areas like Bongweni Village, Westonaria and Randfontein. Foreign workers can also choose to stay out of the mines and they are also free to choose where to live. Opting to stay out of the mines means one qualifies to be offered a living out allowance. The company is compelled to compensate if an employee is staying outside of the mine's accommodation.

NUM has also played a very influential role in ensuring that mining houses provide housing schemes and grants to mine workers. The workers are currently paid R2100 for staying outside of the mines but only in proclaimed areas. According to participants, in the mines, communities practice Ubuntu (meaning Pan Africanism at local level) and treat each other equally irrespective of tribe or nationality. Protection is also offered to foreign workers for example little or no incidents of xenophobia have been documented in the mines. Foreign nationals are entitled to annual leave to go to their respective homes to renew their work permits after every year, although foreign miners interviewed do not see this as a benefit but in fact a long standing demand. If an employee is receiving care at home, they are funded by the company through compliance with the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA). In the same vein, the company is currently channelling its contributions to Mozambique for the benefits of ex-mine workers suffering from workplace-contracted diseases like tuberculosis and silicosis[80]. According to the Mine Workers Provident Fund, the minimum retirement age is 55 years. Incapacitation fund covers those who prove that they are no longer fit to resume work (due to disability) in the category of work in which they were employed in the service of an employer or in another category (MWPFR 2005: page 37)[81]

Similar to their local counterparts, foreign mine workers reported that they benefit from the provident fund. Provident fund is the total amount contributed by both the employee and employer each month. There is also the Compensation Fund which caters for disability at work and funds are set aside in the event that injuries or disability at work occurs which is called RISK and foreign miners are also covered. There is also the COIDA Act which caters

[80] Interview with Grace, Welfare Officer at Mine A. 15.07.2016. South West of Johannesburg
[81] http://www.mwpf.co.za/rules.html

for injury at work and occupational diseases. The company also pays monthly insurance contributions for each employee. Nonetheless, this is not happening taking into account the findings of a study by the Southern African Trust which revealed that over 5.7 billion of Rands of accrued mine workers Provident Fund benefits (and other similar funds for pensions) had not been claimed by 2014. From the estimated amount, "over R3 billion was in the coffers of the Mineworker's Provident Fund while over R1 billion worth of unclaimed benefits" (2014: 12) were lost through fraudulent activities. The Southern African Trust (SAT) Report of 2014 also revealed that complex laws in South Africa were a major hindrance to claiming benefits alongside other factors like gender and employment status such as sub-contracting which deprived workers of social benefits (2014: 12). Another issue is that unions seem to be complacent in their response to foreign miners benefit claims while the mining houses are just waiting for workers to die and because they are from neighbouring countries, this is a safe bet. The poor attention towards the issue of provident fund by unions and business constitutes discrimination.

When a foreign mine worker is involved in fatal accidents or death, they are replaced either by the wife, son or daughter. However, other than replacements, South African mines are now limited from hiring foreign labour. Workers are encouraged by NUM to stand up for their rights and to approach the union where essential assistance is required. There is no discrimination on any appeal if it concerns a foreign national and in terms of representation as well although there are insidious forms of discrimination and this could be as a result of neglect or misinformation. Nonetheless, it is important to point out that the NUM has played a very central role in managing the Provident Fund although there is dissatisfaction that some union leaders were reported to be shareholders, which is a conflict of interest. The issue of provident funds has stimulated tensions between unions and members as some unions exploit and abuse such funds to the detriment of beneficiaries (workers). For example, in 2016, the NUM demanded that the board of trustees of the Impala Worker's Provident Fund steps down following a bribe scandal of R2 million involving seven members of the Association of Mineworkers Construction Union (AMCU)[82]. The history of provident funds dates back to the discovery of gold in Witwatersrand which gave birth to the Witwatersrand Gold Mines Employees Provident Fund (Kops, 1939), and by then it was meant to cover White miners in particular. In essence, the primary objective of provident funds is to grant social benefits such

[82] http://num.org.za/News-Reports-Speeches/ArticleID/403/NUM-calls-for-Impala-Workers-Provident-Fund-board-of-trustees-to-step-down

as medical, sick, disability, death, terminally ill, dismissal, funeral, and standing surety for housing loans to workers when they retire or cease to work for the mines due to retirement or retrenchment (ibid). In South Africa, the Provident Fund is statutory and established in terms of section 12(4) of the Pension Funds Act, No. 24 of 1956.

5.12.2.2 Employee Benefit Centre

The Centre is located at the mine premises workers are assisted with issues that concern their welfare at work. Previously the benefit centre did not exist and only came into existence after too many fraudulent activities occurred since there was no employee representative on the matters of the welfare of the employees at the mine. The main purpose of this centre is to assist the workers to claim their provident, insurance and pension funds. The Union noted that there was no communication between employers and mine workers and thus negotiated for its establishment to enhance a smooth flow of communication between the workers and employer. The worker representative attended training courses on how she was supposed to deal with and assist the workers. Employees are encouraged to fill in nomination forms which require their personal information and the beneficiaries and their correct information, which previously was the responsibility of Teba. The nomination forms will be sent to (TEBA). An amount of R30, 000 is given to the beneficiaries after the death of an employee and also money from the provident fund is calculated according to the employee's contributions at a 100% rate. If there are complications like if an unstated beneficiary claims the late mine worker's benefits, (in the case of polygamous relations which is prevalent given the length of stay foreign miners are physically separated from their families) both a second wife or a child out of wedlock, a recommendation letter is required for identification and it is supposed to be endorsed by the immediate family or other witnesses from the community where the deceased used to live if he had not made formal or 'open' introductions to his family. If the late worker had two wives, then both will be accommodated as long as they are on the nomination forms according to the law.

Food hampers are issued out to beneficiaries for three consecutive months including for duration of one week for the period of mourning. NUM fought for these benefits to be incorporated into company policies. TEBA assists in the communication process. Previously it used to take time for migrant workers relative's to be notified about the death of their loved ones. Now that TEBA offices are in most of the migrant workers' countries, family members are informed appropriately on the death of a member. TEBA also now assists widows and

beneficiaries to claim their benefits in their own countries without having to travel to South Africa. Foreign miners are content that all employees receive the benefits entitled to them like the annual bonus, staying out allowance without prejudice. Another participant also stated that foreign workers are also covered in the medical and social grants being fought for by the Union and that there is no discrimination. All workers are paid the same salaries according to qualifications and experience and also claimed to have access to financial loans from TEBA Bank also known as U-Bank. This bank was established through contributions from both local and foreign miners and today, it is responsible for union investments. Be that as it may, some foreign miners from Lesotho and Mozambique are dissatisfied with the manner in which such investments have failed to benefit them as some retired workers do not receive support from such funds. This is partly linked to the restrictive immigration policy which failed to grant them long term work permits such that they were employed as casual workers for their entire working lives and thus were not covered for social security benefits beyond their employment in the mines. In essence, the work permit regime determines the employment contract as reported by foreign miners in an FGD at Mine A. While the NUM had fought hard for the rights and benefits for mineworkers particularly in the first few years of democracy, it fell out of favour with workers as a result of corruption among some of its shop stewards as illustrated by Wocke and Marais (2016) in a quote below:

> As NUM became entrenched in the mining companies, elected shop stewards in full-time positions moved away from underground operations and into union offices, thereby alienating their leaders from rank-and-file members (2016: 117).

Ex-miners who I interviewed expressed deep concern about the direction in which some of the union leaders are taking the union which is at variance with founding principles of the union. Corruption, greediness and self-interests were cited as some of the key challenges bedevilling unions in the post-apartheid South Africa.

5.12.3 Profiling Solidarity

Union Solidarity was founded as the Transvaal Miners' Association (TMA) on the 22nd of June 1902 then later changed to Mineworkers' Union, (MWU) in 1913 and again in 2002 changed to MWU-Solidarity and today it is popularly known as Solidarity. The union is apolitical and non-aligned to any political party in the country and believes in "protection of minorities and democracy; the fair implementation of affirmative action".

Strongly grounded in Christianity, the union organises predominantly white miners hence it is the oldest union of the three major unions organising in the sector today although little is known about its involvement with foreign miners. Perhaps, the most probable assumption is that it could have interacted with British and other White miners during apartheid times. Unfortunately, I made several attempts to get in touch with the union leadership to get to understand more about the union but all in vain till the writing of this thesis, which prompted me to rely on data provided on the union's website. The union boasts of an approximate membership of 132 000 people and 31% of membership is black[83] across all occupational fields; mining, metal and engineering, agriculture, aviation, chemical and university affairs. It has more than 20 national offices; 300 staff members and 1 275 union representatives in several companies. Through its strong Legal Services Department; the largest among all unions, the union provides essential labour and legal related services to its membership and guarantees job security in light of globalisation. The union's benefits and services towards its member's expand beyond the workplace into the communities. According to the General Secretary of the union, the union focuses:

> …mainly on the recruitment of skilled workers and therefore have limited involvement in the recruitment and servicing of foreign workers. We nevertheless play an active role in debates and negotiations regarding the employment conditions of migrant workers. These negotiations were especially relevant in the period after Marikana when it was realised that the alienation and lack of integration of migrant workers into local communities lead to a rise in tension within mining communities[84]

Furthermore, the union appreciates the role of foreign workers in mining as it fills a gap of work that local employees are not ready to undertake; for instance the position of a rock drill operator. Foreign workers need to exercise their right to freedom of association and their right to collective bargaining processes ought to be protected. In terms of benefits, the union is of the view that a special arrangement and effort should be made to assist these workers to go home more frequently and to obtain and retain work permits. Union and workplace communication should also be done in a language that foreign workers understand. The views

[83] Solidarity Submission. Mining industry challenges and opportunities: input by NUM, AMCU, Solidarity, Chamber of Mines, South African Mining Development Association to the Parliamentary Monitoring Group. Mineral Resource. 19 August 2014.

[84] Interview with the General Secretary of Solidariety – Gideon du Plessis. 05.10.17

of the union are in line with the particularistic approach to organising migrant workers (see Fine, 2015) as there is acknowledgement of the 'special needs'. Nonetheless, these good ideas would only be meaningful if they are enunciated through a comprehensive policy framework.

From a political standpoint, the union believes that employing foreign workers "plays a stabilising role in the SADC region since it reduces the number of unemployed people in a neighbouring country and therefore limits the chances of civil unrest and uncontrollable flooding of SADC residents to South Africa"[85]. While the union has not yet developed a policy on migrant labour and also lacks a clear strategy to mobilise foreign workers, it is involved in fighting for the rights of the foreign workers. For example, the union was involved in struggles to ensure that the foreign workers who were employed by liquidated companies like Pamodzi and Aurora Empowerment Systems were represented in the claims they lodged against these companies for the payment of their outstanding wages.

5.12.4 Profiling Association of Mineworkers and Construction Union (AMCU)

AMCU is a break away union from the National Union of Mineworkers and the youngest of the major unions organising in the sector. Its involvement with foreign migrant miners is not known although it has strong linkages to internal migrant miners. Established in Mpumalanga in 1998 and formally registered in 2002, the union boasts of close to 200 000 members drawn from construction, mining, security, cleaners and logistics sectors of which it gained a lot of millage in 2012 at the height of the Marikana crisis (see Chinguno 2015). In the aftermath of Marikana, the union boosted its membership and took over control of certain big mines as today it represents over 70% as against NUM which today represents 20% of the Lonmine employees. AMCU also represents the majority of workers at Anglo American Platinum (Amplats) and Impala Platinum.

According to Wocke and Marais (2016), the union exploited "external perceived injustices as the main driver for collective action in the platinum mining industry in 2012//2013" (2016: 108). Like NUM and Solidarity, the union believes in extending its scope to the communities where its members social lives occur. As such, the union has fought for better housing for miners and better living conditions including furtherance of bread and butter issues on behalf of its members as it fights for decent wages, security of employment, working conditions that

[85] Interview with the General Secretary of Solidariet – Gideon du Plessis. 05.10.17

are not threatening to the mental and physical health of workers including basic social protection[86] , it is unfortunate that the union was most visible in the first few years after Marikana and seems to be losing popularity as it fails to deliver on some of its promises like those beyond the workplace. This is such a complex terrain to trade on especially when a union claims to be apolitical yet communities look up to political parties to change their social lives (see Barchiesi, 2011). Rather, as Wocke and Marais (2016) suggest, AMCU could win some of the non –workplace struggles through social movement unionism whereby it would forge strategic partnerships with other civil society or community –based organisation to achieve its goal of socio-economic transformation beyond the workplace. But this was not the case hence members trust in the union seems to be gradually waning away. In its submission to the Parliamentary Monitoring Group in 2014, the AMCU cited the triple challenges of inequality, poverty and unemployment including the migrant labour system, compounded labour, fragmentation and the informal settlements (hostels) as impeding transformation in this sector[87].

5.12.5 Profiling Associação de Mineiros Moçambicanos (Association of Mozambican Mineworkers) (AMIMO)

AMIMO is a Non-Governmental Organization which was established by Mozambican miners in 1998, and is "officially registered and published by the Ministry of Justice in 1999 (B.R. nº 29, 3rd Series of the 21st of July 1999) and also officially registered in South Africa through CIPRO for legal operations" (Moises Uamusse, Secretary General of AMIMO, 29 July, 2016)[88]. The vision of the organisation is to safeguard social rights, labour and health of active and former miners, their families and communities affected by migration at national and international level**.** Its mission is to facilitate access to social services, the health and labour of miners, ex - miners, their families and communities affected by migration ***(ibid)***. AMIMO is affiliated to Southern Africa Miners Association (SAMA), "an organisation that represents national mine associations from the countries that supply mine labour to South African mines specifically, whose role is to help mine workers gain access to the social benefits they are entitled to" (SAT Report, 2014: 9)[89].

[86] http://www.amcu.co.za/about-amcu/.
[87] AMCU Submission. Mining industry challenges and opportunities: input by NUM, AMCU, Solidarity, Chamber of Mines, South African Mining Development Association to the Parliamentary Monitoring Group. Mineral Resource. 19 August 2014.
[88] AMIMO Formal Introduction to Solidarity. Johannesburg, South Africa. 29 July 2016.
[89] Southern Africa Trust Report of a 2-day regional dialogue convened from the 27th to the 28th of February, 2014. Pretoria South Africa

The General Secretary, Tata Moises Uamusse emphasised that: "We are not a trade union – we are a mineworkers association!" (Tata Moises. 06. 07.2016)[90]. The association aims to address some of the challenges faced by ex-miners and current migrant miners working in South Africa such as poverty, occupational diseases (tuberculosis, HIV&AIDS, silicosis, asbestosis, deafness and blindness); unclaimed social benefits from the mines, high literacy levels, including psychological challenges such as those stimulated by retrenchments. Tata Moises also pointed out that ex-miners from Mozambique were deprived of pension funds as a result of a labour contract agreement signed between South Africa and Portugal in 1964[91]. Below is an excerpt of an interview between the researcher and Tata Moises, the General Secretary of Amimo.

> **Janet:** Why did you decide to form AMIMO?
>
> **Tata Moises:** Because we are foreign workers we felt we needed a voice. AMIMO was founded here in South Africa in 1996 and officially registered in Mozambique in 1998. By 2000, we started knocking doors of NUM but they could not open for us… We started this Southern Africa Miners Association (SAMA) together with AMCU but then AMCU gave us a back shoulder and never came back to us!
>
> **Janet:** What could be the reason?
>
> **Tata Moises:** Because they have grown up…they are now big and no longer need us! We have made formal introduction of ourselves to both AMCU and NUM but still they don't want to open up their doors! **…** We have come together as mineworkers from sending countries and formed the Southern African Mineworkers Association (SAMA) which is registered in Lesotho and currently hosted by AMIMO. The organisation has not interacted with Solidarity as we believe that most of our members were under these two unions and Solidarity were for White mineworkers not until they began to organise Black mineworkers from NUM; those who were crossing the floor!

The above excerpt from an in-depth life history with Tata Moises and extracts from a submission and presentation to Solidarity Centre succinctly summarises who Amimo is. This is an association of current and ex-miners from Mozambique and their primary goal is to service miners currently working in South African mines and ex-miners. The association has so far established national associations in various countries in the Southern African Development Community (SADC) with the aim of ensuring that current and ex-miners are

[90] Interview with Tata Moises, surname, date. Braamfontein Offices
[91] AMIMO Formal Introduction to Solidarity. Johannesburg, South Africa. 29 July 2016.

well represented. The Association believes that little has been done for ex-miners, who were once members of the existing unions. Again, the interview openly revealed the attitude of trade unions towards foreign miners as intolerant although one cannot completely rule out the subjective nature of interviews.

Beyond AMIMO, a regional structure, the Southern African Mineworkers Association (SAMA) was also established whose aim is to render solidarity and economic support towards ex-miners in the SADC region. The SAMA is registered in various countries as follows:

- Swaziland –Swaziland Migrant Mineworkers Association (SWAMIWA)
- Lesotho – Ex-Mineworkers Association (EMA)
- Botswana —Botswana Labour Migrants Mineworkers Association (BULAMA)
- Mozambique - AMIMO
- Zimbabwe – Ex- Wenela Association (EWA)
- South Africa –Ex-Miners Union (Transkei)
- Malawi – Not yet registered but working together with SAMA to establish a national structure

The establishment of these worker-initiated national structures clearly demonstrate foreign workers' agency and demystify the myth that they are docile (see Webster 1985; Milkman, 2006; Martiniello, 1997). Tata Moises echoed the fact that as a union, they value the voice of the immigrant worker. Further, he explained in detail why they had to form Amimo and SAMA emphasising the fact that in their own view, they did not see the reason why they had to establish themselves as trade unions as already in South Africa and their countries of origin, unions existed where miners could affiliate and such unions participate in collective bargaining on their behalf. For example, AMIMO is a member of NUM and likewise all ex-mineworkers from Mozambique are former members of the NUM by virtue of the fact that they were full members who paid subscriptions. However, he seemed not very sure about their relationship with the NUM as he expressed this statement: "**But NUM has to open a clause in its constitution to accommodate us**" which means at the moment they are not recognised as ex-members.

Interestingly, he also revealed that unions were involved in the labour supply chain as they are involved in recruiting labour to the mines in South Africa. The only challenge, as he rightly points out, is that while unions from labour sending countries were involved, unfortunately, those trade unions cannot come and assist their own workers because of the

limitations posed by labour laws of South Africa and also because the labour –receiving country also has its own trade unions. It is within this context that the notion of union- to union bilateral agreements and solidarity between labour sending and receiving countries could be established. In addition, Tata Moises pointed out that unions in labour sending countries cannot cross border to assist their members who would have migrated to other countries hence mine workers are expected to join and become members of national trade union centres in their host countries. According to him, there are ongoing discussions to establish such relations but still they cannot address particular problems associated with various nationalities or even to address miners' problems with their own respective governments.

The General Secretary acknowledged that their major challenge is that most of SAMA's members have low levels of education; not only Mozambicans but those also coming from outside of the borders and even those who speak English cannot interpret the law or policies of the union, he said. This creates some barriers and lead to the processes of contributing towards pension funds which they fail to claim after leaving the mines. Yet, he laments that foreign miners participated in the struggles against apartheid for South Africa to be what it is today. When probed about whether any of his colleagues were serving in any government structures in post-apartheid South Africa, he denied any knowledge of such but added that the only person he knows of is the Managing Director of Teba whom he used to work with in the mines, and is originally from Lesotho but and he admitted that the MD was well educated before he migrated to work in the mines hence he managed to assume such a position.

Tata Moises lamented that while the NUM recognises them as national associations, it is unfortunate that they are not allowed to participate in decision –making processes related to the union and neither have they been invited to participate at Congresses or conferences. They have been promises to invite the national associations for conferences as he rightly puts it:

> But still we haven't heard from them!" reports Tata Moises[92]. He reiterated that "their doors are shut…but NUM doesn't want to open doors for its former members associations from Botswana, Lesotho, Mozambique, Swaziland and Zimbabwe…[93].

[92] Interview with Tata Moises. 06.07.2016, Braamfontein Amimo Offices
[93] Interview with Tata Moises. 06.07.2016date, Braamfontein Amimo Offices

Further he regrets about the time period of engagements with NUM since the time when Mr Gwede Mantashe was still the General Secretary of the union and "we even agreed to be accepted as Associate members but with no voting rights; but they can't open up"[94]
Other than their appetite to participate in union processes, foreign ex-miners complained that they have no social security benefits. Ex-union members contributed towards the JB Marks bursary fund including provident fund, but still do not fully benefited except for only two candidates from Mozambique who were awarded scholarships for the first time at the beginning of 2016. Tata Moises pointed out that he had previously sought assistance with bursaries for his children when he was still working but inopportunely, failed to get a positive response. On the question of what he perceived as the role of foreign workers in South Africa, Tata Moises had this to say:

> We don't have a lot to say as foreign workers because we just come and work and go back; it is up to South Africans and the mine bosses to say what they think about our role. We can't praise ourselves. If you go back to the history of mining a century ago, you would find that many were migrants; in fact foreign workers were in a more favourable position –I mean their statistics was high. (Interview with Tata Moises 06.07.2016)

Tata Moises and most of his colleagues admitted that they had not been exposed to trade unions before migration as they had not worked back in their country of origin, Mozambique. However, he pointed out that some Mozambicans who come to work in the mines today, have trade union experience; as former nurses or teachers. Many ran away from civil war and poor economy and preferred to work in the mines by the time it was easy to recruit foreigners in South African mines. He also acknowledged that some shop stewards in the mines were Mozambican although he has never been one. He mentioned that his friends pushed him to join trade unions although his father who worked in the mines had not spoken to him about it. Furthermore, he reported that his father and brothers used to work in the mines and had no pension and that is when him and friends came up together and questioned as to for how long should this continue. He is well aware of the law and how it blocks them from accessing their social security benefits as illustrated in his statement:

[94] Interview with Tata Moise., 06.07.2016. Braamfontein Amimo Offices

> We were contributing to Provident Fund which is a South African pension fund product for NUM administered in South Africa according to the law. As a mineworker, after retirement or retrenchment one would go back to your community as if you haven't worked in your life. This is how the association started so that we could voice these concerns. What this means is that once you leave the mines you turn yourself into a dustbin![95]

From the statement above, it is clear that foreign miners are compelled to self-organise or join unions because of socio-economic conditions beyond their working lives in the mines. Portability of social security rights is an emerging discourse, which organisations such as SAMA and AMIMO are using to mobilise both ex-miners and current foreign miners. Drawing from experiences of ex-miners who find themselves entangled in the poverty cycle once they retire or are retrenched, foreign miners sought the technical support of the Southern Africa Trust and Lawyers for Human Rights (LHR) to assist them in claiming and accessing their legislated social benefits to cover their financial and health needs (for those who have contracted occupational related diseases). As revealed in the SAT Report of 2014, "the portability of and access to social benefits will go a long way to building socio-economic security in poor households across the region"

Tata Moises attributed some of the challenges faced by foreign ex-mine workers from Mozambique to language barriers and low levels of education. To substantiate this point, he narrated how they would rely on young interpreters to write and read letters to and from their families during his working days in the mines. Their communication was enhanced through the companies training centres where they were taught the popular language –'Fanagalo'. One would not enter and work underground unless they passed through company training centres on the surface. The issue of language, to some extent explains why miners from the same tribes would by default 'stick' together at the workplace and in the compounds although mining companies deliberately designed this as part of their divisive strategies and to deter worker-to worker solidarity.

5.12.3 Worker Solidarity in the 21st century

Understanding workers collective solidarity is central as this assists us to understand how individual agency could be strengthened or emasculated by social structures and group

[95]Life History Interview with Tata Moises. **06.07.2016.**Braamfontein Amimo Offices

dynamics. Wocke and Marais (2016) contend that "the decision to engage in collective action,[it is argued], does not occur in a social vacuum; on the contrary collective action occurs within an appropriate context" (2016:108). Importantly to note, is that solidarity is shaped by the existence or absence of agency. Simply defined, agency, according to Talcott Parsons (1902-1979) in his theory of social action, refers to a sense of self-determination in relation to structural and voluntaristic aspects of macro and micro factors. The social action theory by Max Weber views agency as a product of social interactions hence solidarity could only exist where people interact. Social order, according to Emile Durkheim's functionalist theory, determines the stability and instability of society and mobilisation of members might result in restructuring of a particular social order. As a result, members of society could exploit their individual agency to mobilise in order to change aspects they do not like within a particular social order and this is only possible through solidarity and agency. Thus, as postulated by Johnson and Jarley (2004) cited in Wocke and Marais (2016), "the role of union leaders is to convert perceptions of individual injustice into collective action by promoting group cohesion and identity" (2016: 116).

The three common sociological theoretical paradigms for explaining how society influences people are the symbolic interactionist perspective, the functionalist perspective, and the conflict perspective. The third perspective best explains the situation under which workers could mobilise as a result of industrial disputes as manifested in the miners' strikes of 1922 and the 2012 Marikana strikes although worker solidarity was divided along racial lines and to some extent nationality, respectively. Many of those who died in the 2012 Marikana massacres were internal migrants from Eastern Cape which somehow demonstrates that locals were actively involved in mobilisation and strike action. Various factors bring people together in solidarity and these include socio-economic (living conditions, wages, religion) and political. A gap noted in my data is the missing element of religion's influence in mobilisation. As with the case of Marikana miners, religion (African traditional) to a greater extent influenced mobilisation action among striking miners (see Chinguno, 2015). Theoretically, the aspect of religion in industrial relations is well articulated by Max Weber's thesis of 'The Protestant Ethic and the Spirit of Capitalism' where he argues that that ascetic Protestantism was one of the major "elective affinities" associated with the rise in the Western world of market. For example, in the case of Marikana tragedy of 2012, workers were mobilised and empowered by claims that a sangoma had offered them 'muti' that would ensure they became 'invisible' and 'invincible' towards bullets or any ammunition and also

would guarantee ancestral protection. As a result, workers came out in their large numbers to protest against poor wages. Foreign miners, four from Lesotho, constituted part of the 34 miners who were shot dead by police on the fateful day (16th of August, 2012) while striking for a wage increase.

Given the fact that some foreign workers originate from countries where trade unionism is suppressed, it is within this context that solidarity and extrinsic motivation is required in order for one to respond to challenges that they face in the workplace such as exploitative working conditions or low wages. Foucault argues that "where a discursive formation has a point of diffraction, it is entirely up to the subject to activate it and select from among the alternatives it makes possible". In short, social structures (to borrow a neo-Foucauldian argot) "act upon action" As data from my study shows, many foreign miners are keen to join unions in solidarity with their local counterparts although they are limited by migration laws that deny them long-term work permits.

5.13 Part 2: Mobilisation of foreign workers in the informal mining sector (ZamaZama)

The section examines how the profound and radical transformation of the mining sector including restrictive immigration laws and policies have led to subsequent proliferation of informal mining as a livelihood strategy and how this shapes mobilisation among foreign ZamaZama. As noted in section 5.4, recruitment trends in the formal gold mines have plummeted over the years while many miners also continue to lose their jobs. According to the Chamber of Mines (CoM)[96], the gold sector has shed many jobs over the years and approximately 120, 000 workers were employed in 2014. The sector's contribution towards the country's GDP has also declined as gold deposits are gradually depleting.

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New forms of employment relations also affect the sector as the share of permanent jobs continues to shrink while casual, labour brokering and sub-contracting have become key defining features of the sector, (see Benya, 2015; SAT Report, 2014). In other words, mining jobs are gradually becoming more of seasonal jobs due to breaks in between contracts (own analysis). As a result, affected mine workers are paralysed with the liminal phase juxtaposed

[96] http://www.chamberofmines.org.za/sa-mining/gold

with false promises and hope (see Dickinson, 2017) as they somehow still place their faith in unions to fight for sustainable employment contracts. This hope is underpinned by developments which have occurred in the public service sector (public universities), were through struggles for in-sources led by unions, students and social movements such as #Outsourcingmustfall have triumphed and in-sourced. Casual employment contracts while to some extent tend to emasculate and demobilise workers, nonetheless, if well managed, this could create opportunities for mobilising as reflected in the case of South African Post Office casual workers (Dickinson, 2017) who translated their challenge as a springboard for self-organisation in the form of casual workers committees. Informal mine workers are not formally employed but managed to identify particular government institutions (such as police) that are relevant to their work as part of their mobilisation strategy.

This section would only contribute meaningfully towards the central question under investigation if it is analysed within the context of restrictive migration and mining laws including policies of South Africa. As discussed in Chapter 4, a key piece of legislation - the MPRDA aimed at redressing historical inequalities that previously existed was introduced in the post-1994 period and continues to be amended to respond to current needs. This piece of law is reinforced by the Mining Charter, which emphasises black empowerment and recruitment of local as a priority whenever employment opportunities arise in the mines. While part of the Mining Charter was to ensure dismantling of the contract migrant labour system in the post migrant labour regime, unfortunately, its unintended consequences is that today, recruitment of foreign miners has significantly declined while those who work in formal mines continue to lose their jobs. Thus, workplace transformation and mechanisation in the formal gold mines, has resulted in massive job loses as miners are forced to seek an economic net in abandoned informal mines. As revealed earlier, some foreign miners have worked in the mines for over 27 years on temporary contracts such that the only skill they are familiar with is that of mining. The statement below drawn from an interview with one ex-miner who is also a leader of a miners association in Mozambique succinctly summarises the patent link between formal and informal mining in the post migrant labour regime:

> We are very worried about this issue of illegal mining because it relates to death of people. As an organisation, we really want to see how we can address this issue as AMIMO (Associação de Mineiros Moçambicanos (Association of Mozambican Mineworkers). Most of those ex-miners involved used to work in the formal mines and lost their jobs because of retrenchments … these days it is not easy to get

> contracts. They cannot also be employed somewhere in other sectors because they are not educated. Some are those affected by closing of mines and other processes; some are victims of lack of clarity on compensation and social benefits. For instance, management changed while their cases are still in courts; some have worked for 26 - 27 years in South African mines but without any compensation. They cannot go back home with nothing and meanwhile have to earn a living. Have you heard of a case of EPRM? A mine was declared bankrupt; closed down and workers were not compensated. NUM is still following processes at the court; people have started dying one by one without having been compensated. Illegal mining has these kinds of background![97]

As revealed in the statement, informal mining is rooted in the political economy of migration and mining and that those involved at the bottom end of this practice are precarious migrants struggling to earn a livelihood. As mentioned earlier, labour demand and supply has dwindled over the years and the mines have been affected by retrenchments yet some labour sending countries still depend on remittances. As a result, ex-mine workers revert back to the mines through informal migratory routes and engage in informal mining activities in abandoned mining spaces rendering themselves as "double criminals" (see Munakamwe 2015).

This section is very critical as it provides an insight and deeper understanding of mobilisation trajectories of foreign workers in the mining industry in a post migrant labour regime. It provides original empirical data based on participant observations, key informant interviews and life history interviews with foreign miners involved in what is viewed as 'illegal' mining activities and popularly known as *zamazama*. In the preceding sections some of the interlinkages between mining in the historical migrant labour system and in the post-apartheid period have been revealed. As noted, the later phase has been marred by massive job losses, casualisation and informality.

This section attempts to problematize the phenomenon of 'illegal' mining as it relates directly to the current labour market flexibility which characterise the post migrant labour regime and how this shapes political subjectivities of foreign workers. Based on empirical data, it attempts to conceptualise 'illegal' mining activities, the labour process and working

[97] Life History Interview with Tata Moises. 06.07.2016. Amimo Offices. Braamfontein

conditions, marketing of illegally mined gold; mobilisation and representation of workers involved in these activities. It argues that the proliferation of 'illegal' mining is intricately connected to the new precariat affected by retrenchments in formal mines (as the opening remarks show) as capital continues to bid for profit maximisation, and that the 'illegally' mined gold ultimately finds its way in the formal markets yet workers involved work under very risky conditions without any labour rights protection raising the question of representation. Finally, the section presents new forms of representation, solidarity and resistance emerging amongst illegal miners in contrast to the formal mines.

5.13.1 'Illegal mining' – A synopsis

Studies conducted by scholars in Africa demonstrate that illegal mining which is usually manifested in the form of small scale artisanal mining (depending on different contexts in individual countries) plays a fundamental role in poor rural households livelihoods (Debra et al 2014: Lahiri- Dutt, 2011: Zvarivadza 2014: Perks, 2011: Purevjav 2011). While many scholars appreciate the significance of informal mining in promoting economic development for rural communities, this study provides an insight on how communities in urban spaces earn a living by engaging in informal mining activities. I argue that informal mining represents a critical source of livelihoods for those engaged in the practice at the bottom end (Munakamwe, 2015) in both urban, rural areas and immigrants.

Furthermore, these practices are shaped by the transformation of the labour migration regime in the region and by contemporary realities facing the urban poor in South Africa. Underscoring this argument, I demonstrate how there are two international linkages in this sector: whilst all the attention has focused on the lower end, that of illegal miners, and on negative factors associated with the people and work that is being done, less attention has been paid to the top end of the sector (see Munakamwe, 2015). In other words, it is the predominantly (white) multi-national and transnational wealthy elites who benefit at the expense of poor (black) workers (ibid) who operate under precarious conditions. While trade unions cannot mobilise illegal miners because of their 'criminal status', the study revealed that various resistance strategies evolved over the years as miners seek to resolve problems which they face in their daily working lives; police brutality being at the core of their struggles. The miners have resorted to worker advice offices (see Wilderman, et al 2015) and or private commercial legal aid companies like Scorpion for representation in court cases.

5.13.2 Key Findings

The section presents findings based on empirical data gathered through fieldwork conducted in informal abandoned mines in Johannesburg. It examines the issue of mobilisation trajectories of cross-border migrants with particular reference to the working lives and career aspirations of women and men who are finding a livelihood by working informally in abandoned and closed mines in Durban Deep, Johannesburg, South Africa. This research is ethnographic in nature, including direct observations and in-depth interviews with participants and key players in the illegal gold mining value chain. While cross-border zamazama are not docile, they are however, limited by the South African immigration regime as well as the criminality attached to zamazama which tends to demobilise them as they rather prefer to remain 'invisible' to avoid deportation (see Segatti and Munakamwe 2014). Moreover, they fear long-term jail sentences attached to the criminal offenses related to illegal gold dealership. Findings showed that there is a strong link between legally and illegally mined gold as the two come to a convergence between level 3 and 5 of the commodity value chain [which I will explain later] yet the workers who produce the gold work under very risky and precarious conditions. Yet trade unions in South Africa have paid little attention to this sector as they seem to agree with those who perceive them as 'criminal' and not workers. The research also demonstrated that while these workers lack a formal political voice, they however, have developed their own strategies of resistance to police brutality as they also demand gold trading licenses while some resort to alternative worker advice centres and commercial legal aid societies.

5.13.3 Setting the scene

In 2011, forty miners died at an illegal mining shaft in the old mining town of Springs, east of Johannesburg. In 2013, another nineteen miners died at an illegal shaft ZM[98]. A "volcano" erupted at ZM and the bodies were 'cooked' and charred beyond recognition. No one was willing to risk their lives to go down and extract the dead bodies. The mine was later sealed with the dead bodies inside. In February of 2014, twenty five illegal miners died at Mag[99] shaft in Roodeport, west of Johannesburg. Their colleagues volunteered to retrieve the bodies

[98] I have used pseudonyms throughout this study to avoid identification of both participants and research sites as this might expose participants to the police .

from underground to ensure a dignified burial for the dead miners. In all three incidents, cross-border migrants constituted the majority of those who perished.

This section is grounded in a catastrophic incident which occurred in February 2013 and claimed the lives of twenty five informal miners at one of the abandoned shafts in Durban Deep, Roodeport, and west of Johannesburg. Twenty three Zimbabweans (including one woman), one Mozambican and one young Zulu migrant from KwaZulu Natal lost their lives. The incident resuscitated a debate by those who believe in the need to seal off old mine dumps around Johannesburg. Three months later, the municipality and the police in collaboration with an unnamed "owner" of the 'bloody' shaft, sealed the 'mouth' of the illegal shaft. Despite the dangers and the trauma from the February disaster, two weeks later, zamazama reopened the shaft claiming that this was their only source of economic survival in a country where the unemployment rate is high and, in the case of foreigners, the rigid and bureaucratic immigration policy makes it difficult for them to enter the formal labour market.

The section examines the precarious working conditions of ZamaZama, their resistance and coping strategies including the possibilities of them finding a "voice" and improving their work and living conditions. These workers operate informally and are classified as illegal miners based on the activities in which they are involved. Illegal miners are usually associated with criminality in relation to national laws and policies. It is even worse for immigrants who quite often have illegal documentation. According to the Chamber of Mines, "about 70% of all arrested illegal miners are illegal immigrants" (2014: 3) Indeed, the stereotypes associated with illegal miners make it difficult for these workers to seek justice in the face of police brutality and violence or to access critical health services like in the case of the twenty five miners who perished at Durban Deep in February 2014 because of delayed state services such as rescue team operations.

5.13.4 Conceptualising illegal mining

Informal mining exists in two forms. First, it takes place in formal mines where "formal employees engage in illegal activities, either while at work (abandoning their working places) or during their leave periods" (Chamber of Mines of South Africa, 2014:3) and as mentioned earlier during contract breaks. Illegal miners involved in formal mines spend extended periods of time, between seven days up to six months, underground and sustain themselves through provisions supplied by formal employees. Where strict measures have been

implemented to prohibit formal employees to take food underground, a loaf of bread, for instance costs as much as R1000 . In formal mines illegal miners usually steal huge blasted gold-rich rocks which generates a lot of income at a time. This kind of illegal mining is very sophisticated involving powerful syndicates who aim to make huge profits as opposed to economic survival. The second type of informal mining occurs in abandoned or closed mines where miners "use explosives to blast open concrete seals of surface shaft entries" (Chamber of Mines of South Africa, 2014:3). This type of mining usually involves individuals, groups and families and often primary and secondary deposits of minerals are extracted using rudimentary hand tools (Purevjav, 2011: 199).

Artisanal mining is defined as small-scale or subsistence mining and involves gold panning using simple tools but is undertaken within the confines of the law (see Debra et al 2014, Zvarivadza 2014: Thornton 2013). While artisanal mining occurs with minerals like sand, clay, precious stones in South Africa, however, this does not occur in gold for reasons which I will explain later[100]. Illegal miners do not work for any company and therefore operate independently using their own hand tools and resources. Thornton (2013) describes artisanal miners as those who "produce their own gold using simple techniques" (2013:1). Artisanal mining is usually undertaken within the confines of the law where individuals are allocated mining claims and licences to trade in gold as in the cases of Zimbabwe, DRC, Tanzania and Ghana (see Zvarivadza 2014: Mutemeri and Petersen 2002). Artisanal mining activities usually contribute towards a country's overall economy (GDP) because individuals involved usually possess formal gold dealership licences and therefore pay taxes. The study focused on the second type of illegal mining.

In the earlier section of this chapter, an analysis of the political economy of mining was presented which showed that mines have closed leading to job losses and the changing trends of labour supply and recruitment from outside were also noted. The section on remittances revealed that ex-miners who have 'tasted' mine wages still rely on remittances from the South African mines and enter South Africa informally or clandestinely and seek economic livelihood in thus are involved in abandoned mining dumps where they scrap for residual traces of gold left behind by huge mining companies, using the skills acquired in formal mines as revealed through interviews with workers involved in these activities.

[100] Interview with Nellie Mutemeri, Anglo-Gold Ashanti, 15/10/2014; Newtown Offices

The negative structural economic transformation in the mining sector is part of the explanation for the proliferation of illegal mining in post-apartheid South Africa coupled with independent, individual clandestine mobility of migrant labour into South Africa. Further, while free mobility across the borders increased with the ushering in of democracy, however, rigid immigration policies in particular related to the work permit regime persists as shown in chapter 4. For instance, in my study, I came across a qualified geologist who is in possession of a degree but failed to secure a job in the formal market because of the bureaucratic requirements and policies which require one to undertake laborious and protracted processes such as registration to a professional body for their sector. All this is compounded by structural xenophobic tendencies within the very institutions predestined to service foreign workers. The aspect of immigration policy has to a greater extent contributed to a lack of mobilisation of foreign labour in this particular sector.

5.13.5 Mineral and Petroleum Resources Development Act in relation to illegal mining

Other than the gold ownership laws and the Mineral and Petroleum Resources Development Act, South Africa does not have explicit laws to prosecute illegal miners other than drawing from trespassing laws, theft, money laundering or corruption. The country to some extent is still dependent on some of the apartheid laws in particular the Precious Stones Act of 1927. According to Chamber of Mines of South Africa, "there is a specific prohibition in the MPRDA on mining without the required statutory authorization" (section 5(4) (Chamber of Mines of South Africa Factsheet 2014). South Africa "is about the only country in the world where it is illegal to be in possession of unwrought precious metal without the required statutory authorization" (ibid).

Parliamentary debates on how to deal with the illegal mining scourge dominated particularly in 2009 but until today no specific Act has passed through parliament. Policy makers and key players in law enforcement of the country have in the past expressed unorthodox views. Some believe the only way to eradicate illegal mining is "to rehabilitate the area,"[101]. The then honorable Minister for Minerals and Resources in 2009, Ms Susan Shabangu believed the best way to deal with the problem is through the South African Police Services (SAPS) but this proved to be a short term measure according to the Democratic Alliance, the main opposition party in South Africa. The lack of a clear strategy simply means the government

[101] Col Hennie Flyn of the South African Police Services (SAPS)

acknowledges the instrumental role played by illegal mining in alleviating unemployment and poverty amongst poor communities while at the same time pursuing business interests.

This section presents findings based on empirical fieldwork and documents the working conditions of zamazama. One of the critical issues under investigation was the need to understand the reasons for individual participants to opt for illegal mining as a source of livelihood. Immigrants mentioned that they realised there were no jobs when they came to Johannesburg and the reality is that South Africa has a high unemployment rate yet they need money to pay rents and school fees for children. Deindustrialisation which has taken place in the global era has contributed to a lack of jobs and lessened recruitment efforts by business as shown in earlier sections. Citizenship also shaped economic activities engaged by foreigners as shown here:

> Yes I know informal mining is bad but what can I do? I'm a foreigner in a foreign land no one is ready to listen to us. The police steal our stuff but we cannot report… instead they arrest us and lie at the station that they have arrested us because of documentation. As u can see, we are caught in between crimes for digging gold and not having right papers.

Further probing on whether he would join a union to assist him, Tomu said:

> Our lives are at risk and we can die anytime, so I can pay union subscriptions then what? I'm ready to join those organisations dealing with social issues like burial society because I know one day I will die and I need a better burial. My fellow countrymen died in the mines and were buried in the bush (meaning South Africa). If I die under the mine and my friends can take my body out, I want to be buried back home.

5.13.6 "Sponsors" versus Employers

Miners use hand tools such as hammers, hard- emilites, fuse, ignite and coat chisels, copper cables, simple head torches, horror, drillers**,** *mugwara* (long chisel), to extract gold underground. Use of modern technology like simple Nokia phones has been introduced of late. A simple Nokia phone is used to 'scan' for gold rich rocks underground. Copper cables are used to convey miners in and out where the surface is loose and not portable enough to step on or else rock fall accidents occur. However, this is the worst form of conveyance as miners mentioned that any slight mistake leads to death. Where a huge concentration of gold

is detected, then dynamite or generators are used to blow out the rock. However, the use of such huge machinery is attributed to some extent to rock fall accidents.

Very often "sponsors' buy tools used to extract gold for the miners in return for gold. Sponsors play a paternalistic role in the working lives of *zamazama* and thus trust and loyalty is required between miners and sponsors. If a sponsor provides miners with tools and other equipment including food provisions to take underground, the miners are expected to positively reciprocate by selling the extracted gold to their sponsors. If miners run out of food or equipment underground, they send one of them to their sponsor (usually buyers) who is also linked to them based on ethnic and nationality lines[102]. Miners reported that sponsors sometimes pay legal fees for legal representation if they are arrested including bail fees. The terminology used like 'sponsor' instead of employer presents a very paternalistic relationship whereby miners feel indebted to those people who exploit them. Sponsors are claimed to disappear once fatal accidents occur as they deny responsibility for the death of their beneficiaries yet when they come out alive, they demand that they sell the gold to nobody else other them. This also creates a new form of overt capitalism and racial dynamics which to some extent hinder mobilisation as miners claim that they do not work for anybody and view sponsors as their redeemers. In the end, the sponsors make huge profits by exploiting cheap labour in the name of sponsorship.

5.13.7 Division of labour: working conditions, shifts, tasks and syndicates

Zamazama operate as syndicates based on ethnicity, nationality and sometimes racial lines as people from various racial groups; tend to 'own' particular shafts. Syndicates usually range between three u and do not usually exceed eight as this might 'fuel' conflict in particular on allocation of earnings. Brothers can easily turn against each other and the same might apply to friends. Work is usually done collectively although some respondents indicated that they do have informal leaders who usually guide them in particular at the distribution of earnings. Leaders operate more like induna in the formal mines and are responsible for negotiating with other syndicates on common issues such as resistance against police brutality and violence. Violence usually erupts if syndicates trespass shaft rules. An opportunity for mobilisation is presented through the syndicate groupings as these workers are already self-organised.

[102] However, this practice seems more like labour brokering of a special kind than sponsorship. The normal practice of sponsorship means someone provides without expecting anything in return!

Gold is extracted by men as according to the miners' taboos, beliefs and superstitions, women are forbidden underground. Allowing women underground, according to illegal miners, results in catastrophic incidents as mentioned earlier[103]. Women often work as processors and transporters of raw material (Perk 2011) and also as service providers in areas of commerce, catering and frequently prostitution (2011: 186). Much of the surface work which involves crushing and refinery of the mineral ore from the rock is undertaken by women and children. According to Overholt et al (1985) cited in Lahiri-Dutt (2011), "the gender-based division of labour, as well as access to and control over resources and benefits are likely to differ within a community". Labour is divided based on sex and the same applies to work-related problems and diseases. While respiratory diseases like tuberculosis cuts across both sexes, more women than men suffer from this disease as they get into direct contact with dust particles as they crush and grind gold-rich rocks to extract gold particles. At the same time, women complain of back aches, chest pains and body muscle pains which are as a result of rock grinding. Men who go underground complain of flues and sometimes asthma caused by dangerous gases underground. These men's major threat is death due to fatal accidents underground. Babies and toddlers also suffer from tuberculosis as they inhale dust at their mothers' surface 'workplaces'.

Zamazama do not have a formal employer and their earnings are usually determined by *bhandi* (meaning gold belt) and the stock exchange in relation to gold price for the day. The richer the belt; the higher the earnings. An average of R3 000 is earned per week although some claim to earn as much as R8 000 depending on the size of the syndicate one belongs to. Women earn between R70-R100 per day which can translate to R700 per week if one works every day. Almost 90% of respondents said they are happy with their earnings in contrast to earnings from previous jobs like security, domestic work, farm work, construction and retail work. They claim that at least their earnings in this sector are guaranteed and regular compared to working for some bosses who sometimes underpay them based on their migration status and citizenship. Contrary to many studies (Purevjav 2011: Hinton et al 2006; Debra et al 2014) which claim that women lack autonomy on their earnings, this study showed that there is a strong link between independent migration of women and autonomy

[103] For instance the sole woman who was amongst those who died on the 19th of February was blamed for the disaster. The miners believe that *makunakuna (meaning* casual sex) which occurred underground offended the 'gods' of the underworld hence the subsequent disaster. Respondents said there are certain sexual rituals to be observed before they enter underground. Men are not supposed to have sex two days before they go underground and also while they are underground.

on earnings as single women expressed that they are in control of their earnings. Lahiri-Dutt, (2006) asserts that informal mining provides new identities and new senses of the self which women acquire in masculine spaces. Wage disparities are subtle as both women and men earn the same wages for the same work performed on the surface.

However, some expressed that while they are happy with their earnings they are risking their lives as they can die any time as one respondent said:

> I'm not happy about the money because I can die anytime; I know one day I might get underground and never come back[104]

The aspect of health and safety is a very contentious issue as despite their earnings which are sometimes very high, they do not see the need to purchase highly protective clothing relevant to their types of jobs. Their priority is safety shoes and *maperengende* (second hand clothes) which they ironically throw away after each trip. Surprisingly, they do not purchase hand gloves to protect their hands from the hazardous mercury. Woollen hats are used as helmets and these allow them to squeeze through narrow spaces as opposed to helmets (see Thornton 2013). Unfortunately, women working with dust on the surface do not use masks to cover their noses and mouths from dust and other air-borne impurities. This observation points to a great need for education programmes around the need to observe health and safety in illegal mining activities. Workers could also be mobilised around health and safety which is very critical for the sustainability in this sector.

While illegal mining contributes to poor households livelihoods, Perks (2011), however posits that the sector manifests some of the worst forms of labour and social practices like forced labour or 'slavery'. To protect themselves before going underground, miners pray or consult sangoma (traditional healers). On the surface, police 'rob' them of their earnings through bribes or sometimes confiscate their 'stuff'. Police are believed to work with syndicates of robbers and are claimed to be supply illegal guns. Almost every miner lamented that their worst enemy in this sector is law enforcement authorities and some suggested that they are keen to pay towards their representation against police brutality either individually or collectively.

[104] Interview with Eneristo. 14/09/2014. Site B.

5.13.8 Marketing of gold: Buyers and the destination of gold

Three categories of buyers exist. Primary buyers are those who establish bases at the shafts and buy the gold directly from the miners through the intervention of agents. Agents are directly linked to illegal miners and usually live within the community hence they assist primary buyers on security matters. Primary buyers sell their gold to secondary buyers who usually operate in the 'black market'. Secondary buyers sell their commodity to tertiary buyers who are usually linked to big mining companies and possess gold trading licences which then formalises the illegally mined gold. A system of licence brokering exists and one can earn a lot of money without directly involving oneself in gold transactions. Licence brokers sell gold on behalf of buyers who do not possess licences to sell gold directly to the formal refineries. Informal buyers claimed that licence brokers sell gold at the highest price of the day which fluctuates between R1, 100 and R1, 200 and they usually pay informal buyers between R500 and R800. The difference between the maximum price and the prevailing market price is theirs and on top of that one has to pay an agreed amount as commission. Clearly, there are no systems of accountability and there exists huge loopholes in the system which allows illegal gold to be legalised along the commodity chain. An interview with director of security for Company X provided a succinct summary of the value chain of illegally mined gold as illustrated in the diagram below:

The diagram below clearly demonstrates the relationship between informally (undertaken predominantly by immigrants) and formally mined gold and formal markets. The number of individuals involved becomes smaller as we go up the hierarchy while gold price gets higher at each level. Interestingly, the final destination of gold is at international markets where gold trading is liberalized and formalised**.** At this stage, no one questions the origin of the product and illegally-mined gold is legitimized. At level four, gold is sent to the national refinery. Rand Refinery is the largest refinery in South Africa and it is here that both illegally and legally mined gold converges. From credible national refineries, pure gold is exported formally to international markets where it is sold at very high prices usually tenfold compared to what the illegal miners on the ground earn. Gold is also exported informally by smuggling whereby it is moulded into personal fashionable chains, rings or bangles.

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Source: Author's own analysis based on key informant interview with Mr P, X Company

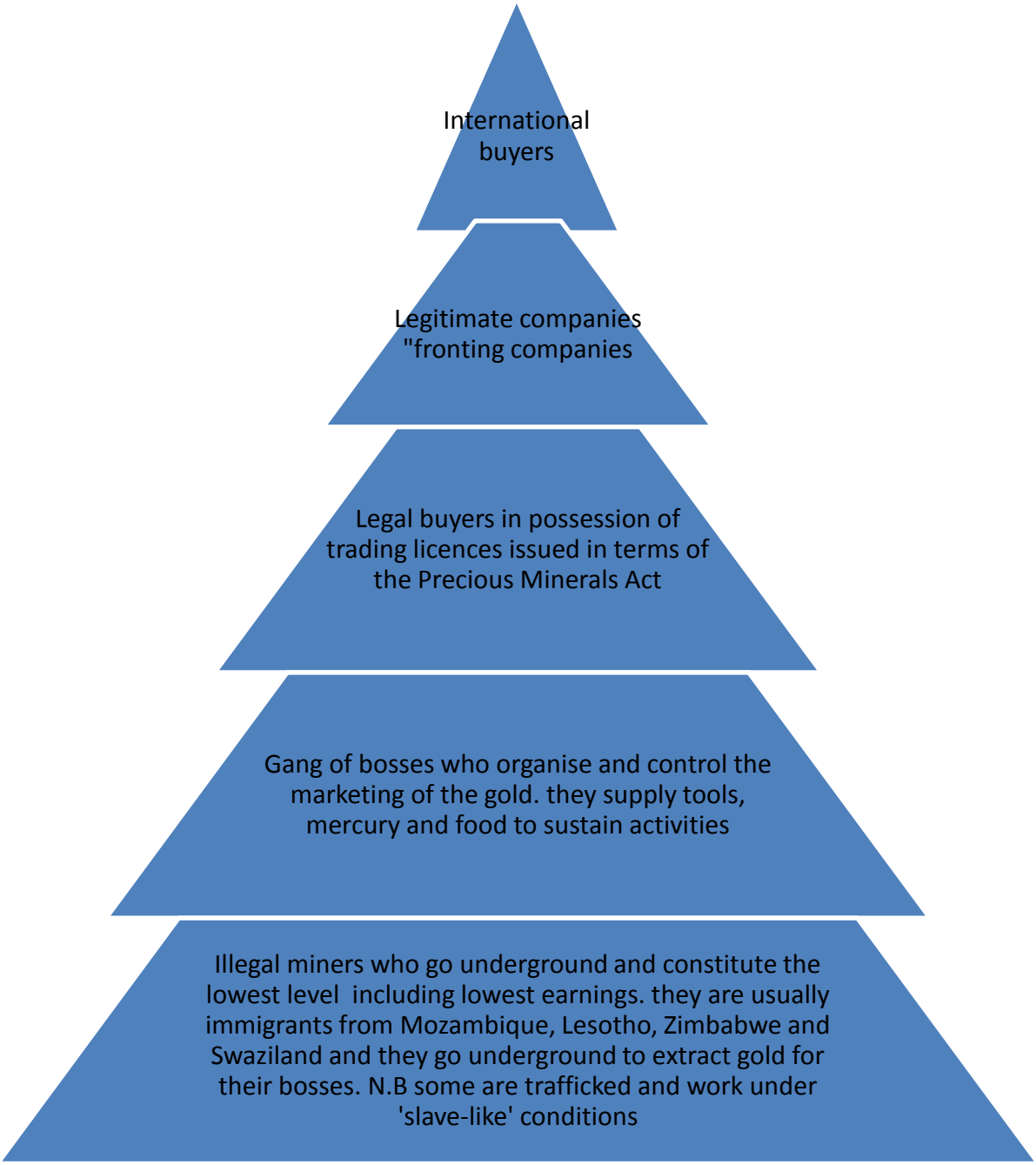


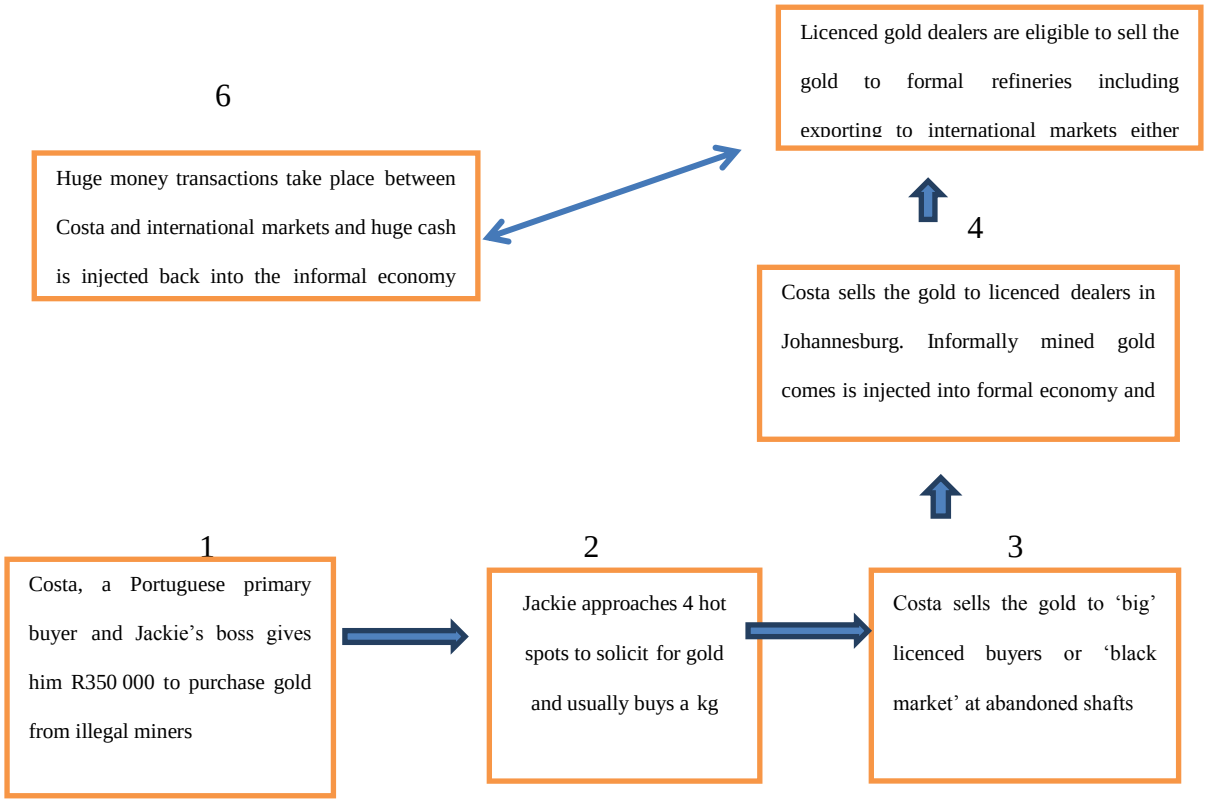
Figure 1: The relationship between formally and informally mined gold

Primary buyers indicated that they sell gold to some white people in town and they usually shop around before they sell to check who offers the best price on that particular day. Licensed gold dealers are eligible to sell gold to formal refineries within and outside South Africa. Sometimes, buyers from overseas come to buy directly from primary buyers at a higher price as they (international buyers) benefit from the exchange regime.

. While some illegal miners claimed to know individuals involved in the buying process, respondents refused to say exactly where these people could be located for interviews.

However, they stated that usually buyers are white people who work for registered mines or Indians or Nigerians. Interestingly, primary buyers interviewed claim that the later are very 'stingy' and are reluctant to pay the market price. Because of this, most primary buyers prefer white buyers or those who come from overseas but these are difficult to find because they come once in a while. An agent for a buyer (Jackie, from Malawi) summarised the commodity value chain of illegally mined gold as demonstrated below:

Figure 2: The interaction of the formal and informal where many migrants are located as a result of restrictive immigration laws and are subjected to 'double' illegality



Source: Author's own analysis based on a key informant interview with an informal buyer

The commodity chain above involves huge transactions of cash and also demonstrates how South Africa loses billions of Rands (estimated at 2 billion a year) to clandestine 'black markets' including evasion of tax. The gold market is highly competitive and primary buyers often 'pull down' each other[105]. From a sociological perspective, the commodity value chain could be a good starting point to analyse opportunities for mobilising miners involved in the informal mining sector. For instance, Zama-Zama could be mobilised at the point of

[105] Interview with Jackie a gold buyer agent. 27/09/2014. Restaurant in Roodeport.

production around common issues like police brutality, health and safety or gender related problems such as the need for child care facilities.

While illegal miners cited police brutality as their major challenge, primary buyers mentioned robbers as their main enemies. All the buyers interviewed reported that they hire their own body guards to protect them from robbers. In addition, some reported that they consult prophets or sangoma for protection. One of the buyers boastfully said "I got my prophets back home who give me water for protection. Because of this protection I'm untouchable even as small as I am, nobody touches me"

Other copying strategies have also been devised. For instance, buyers desist from moving around with bulk cash as they fear police and robbers. Usually robbers bring a little bit of gold as 'bait' to check if buyers have bulk cash on them. Buyers mentioned that they can only collect bulk cash if they are guaranteed of business. The security measures put in place point to the high risk nature of gold buying. One respondent mentioned that every gold transaction process involves security guards and these are usually guarding the entrance of the backyard shacks which buyers use as their 'bases'. This means illegal mining while informal, somehow creates jobs.

5.13.9 Risk –taking, Precarity, Solidarity and new forms of resistance

There are a lot of dangers associated with illegal mining. Police brutality tops the list. For instance, a pregnant woman fell when running away from police at a 'processing plant' and consequently suffered from a miscarriage. Unfortunately, she lost her child and at the same time could not seek justice through the courts as her colleagues indicated that she is undocumented and at the same time involved in illegal activities.

Police are accused of confiscating 'our stuff' and even sell back to illegal miners as the statements below:

> I once bought stuff for R1, 000 from cops, processed it and I sold it and got R3, 000[106]
>
> Police are now thieves and stealing from us instead of protecting us[107]
>
> They steal our staff- they won't go underground but just finish off what we have hunted for[108]

[106] Interview with Muy, a primary gold buyer. 06/09/2014
[107] Interview with Thabo. 06/09/2014. Site A.
[108] Interview with Makoro. 28/08/2014. Site A.

> Police are stealing our soil. They take our means to survive[109]

Sometimes police take away passports and change statements at the station and "lie that they arrested us for public drinking or because we had no legal documentation to be in the country" mourned one illegal miner. There are syndicates of robbers who also work hand in hand with police. They are said to get gun and ammunition supplies from police. These robbers connected to police rob people *mkunzi* style. Ironically, buyers mentioned that police do not harass them but demand bribes from them. Sometimes they confiscate and get away with hard cash or they negotiate for a certain percentage of bribes. One primary buyer grumbled that:

> They confiscated my gas bottles and locked me up for three days. They took away my R35, 000 but only clocked in R1, 000 at the station. I attended court 5 times… 1st appeal I paid R3, 000, then the following appearances; 2nd, 3rd, 4th, I paid R1, 500 each time. They send a lawyer connected to them (part of police syndicate) to bail me out. When we go to police to report, they say you bring your problems yet you are a problem[110]

Sometimes miners are locked up in abandoned mines and struggle to get back to the surface under very hard conditions using a string with the danger of falling down from long heights and perish. In such circumstances, they have to use ropes to travel a distance which takes 45 mins on a lift in a formal mine.

When people die in the abandoned mines, their colleagues attempt by all means to take out the bodies to the surface so that their spirits cannot haunt the mines. Miners said they do this because they work at night and even sleep underground for many days. If they do not exhume the dead bodies, they believe the mines might get infested with "*zvikwinya*" same as '*tokoloshe'*. So they try to avoid this and where possible they can extract out bodies but where there is a danger of rock falls they cannot risk their lives and prefer to leave the dead body (ies).

Miners cite their families, friends and the local community as key sources of power and inspiration in times of trouble. Sometimes they team up against police brutality. However, sometimes they are divided as some are very scared of police revenge. They sometimes

[109] Interview with Nina. 04/09/2014. Site A.
[110] Interview with Elyn. 28/08/2014. Site B.

compromise by paying bribes of at least R500 when police raid their 'bases'. Workers hardly convene mass meetings as they believe 'sell-outs' might form part of the meetings as one said:

> No meetings coz people come with 'double up'. So it's one man for himself. No one is ready to take up leadership or to take our problems further[111]

One major barrier to mobilisation is lack of leadership to drive and provide direction. The statement above implicitly means that leadership amongst this community operates on an ad hoc basis. What struck me the most is how the miners choose their leaders whereby their priority rests on good the prioritised qualities. Some said they would choose somebody from the most powerful ethnic grouping while others said they prefer someone who is ready to listen to people and also good at talking. Lak of class based unity is another challenge as illustrated in the statement above.

Very often, miners come together to socialise in spaces such as beer drinking during weekends or when there are funerals. They have established burial societies which usually comprise of people from the same country and ethnic groups with leaders like chairman, secretary and treasurer. For instance, when one dies they put together money as families or neighbours to contribute towards burial. Ordinary miners pay R50 and 'buyers' pay R100 or more depending on an individual. If an individual has better-off families then they can repatriate the body back home but if not, they request the municipal councilor for space in the local cemetery to bury the body. Women who work as "crushers or grinders "on the surface claimed that they establish their own women committees and if somebody dies, they all contribute R20 towards funeral costs. Again, women are socially linked through stokvel collectives whose contributions usually range between R100 up to R500 per week. Miners admitted that they often come together when many people die like as portrayed in the February 19 catastrophe, but can become enemies anytime and also get divided based on earnings.

The aspect of representation is virtually absent amongst illegal miners. The majority are familiar with trade unions from television or street marches and protests. However, a few were union members in their countries of origin while those who once worked in the formal mines have an idea although they admitted not having joined unions for various reasons as this statement reveals:

[111] Interview with Mlungi. 06/09/2014. Site A.

> You see, in the formal mines we used to see NUM people coming and workers joining. We used to come together as workers but unfortunately, I never joined a union … I was scared because I was using a false I.D[112].

Historically, mine workers' struggles in the formal mines were centred on wage struggles including resistance against the apartheid system. Mobilisation occurred irrespective of nationality (see von Holdt 2002) but it seems absent within the current mine workforce (whose destination is usually in illegal abandoned mines in Johannesburg's West Rand). This is further compounded by the fact that ZamaZama are self-employed such that there is no employer –employee relationship for the purposes of collective bargaining. Studies have shown that absence of an employer to bargain with very often poses as a challenge in organising efforts by unions (see WIEGO, 2006; Munakamwe, 2008). Migration is clandestine and individualistic and is targeted at rapid capital accumulation in anticipation of social mobility. Empirical data shows that one can easily transit from a mere labourer to a 'capitalist' over a short period of time. This to some extent divides solidarity and undermine mobilisation amongst workers particularly those of foreign origin who believe that illegal mining is a temporary measure as one had this to say on the question of mobilisation to improve their working conditions:

> Why should I protect and fight for improvements in a sector where I do not intend to spend my entire life. I'm only here to make quick *bucks* (money) and return back to my country of origin. When I go back, I will be able to employ others …I mean train my siblings on how to buy this mineral … all I will have to do is to sell the stuff I get from country X here in South Africa where I know there is a higher market rate because of the high quality and weight of gold from country X"[113]

However the remarks expressed above do not resonate with all immigrant *Zama-Zama* working in the West Rand abandoned gold mines as illustrated by the statement below:

> I came here in 2006 from country V. Then I got a job at a formal mine in Rustenburg but unfortunately I was using a forged green book (referring to ID). I was a semi-skilled boiler maker but had to work underground as a labourer. I was earning a very good

[112] Interview with Chimbo (Observation , to illustrate how politically involved, the respondent was wearing an EFF red beret at the time of the interview)
[113] Interview with Janda. 21/09/2014. Site A

> salary for two years but my fate came like a bombshell one month when the bank withheld R5000 from salary. I was forced by circumstances to get inside and inquire about my problem. As I began speaking to the teller, an emergence button was pressed and the next moment I was surrounded by security guards who demanded to know about my identity. I made the swiftest move out of the bank and escaped the scene…of course I had to leave my salary which I had sweated for including all my savings…I never went back to my workplace and had to quickly relocate to Johannesburg…settled in this informal settlement where I believe police could not make track of me…all I am begging for is for the mine owners not to close down these informal mines and to have legal documentation. All these past six years I have made a living from earnings from underground. I have also worked as an agent for a 'big' buyer but unfortunately after making enough money, the guy had to leave South Africa back to his country of origin. Police have taken away all my investments (*penduka*)[114] and destroyed my drainage which were now my sources of income … I don't belong to a union but I have joined … Scorpion Legal Aid because they are always there to represent and bail me out of prison if I'm arrested by police".

The two examples above reveal the precarious yet sometimes promising nature of illegal mining. Of those interviewed in the study, only one was a local South African. The probability of encountering locals involved in illegal mining could be estimated at a ratio of 1:20. Many of the locals found in illegal mining settlements are either landlords (popularly known as *masitandi*) or are running some small informal businesses like backyard spaza shops, '*pap and chesa nyama*' kitchens, fruit and vegetable markets, welding or fashion industry (which sell second hand clothes or work suits and safety shoes). What this study points to is the fact that unemployed foreigners perceive informal mines as their economic safety net but of course exposed with risks of uncompensated mine accidents like rock falls, underground mine violence and slavery; police brutality and violence; mkunzi[115] or 'day light robbery' by police or both local and foreign colleagues.

[114] Penduka refers to a special man-made machine used to process gold.

[115] Mkunzi is a township style of robbery as opposed to pick-pocketing. A robber approaches their target with a knife or at gunpoint demanding all their earnings. Participants indicated that they are usually 'sold out' by their friends when they extract 'valuable stuff'. There exists a strong sense of mistrust which therefore undermines solidarity. They indicated that they usually stick to their 'blood related siblings' or close friends from their countries of origin for protection. Part of the solution is to establish teams or 'syndicates' to go with underground. However, one participant criticized team from a superstition point of view where he expressed that sometimes you might mix up with somebody "ane zvekumusha kwake zvisingade mari" (meaning you might

5.13.9.1 Scorpion Legal Aid

Many miners who go underground mentioned that they joined Scorpion Legal Aid (SLA). The organization provides legal services and assists in bailing out arrested miners. Miners indicated that SLA is very efficient in dealing with their cases and they have won many cases on behalf of illegal miners as shown below:

> At the time when we got arrested for possessing gold … Scorpion has helped many of us to get out of prison[116].
>
> They (Scorpion Legal Aid) represent us very well and I don't mind paying for whatever amount they ask us to pay. We are all happy. In fact yesterday, they were here busy recruiting[117].
>
> Usually, when we get arrested, police officers tell our friends or relatives to call one of the lawyers and that's how we get to know about the organisations[118]

Members pay monthly subscriptions dependent on the scheme one opts to subscribe to. SLA recently introduced funeral insurance policy. This could be because they realised that they are dealing with categories of workers whose lives are prone to death at any given time and would really require such services. Miners also narrated some direct confrontational resistance strategies in response to police like taking videos and photographs which will be used as evidence in court. This tactic scares away unscrupulous police with bad intentions to confisticate 'stuff' and miners reported that this has proved very efficient as they cannot always live as victims.

However, some miners believed that once one decides to go underground, their lives are at risk as anything can happen. Sometimes, they die and rot underground hence place of burial becomes insignificant in their lives as illustrated by the statements below:

> We don't value much of the burial place like we believe in at home because it all depends on available resources[119].

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mingle with somebody who is endowed with bad luck which repels money and as such one can go underground for days and come back to the surface with nothing).

[116] Interview with Achimw. 21/09/2014. Site A.

[117] Interview with Chimbo. 21/09/2014. Site A.

[118] Interview with Madube. 13/09/2014. Site B.

[119] Interview with Loyd. 12/09/2014. Site A.

> South Africa becomes your permanent home because that's where you were earning a living, your relatives should just come and take your spirit back home if they came so if anyone wants to help us, they should provide funeral services … They should help us on the issue of burial because most people don't die of sickness but mine incidents, so if NUM is to assist us that's what I can say is the best for us and what we need[120].

The two statements demonstrate the changing needs of workers in the informal economy and the need for unions to shift their organising strategies to embrace workers operating in the margins of the conventional workplace. Primary buyers stated that their personal lawyers represent them if they are arrested. Workers are also self-organised into co-operatives whereby they assist each other with extraction and processing of the gold ore. Also, they put together savings which they use to pay for bails in case some are arrested.

Zama-zama could be characterized as doubly at risky; they are undocumented and at the same time involved in criminalised activities, living in precarious social, economic and environmental conditions (see Perk 2011). The study reveals that illegal miners have shifted their focus and hope from trade unions towards private legal aid societies such as Scorpion or Legal Aid Society, Clientele legal, and funeral insurance companies for legal representation and social support. Illegal miners in this case rely more on institutional forms of power like the national constitution for protection. Miners have also assimilated and forged strong relations with local communities such that they partner in their action against, for instance, police brutality, as they exercise their moral power. This alliance could be a good starting point to call for social movement unionism as a means to mobilisation, representation and participation of cross-border illegal miners as a means to empower them at their workplace. The mere fact that most of the illegal mine labourers form part of the poor working class predominantly black families and foreigners might be a good starting point for any progressive workers solidarity movements who might want to 'tap' into this very potential but most vulnerable population for mobilising purposes (see Milkman 2006).

For social support, workers are organised around social networks or ethnic groupings such as burial societies. To them, interventions related to social issues such as death are a priority as they claim that their lives are ever at risk underground due to accidents like rock falls or gas

[120] Interview with Chimbo 21/09/2014. Site A.

emissions and robbery at gun point whilst on the surface. The study thus challenges and tends to deviate from trade union orthodoxy which holds the view that poor working conditions and wages constitute a central position in worker mobilisation against capitalism in contrast to formal miners' demands. While these workers lack a political voice (Munakamwe, 2014), they however have developed their own self-mobilising strategies to police brutality as they also demand gold trading licenses. The sub-section on illegal mining is very critical as it demonstrates the deleterious effects of workplace restructuring, retrenchments including policy shifts like the Mining Charter of 2004 in the mining sector and its combined effects with immigration legislation and how this has shaped mobilisation, participation and representation of foreign miners in South Africa.

5.14 Summary

The empirical findings from this study make several contributions to the current literature. First, the chapter revealed the influence of the profound change in the nature of the mining labour market with the growth of informalisation and informal mining on mobilisation, participation and representation of foreign miners. Accordingly, the point of departure was to analyse mobilisation trajectories of foreign mine workers in the sector reflecting back to early industrialisation to the current period in order to understand the similarities and what has changed today. Further, the study shows that trade unionism was imported into South Africa's labour relations by foreign workers in particular British and it is within the very sector that workers mobilisation began. The notion of trade unionism cuts across both periods reviewed although new forms of worker collectives are emerging in the post migrant labour regime prompted by the current realities in particular precarious employment relations and rigid immigration laws and policies. This seems a betrayal to foreign workers who were at the core of the formation of the first Black trade unions. It is also important to point out that the analysis of foreign workers mobilisation, participation and representation needs to be understood from a class perspective other than racial standpoint although the study undoubtedly shows an acute deficiency in solidarity between White and Black workers. While White workers had the right to form and join trade unions during apartheid, still class conflict and contestations existed between them and the employer which partly explains the 1922 strike massacres. The low level of mobilisation among Black workers during apartheid was not because they were docile but it was due to the repressive laws imposed and also the dehumanising nature of the migrant labour system and still today their low level of

mobilisation is related to post-apartheid immigration laws and workplace restructuring as revealed by the study.

Interestingly, while African workers mobilisation was informal in the early days as a result of repressive laws which did not allow them to unionise, they persevered and formed the first Black workers trade union, AMWU, in 1930 comprising of a substantial number of foreign miners, as leaders and members. In so doing, they demonstrated their agency contrary to conventional scholarly writings which associate migrants with political apathy. AMWU reflected a social movement type of a trade union through its collaboration with the Communist party, which was deeply entrenched in communities which is partly the reason why the apartheid government made several attempts to discourage trade union leadership from associating with the Communist Party (see Allen, 1992). This is because, by then Party stood was a very powerful institution and pillar to the Black workers struggles to establish their own unions and also ideologically at variance with the capitalist ideology.

While the old stream of miners forged class-based unity, this is not so in contemporary South Africa where binaries have been created between locals and foreign nationals as reflected by the erratic eruptions of xenophobia. Again, informality and the precarious employment relations force workers to compete against each other on the labour market and has resulted in individualism as opposed to collective struggles. It is also sad that while pioneers fought for the establishment of African trade unions for all, today foreign workers are represented outside of these institutions in particular those involved in informal activities, contract, casual and temporary work. As a result, new forms of representation outside trade unions have emerged as workers seek representation through other forms like worker advice centres, private legal companies and migrant rights organisations as will be discussed in Chapter 7. In addition, the chapter shows that workers' faith and trust in unions is slowly waning such that those who find themselves engaging in what is considered 'illegal' or informal economic livelihood activities seek new ways of representation. This problem is further compounded by the fact that sending governments have done little to alleviate poverty as the unemployment scourge persists unabated and remittances remain the only remedy to address economic hardships. As long as the economies of sending countries continue to depend on remittances, (see Tyler1981), clandestine migration will continue. As such, in this globalisation epoch where workers have been reduced to commodities, trade unions need to expand their

collective bargaining process to embrace migrant miners' special needs such as documentation and also to confront divisive tendencies of xenophobia in the labour market.

Labour demand, supply and recruitment from southern African countries have dwindled over the years as a result of rigid immigration laws, new recruitment policies and retrenchments which have occurred in the post-migrant labour regime prompting informal migration where ex-foreign miners engage in informal mining in abandoned mines as a livelihood strategy. The proliferation of informal mining activities is directly linked to changing migration and labour supply policies and trends. While the employment of contract migrant workers in the mining industry has declined, clandestine or illegal migration has escalated and correspondingly clandestine economic migration to South Africa continues, driven by poverty and unemployment in home countries, an area which has been neglected by migration scholars and sociologists. The mining sector was used as lens to understand mobilisation trajectories of foreign workers given the fact that it is was the first to attract labour outside of the country's borders although agriculture also relied on migrant labour but is poorly mobilised even today hence the later would not provide a flawless analysis of foreign workers mobilisation trajectories. What differentiates the two is the militancy demonstrated by miners while farm workers' mobilisation history is portrayed as acquiescent.

During apartheid, Black miners were divided along racial lines, factional violence, and ethnicity as opposed to nationality. In contrast, the study revealed some of the key factors shaping political subjectivities of foreign workers today; rigid immigration laws, migration status (political refugees[121]), xenophobia, the emergence of a new precarity (short-term contracts, casual, permanent casual, temporary, labour broking and out-sourcing including a "subtle process of reorganisation of the labour supply taking place within the mining industry since the mid-1980s" (Head 1995: 136). All these combined, have to a greater extent negatively influenced mobilisation of foreign workers in a post migrant labour regime although the challenge of precarious employment contracts cuts across both local and foreign workforce and correspondingly shape their responses to mobilisation. It is up to unions to continue championing struggles for all workers or else the "rights and benefits for which they fought so long, and even the NUM itself, may not effectively endure" (Coplan and Thoahlane, 1995:150). This will be discussed in further detail in Chapter 7.

[121] Ex-miners from Mozambique mentioned they were traumatised that the civil war they endured in their country and all they needed when they sought refuge in South Africa was peace; in the workplace and communities where they lived.

My fieldwork data suggests that there is some degree of solidarity among miners working in both formal and informal mines. This is very often issue-based although with some degree of variances. For instance, the common grievances among all miners in the formal economy irrespective of nationality include wages and struggles against retrenchments and employment flexibility and labour broking while differences are related to issues of documentation and xenophobia. While loosely organised along ethnic and 'syndicates', unity among zamazama is forged around resistance to police brutality and frequent mine accidents which bring them together as alternatives to government services like paramedic rescue services. Zama-zama also make monthly contributions of at least R50 towards some burial societies; and use the funds for funeral or repatriation services, also for burial purposes. A sense of common identity –class, exists among local and foreign zamazama as they perceive their economic activities as a way of earning a livelihood among poor subaltern. In other words, what brings them together in solidarity is poverty.

From the study of both the formal and informal mining sectors, one is compelled to conclude that it is the recognition of injustice (see Wocke and Marais, 2016) at the workplace which coerces workers to self-organise, join trade unions, elicit militant behaviour and resistance, forge unity and solidarity and fully participate in decision-making processes which have the potential to emancipate them. An issue that was not addressed in this study was an analysis of why the contemporary worker cannot identify or recognise the injustices of the workplace today? And this Chapter has thrown up many questions which need further investigation. If the debate is to be moved forward, it is important to understand: given the precarious employment relations in the post-migrant labour regime, why is it that workers have become passive when there is gross violation of their labour rights or is it a lack of recognition of such injustice? Building on Burawoy's (1976) and Vidal (2010) studies, while the formal migrant labour system could have collapsed, it is clear that the over-dependence on remittances by both labour sending countries and migrants points us to a subtle form of the old migrant labour system, which poses huge challenges to mobilisation of foreign workers today. Two areas emerged from this chapter and require further investigation and these include the role of religion in mobilisation of foreign workers and also how aspects like health and portability of occupational diseases shape political subjectivities of foreign miners in light of self-organising by ex-miners across the SADC region.

Chapter 6: Understanding liminality, 'universal exploitation" and low levels of organisation in the hospitality sector

6.1 Introduction

This chapter critically examines mobilisation trajectories among foreign workers in the hospitality sector within the period 1980-2016. Numerous studies conducted in this sector focused on the dynamics related to tourism and hospitality and its contribution to the economy and did not give much attention to employment relationships as they relate to mobilisation of the sector. This study attempts to build on recent studies undertaken by scholars in Europe most notably by Alberti (2015), who examined union efforts towards organising migrant hotel workers in London. My study attempts to understand labour geography as it relates to mobilisation in the hospitality sector in the context of the global south. In contrast to the mining sector, little has been documented with regards to mobilisation of workers in general and foreigners working in the hospitality sector in particular and thus there is a dearth in literature with regards to this sector.

Hospitality sector in this study includes catering, accommodation and therapeutic beauty services provided in hotels, lodges and restaurants. The sector is characterised by high levels of precarity, labour flexibility and acquiescence partly associated with conflicting reasons for seeking employment in the sector (Underthun, 2015). As noted by Underthun (2015), people seek employment in this sector for various reasons; for full-time employment or as a means to subsidise living allowances in the case of students and also some for the sake of tourism while they work[122]. At the same time, the sector has reconfigured migration trends in the post-migrant labour regime and is regarded as one of the easiest to enter (Jordhus-Ler and Underthun (2015) although an in-depth analysis revealed that not all jobs are low–skilled as it also employs skilled technical professionals like therapists and chefs.

Some studies attempted to explain the hospitality sector from a skills standpoint and thus argue that workers are poorly paid because of low levels of skills. This study challenges this notion based on collected statistical data that shows that of the 67 respondents, 24 matriculated while 13 were in possession of post-matric diploma or certificate and 3 attained university degrees. In fact, in South Africa, the sector is a good epitome of job mismatches (see SWOP 2012). For example, immigrants in possession of tertiary degrees entered the

[122] In Cape Town for instance, a sizable number of students from Europe work in restaurants while they study at local universities

sector as a liminal[123] measure while they wait to find substantive opportunities in areas of specialization while students are attracted to this sector as a way of boosting their monthly allowances and all these factors result in lack of attention towards mobilisation for example better wages. Nonetheless, there are workers who entered the sector as their permanent form of employment such as casuals, sub-contracting (see Kenny and Bezuidenhout, 1999). As the study shows, migrants seem to have accepted the poor working conditions and wages with the hope that the situation would one day improve. Nonetheless, some have begun to self-organise or join unions after they realised that the situation continues to deteriorate other than improve. Workers' responses have been influenced by several factors which include social media and emerging forms of worker representation such as worker advice offices and migrant rights organisations.

Following Underthun (2015)'s framework of liminality, while his conclusions were based on the context of Europe, this study revealed the various and sometimes conflicting interests which motivate people to seek employment in this sector and to some extent explains the low levels of organisation in the sector. The concept of liminality was first coined by Van Gennep in 1909 in his works which attempted to explain the various rituals and rites which an individual transition through in life which are defined by certain boundaries; changes of place, state, social position, religious calling, and age in a culture.

Gale, (2005) describes "liminality as the condition that prevails during the inner phase of rites of passage, those rituals performed in many societies to transfer a person from one stage of life to another. Liminality is the experience of being "betwixt and between" (2005: 1). Liminality, according to Thomassen cited in Underthun (2015), "has a temporal dimension, distinguishing between liminal moments, liminal periods and liminal epochs… and has a spatial dimension" (2015:29). In light of this, it is clear that liminality is shaped by prevailing situations, time and also place. For example, the first stage and priority for a foreign migrant is to find a job and any problems associated with the job would be deferred to a later stage. However, depending on the length of time that one spent in search of employment, they might opt not to challenge any injustice or simply remain hopeful that one day the situation might change even if this will happen after many years or never. My study also reveals that students also undertake casual jobs as waiters as a means to supplement or economically sustain themselves while studying. In this situation, the understanding is that this work is not

[123] As explained in Chapter one, liminality refers to a transitional or preliminary stage of a process while liminal is an adjective that is used to describe the phase related with the process. For example, for workers, immigrants in particular, the first stage is to secure a job before looking at the nature of exploitation.

in line with their career path and thus would rather preserve their efforts to that point when they are employed in a stable sector commensurate with their qualifications. As a result, they are caught up in an ambiguous social process such that they do not pay much attention to low wages or poor working conditions (see Underthun, 2015) as they perceive this as a passing phase. Liminality according to Thomassen cited in Underthun (2015), "has a temporal dimension, distinguishing between liminal moments, liminal periods and liminal epochs… and has a spatial dimension" (2015:29). In light of this, it is clear that liminality is shaped by prevailing situations and time and also place. In relation to this study, liminality explains the low levels of organisation in the sense that workers enter the sector for various reasons; as temporary or permanent workers which ultimately shaped their responses to unionisation. Thus, as my study shows, migration to some extent results in alienation in the workplace and tends to disengage workers from participating in workplace related issues for two reasons; restrictive immigration laws and self-fulfilling reasons in which they do not worry much about their social status in the host country but that from their country of origin.

Foreign workers including locals who fall outside standard employment like casuals in the hospitality sector constitute a class of the liminal in the workplace and to some extent have developed permanent negative liminality. This is because the labour market segmentation which has occurred as a result of globalisation has located them at the periphery such that they developed a sense of alienation in the workplace. This is exacerbated by the fact that, today, many cross-border migrants comprise of young graduates who have never worked before and would present themselves as 'novices' in the workplace and again do not have experience in unionism. Thus, they prefer to restrain from joining unions as at an early stage of their career partly because they will be hoping that their working conditions would one day improve or are discouraged by employers' union busting strategies.

The present study reveals what I refer to as 'inclusive exploitation' which exists in the sector with over seventy (70) percent of workers (locals) falling outside of collective bargaining coverage as was also noted by Cazarin and Jinnah (2016). By 'inclusive exploitation', I refer to the universal exploitation against both local and foreign workers in the workplace based on their work contracts for example, casual. What this study reveals is that foreign workers are affected by both, as they are very often hired as casuals based on their immigration status as shown in Chapter 4. It also reveals that the mobilisation of foreign workers in South Africa is habitually framed around issues of documentation and struggles against xenophobia, in contrast to conventional labour mobilisation demands around wages and working conditions.

Further, it also shows that wages in the sector are extremely low with some respondents working in between jobs (sometimes engaging in domestic work during the day and waitron jobs at night) to supplement their wages. However, mobilisation of foreign workers in the hospitality sector is very complex as their jobs are very often precarious coupled with restrictive immigration laws which somehow make it difficult to negotiate for better wages or change jobs. Thus, the confluence of migration and labour laws in a way deleteriously shape foreign workers' political subjectivities and agency in the workplace as many opt to remain 'invisible' (see Segatti and Munakamwe, 2014) in spite of their exploitative working conditions as they fear deportation.

The subsequent sections discuss various issues emerging from empirical data collected through a review of documents, workplace census, key informant interviews, interviews with workers and shadowing on social media platform herein closed WhatsApp group. Various themes emerged which also informed the title of the chapter and analytical categories. In this chapter, I examine the political economy of the hospitality sector; informal migration and how it shapes informal employment. I also present results of a workplace census which was conducted to solicit baseline data on the contemporary workplace and workforce in the hospitality industry including levels of mobilisation, participation and models of representation. A summary of key points is provided at the end of the Chapter.

6.1.1 Citizenship, identity and self-organising

In discussing foreign workers' collective action, participation and representation in the hospitality sector, both public discourse and research analyses have tended to focus on union-based models of mobilisation. By doing so, scholars have ignored some essential aspects of collective self-organising actions by workers. For instance, in 2005 Asian migrants in the United Kingdom (UK) working for Gate Gourmet in London embarked on a strike against poor working conditions and casual contracts; this illustrated how foreign workers could exercise their agency irrespective of their identity as non-citizens[124]. Drawing lessons from this case, I argue that aspects of identity and citizenship are critical in as far as civic agency is concerned as Bennett and Entman (2007) argued:

[124] See http://www.leeds.ac.uk/strikingwomen/gategourmet/quotes

> In order to act as a citizen, to participate in achieved citizenship, it is necessary that one can see oneself as a citizen, as subjectively encompassing the attributes of agency that this social category may involve. (2007:89)

The present study argues that while barriers to organising tend to overshadow opportunities, it is important to appreciate efforts by workers themselves to self-organise including their self-representation strategies where disputes occur (see Alberti, 2014). Results from a workplace census (conducted in this study) revealed that some foreign workers were affiliated to at least one worker organisation (for example, a workplace workers' committee or forums) and to other external representative bodies like trade unions. Furthermore, in-depth interviews with respondents revealed that some had affiliations with multiple worker organisations. They reported that holding multiple affiliations was a strategy to obtain efforts from multiple sources given a myriad of problems faced by foreign workers which include documentation, working conditions, wages and many others. For instance, foreign workers may access migrant rights organisations which render documentation and legal services while also accessing trade unions which assist directly on 'bread and butter' issues in the workplace through collective bargaining processes.

This study reveals that because of the nature of employment contracts in this sector, which are very often casual and outsourced; the normative South African model of union organisation is insufficient to address workers' challenges in a holistic way. This is because of bureaucratic tendencies associated with unions which are often aligned to the labour and migration laws as shown already in chapter four. Consequently, both local and foreign workers who fall outside of standard employment relations are excluded from enjoying their labour right to freedom of association. However, in the last few years we have witnessed more widespread concern than before about casual contracts as was illustrated by informal organising of the 2015-16 students and outsourced workers protests using the hashtag #Outsourcingmustfall as well as the establishment of worker advice offices like the Casual Workers Advice Centre (CWAO) including the national campaign against labour brokers and others which will be discussed in detail in Chapter 7. The present study shows how these emerging movements and worker solidarity networks function as forms of collective action, which further our understanding of mobilisation strategies and trajectories among foreign workers and how these shape their political subjectivities in South Africa. Protests have

become a prevalent form of collective action for expressing workers' demands in workplaces which are currently not organised by trade unions.

Further, the study identifies social networks which bring together workers in vulnerable sectors like hospitality and domestic work as crucial for the establishment of self-organised worker organisations, and notes that networks function especially well via social media like WhatsApp and Facebook. This study also shows that trade unions and migrant rights organisations have also adopted the use of social media to enhance grassroots mobilisation and participation (I refer to this in the study as *'cyber politics'*). Workers across the globe are connected through social media and use such platforms to render worker-to-worker solidarity including self-organising support. Most importantly, global union federations (GUFs) play a critical role in worker-to- worker solidarity. GUFs bring together workers and trade unions in one sector across the globe and in a way play an organising role in ensuring that their affiliates, especially in destination countries accommodate foreign workers into their ranks. For instance, with the support of the global federation, International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) the South African Commercial, Catering and Allied Workers Union (SACCAWU) has begun to organise foreign and casual workers in the hospitality sector. The Bargaining Council for the Restaurant, Catering and Allied Trades governs industrial relations in the hospitality sector and a brief background is presented below.

6.1.2 Bargaining Councils and Agreements: Profiling the Bargaining Council for the Restaurant, Catering and Allied Trades.

The Labour Relations Act, No. 66 of 1995, Section 31 allows for the establishment of a bargaining council for workers in the Food Retail, Restaurant, Catering and Allied Trades. Accordingly, both parties and non-parties are bound by the existing collective bargaining agreement as gazetted by the Minister of Labour and is in full force until December 2016.

SACCAWU is the largest union organising in the hospitality industry and is part to the Bargaining Council for the Restaurant, Catering and Allied Trades together with The Catering Employees' Union (CEU) and The Distributive, Catering, Hotels and Allied Workers' Union (DICHAWU). The main employer body which is signatory to the Bargaining Council is The Restaurant and Food Services Association of South Africa (CATRA).

The scope of the bargaining council agreement covers magisterial districts of Alberton, Benoni, Boksburg, Brakpan, Delmas, Germiston, Johannesburg, Kempton Park, Krugersdorp, Randburg, Randfontein, Roodepoort, Springs and Westonaria and according to section 1. 1(a), 2 and 3 would not apply to non-parties. Profiling of the bargaining council for the sector was critical as subsequent sections will make extensive reference to it as a way of elaborating some of the key issues emerging from the workplace census data as will be noted.

6.1.3 A reflection of some of the emerging key points

The post migrant labour regime is characterised by economic restructuring, massive job losses and protracted marginalisation of foreign workers; for example, foreign workers currently constitute less than twenty-two (22) percent of miners in gold and platinum mining (see Budlender, 2013). In their report on a study conducted in the hospitality sector in South Africa in 2013, Jinnah and Cazarin (2014) noted that employment within the hospitality industry is characterised by increasing casualisation, outsourcing and informalisation of labour (2014:13).

While there has been a decline in recruitment of foreign miners, the service sector (which includes hospitality, finance, healthcare and retail) has expanded and become the largest employer of foreign labour in South Africa. According to Budlender (2013), the total share of foreign workers in the service and sales sector in 2013 stood at nine percent of the total professions occupied by foreign workers in South Africa. Far too little attention has been paid to the changing dynamics of foreign labour in the South African labour market as a result of newer economic trends. To remedy that gap, this chapter raises critical issues which have been caused by this profound shift in relation to foreign labour: feminisation of migration, gross violations of labour rights, the emergence of a new precariat (casual, outsourced, temporary and seasonal workers), job mismatches (where employees are over-qualified), informality within the formal (this refers to workers without formal contracts but working in formal workplaces); very low levels of mobilisation and sub-minimum wages for tipped workers. The impact of these characteristics is further compounded by the implementation of rigid immigration laws as shown in chapters four and five. Almost all respondents reported that they found themselves in the hospitality sector because they had failed to meet some of the stringent requirements and conditions needed to obtain work permits.

A seminal study conducted in South Africa by Society, Work and Development Institute (SWOP), a research institute at the University of the Witwatersrand, reported that there was a high statistical representation of foreigners in the hospitality sector and its sub-sectors (SWOP for Gauteng Economic Commission, 2012). In 2013, the Migrating for Work Research Consortium (MiWORC) at the African Centre for Migration and Society (ACMS), University of the Witwatersrand, also conducted a sectoral study of foreign workers in the hospitality industry (Jinnah and Cazarin 2014) and is consistent with the SWOP study's findings about demographics in this sector. Outside the universities, the National Labour and Education Development Institute (NALEDI) (2011) and the Labour Research Service (LRS) (2012) conducted studies which applied research to inform policy recommendations. The two academic studies were of a scoping type and therefore outlined that further research was needed on this sector in South Africa. Scholarly studies have been conducted elsewhere in the world (see Alberti, 2014). The present study takes that research further by examining in more detail the mobilisation trajectories of foreign workers in this sector.

As mentioned earlier, the history of this sector is under-documented in South Africa as some respondents acknowledged (as reported in chapter five) the role played in the years 1919 to 1928 by foreign workers like Clements Kadalie in the establishment of the Industrial and Commercial Union (ICU) as the first black union in the commercial sector which also organised hospitality workers at that time.

To address the lack of data about this sector, a workplace census of workers was conducted. It contained questions on demographics, age, sex, marital status, race, ethnicity, nationality, level of education, number of years in South Africa and length of employment in the sector, as well as questions about migration status, working conditions, remuneration, and knowledge of employer (considering the new precarious employment relations). This was undertaken to attain an understanding of the complexity and depth of sectoral dynamics, and their relation to mobilisation, participation and representation. These data were complemented by conducting direct observations; key informant interviews, writing workers' life histories and studying of key archival material. In particular, the findings from data collected will be of use in advancing theory around the migration and mobilisation of transnational migrants as most of the foreign workers reported that, due to the unfavourable work permit environment, they frequently cross borders to renew permits or 'reserve some of the days' on a fixed-period work permit. The idea of 'reserving days' involves 'stamping out of passport' while someone is still physically working in South Africa. This is done to avoid

defaulting on the time period (overstay) one is eligible to stay in South Africa in the absence of a work permit. Therefore, using a transnational framework is appropriate for consideration of the mobility of these workers in and out of South Africa as "temporary migrant labour is increasingly the primary basis of labour supply growth in several economic sectors and labour markets around the world" (Valiani, 2014:1). Nonetheless, transnational migration which is pervasive in this sector poses challenges in organising foreign nationals. Business approaches to unionism prioritise union subscription deductions as the core of union-worker relationships (see Lopez, 2004). The study reveals that the long breaks in employment during off seasons make it very difficult to achieve long-standing relationships between unions and workers. This may call for adaptation or transformation of some labour practices and a challenge to the dominant models of the collective bargaining process so as to include those who fall outside of standard employment.

The key findings (which are consistent with similar findings reported in the previous chapter) show that immigration status and precarious employment contracts deleteriously shape foreign workers' mobilisation although precarity affects all workers across the sector and few unions have done much to address these challenges. While the South African Commercial and Catering Allied Workers Union (SACCAWU) has made efforts to organise all workers in non-standard employment relations in this sector, the union's efforts have been thwarted by national laws allowing labour brokering practices which the government has preferred to regulate rather than legislating for a total ban on labour brokers. In fact, alternative models of representation were noted in the form of Worker Advice Offices such as the Casual Workers Advice Office (CWAO) and migrant rights organisation which offer document related services.

6.1.4 An overview of the hospitality sector

The hospitality sector is a labour-intensive industry characterised by irregular hours, low wages, and lack of job security including a representation gap. According to the World Travel and Tourism Council Report of 2012 cited in Jordhus-Ler and Underthun (2015), globally, the industry contributes "approximately 9 percent of total world gross domestic product, providing about 255 million jobs in 2011" (2015: 1). Duncan, et al (2013) project the growth of the sector at 4 percent annually by 2022 as the sector continues to internationalise underpinned by "a deepening of economic globalisation that entails rapidly increasing mobibility of capital and workers" (Jordhus-Ler and Underthun (2015:1). Nonetheless, the

sector is increasingly becoming informalised and precarious (HSRC, 2005). Despite the poor working conditions, the sector has continued to expand as reported by LRS (2012) citing the CEO of the Tourism Business Council of South Africa. The sector has increased significantly over the last decade and is now one of the fastest growing sectors of the South African economy. It is said that globally the global business volume of the hospitality sector equals or even surpasses that of oil exports, food products and motor cars. In South Africa, in 2009 the sector generated 179 billion rands of economic activity and 45 000 jobs through direct employment and a total of 1 011 000 jobs, representing 7.6 percent of total employment (LRS, 2012:3).

As it expands, the hospitality industry is creating more employment in the South African economy. This study explores the hospitality industry as a growing sector that relies on foreign labour in a post migrant labour regime although there is a lack of statistical to show the number of migrants employed in the sector (Jinnah and Cazarin, 2013). The study aims to compare the degree of receptiveness to mobilisation, participation and representation of foreign workers between this highly feminised sector and the mainly masculine workforces of the mining and agriculture sectors. The LRS report (ibid.) documented that workers experience a high level of job insecurity due to constant threats of retrenchments by employers. According to NALEDI (2011), more than 70 percent of workers in the sector are not covered by collective agreements or bargaining councils. This means that most workers in the industry are protected only by the sectoral determination in terms of the Basic Conditions of Employment Act (BCEA) for the hospitality sector in which the Minister of Labour has laid down the minimum wage and working conditions for the sector. The Act provides for sectoral determinations for workers in industries that are particularly vulnerable to exploitation and where there is a very low level of representation of workers by organised unions. Workers in this sector are subjected to retrenchment threats which make it difficult to push for financial benefits (wages) within the collective bargaining process as revealed interviews with workers and some key informants. Hence, a few or no protests have occurred in this sector since the 1994 as unions' bargaining power was weakened by legislative provisions for flexible work contracts.

The hospitality sector offers fresh insights about how this growing sector attracts foreign workers in post-apartheid South Africa. The LRS report claimed that there were an increasing number of foreign workers in the sector which posed a challenge to organising efforts by

union (LRS 2012: 22). Further, it notes that there are high and increasing levels of foreign workers in the workplaces. The high presence of foreign workers in the sector has to some extent been blamed for the increased level of vulnerability and fragmented solidarity between local and foreign workers. This is well captured in the quotation below:

> Participants felt that immigrant workers were an easy target for management abuse as they do not know their rights or are willing to give them up in order to keep their jobs. This vulnerability makes immigrants popular with management as they are cheaper and easier to control. On the other hand it sews divisions among workers who see immigrants as destroying the hard won gains for conditions that South Africans have fought for as well as making it more difficult for locals to get jobs. Where immigrants have joined unions, it is reported that South African workers are not always willing to join the union if they see that foreigners have joined it. (2012:22).

The above quote reveals the divisive nature of capitalism in a post migrant labour regime and substantiates the earlier claim that the post-apartheid migrant labour regime has inherited certain aspects from its predecessor. Whilst capitalism sustained itself through racism under apartheid, the post migrant labour regime thrives on flexible work contracts and xenophobia which create divisions amongst workers (see Mattes et al. 1998, Crush 2001; Crush et al. 2008; Landau, 2012; Misago et al. 2008; Monson, 2010; Nieftagoodien, 2012; Ogunyemi, 2012). In fact, new political subjectivities are created among both local and foreign workers. Similar to the agriculture sector, both local and foreign workers seem not to have a voice and are under-represented.

A report by Labour Research Services (LRS) of 2012 revealed that the hospitality industry is dominated by a large share of foreign and female workers in recent years (see also HSRC, 2005). Interestingly, the hospitality industry has been in existent but only recently has it been associated with foreign labour (see LRS, 2012; NALEDI, 2001; Webster et al, 2012). The emergence and expansion of the sector corresponds very well with neoliberal policies. Nothing much has been documented about this sector compared to the mining sector, as discussed in Chapter 5. Anecdotal data claims that one of the key unions organising in the sector has already taken some steps towards organising foreign workers in the sector. Research institutions which have conducted studies in this sector (SWOP, 2012; NALEDI, 2005; LRS, 2012) depending on the questions for analysis, time available and resources, have

employed interviews, surveys and focus group discussions (FGDs) as data collection methods. Because of the nature of the key question for this study, workplace census coupled with participant observations and in-depth interviews were more appropriate to understand the sector in greater depth.

6.1.5 The gender dimension of the hospitality sector

As shown in chapter five, the mining sector in South Africa has shed many jobs and its recruitment of labour from outside South Africa has declined in the last two decades. In contrast, the hospitality sector is increasingly relying on foreign labour predominantly women for some of its core and non-core labour processes. Thus, gender, rather than race or class, may be a good starting point for an analysis of the mobilisation of foreign workers in the hospitality sector in a post migrant labour regime. In the post-apartheid era, there has been a remarkable shift in migration patterns where the number of women migrating to South Africa has increased (the feminisation of migration) although men still comprised the majority of migrants (see Dodson, 1998). South Africa's 2001 census revealed that women constituted 37 percent of the 687 000 residents born elsewhere in SADC and 63 percent of that category were men (DoL, 2007). Data from the most recent census in 2011 show that women migrants constitute about 40 percent of international migrants from the SADC region (Obisie-Nmehielle & Adedini, 2015), and a large number of them are black women who find employment in the hospitality sector in contrast to their white counterparts as revealed by this study in subsequent sections.

As migration trends have shifted, individual, clandestine and informal labour migration has become the most prevalent alongside a noted decline in fixed contracted labour which was previously facilitated by TEBA (see Crush, 2007; DoL, 2007; Simelane and Modisha, 2008). Indeed, there has been massive disruption to the old migrant labour system (Simelane and Modisha, 2008) which was precipitated by new labour policies that emphasised recruitment of local labour (see Forrest, 2013).

6.2 The political economy of the hospitality sector in post-apartheid South Africa

According to Statistics South Africa, the tourism sector, of which hospitality is a sub-sector, contributed "R103,6 billion in 2013, rising from R93,5 billion in 2012. The industry's contribution to total GDP remained stable at 2, 9% for both years" (StatsSA: March 2015). According to StatsSA (2016) in its fourth quarter, industries with higher percentages of GDP in 2016 were trade, catering and accommodation industry which increased by 2,1% and finance, real estate and business services which increased by 1,6% and , each contributed 0,3 of a percentage point to GDP growth. However, as shown in chapter five, the sizes of the mining and manufacturing industries have declined, whereas service industries continue to expand. Work place restructuring and fragmentation is taking place in all sectors (see Jordhus-Ler and Underthun 2015) as company owners (and their financiers) attempt to adjust to the current realities of the labour market. All this, is as a result of imposed neo-liberal policies which were popularised by Bretton Woods institutions in the 1990s.

Neoliberal policies such as Zimbabwe's Economic Structural Adjustment Programme (ESAP) are at the helm of the economic mayhem which confronts workers today (see ANSA, 2007), which culminated from ill-informed policies popularised by Bretton woods institutions. Such policies called for opening up of markets as stimulants for growth and development in the capitalist economy (see Standing, 2011), the result of which is labour market flexibility. Part of the strategy, as argued by the economists was labour market flexibility which eventually resulted in what Standing refers to as a 'global precariat'. Contrary to the view of neoliberal economists, market-led economic growth threatens workers job security including social security today as witnessed in many countries in the global South after adopting such disruptive policies. Ironically, the self-regulated market economy resulted in commodification of social and economic life throughout the globe. And today we see the erosion of social protection that used to exist before the 20th century, and the restructuring of labour which exposes workers to precarious life.

In essence, the risks and insecurity created through the application of neoliberal policies were transferred to workers and their families, consciously creating a precariat (give a definition of precariat in brackets here) in the process (Standing, 2011). The hospitality sector operating within this economic context is today characterised by casualisation, outsourcing, labour

broking and temporary employment contracts. All these characteristics undermine union organisation in the sector (Valiani: 2012; Valiani: 2013b) as it is difficult to maintain membership under these conditions. Informal employment relations are also very common as large hotels rely on out-sourcing for services like catering (see Jinnah and Cazarin, 2014).

As mentioned earlier, the hospitality industry relies predominantly on foreign labour (see SWOP, 2012; Jinnah and Cazarin, 2014) and is recorded as an exploitative sector using flexible employment contracts and paying very low wages. Very often, workers engage in other economic activities to supplement their meagre wages or seek other part-time jobs at other employers (see Alberti, 2014). Because of the nature of contracts in the sector, following the agriculture sector, the rate of unionisation is recorded as the lowest among all South African sectors due to high levels of turn over (see NALEDI, 2005). Yet, migrants experience it as a niche industry to earn a living and remittances to send back home (see Jinnah and Cazarin, 2014). The opportunity to remit money 'back home' to their families is a fundamental concern worldwide of the majority of migrating workers as remittances assist in sustaining social reproduction back home. Social reproduction entails the costs of labour renewal usually borne by women in labour sending countries (see Burawoy, 1976; Fakir, 2012).

6.2.1 Informality within the formal

The study shows that while work in this sector takes place in formal workplaces, the prevalent employment relations are informalised. Workers do not have written contracts and in most cases rely on verbal arrangements with employers (see Jinnah and Cazarin, 2015). As pointed out earlier, the hospitality industry is over dependent on subcontracted or outsourced workers and as a result the majority of those interviewed did not know the name of their actual employer. Informalisation is further reinforced by informal migration as employers prefer undocumented foreign workers as a way of avoiding social security responsibilities (see Cazarin and Jinnah, 2015). Casual employment relations are prevalent and a universal challenge among workers in this sector irrespective of nationality and new entrants into the labour market are mostly affected. Outsourcing is used by companies to cut expenditure and increase profits by decreasing wages and avoiding payment of employment benefits such a leave pay, medical insurance and pensions. Very often, workers are offered short-term contracts and work under very deplorable conditions (which will be explained later) and are sometimes replaced with 'scab' labour if they embark on strikes. Ultimately, such

employment relations result in submissive and paternalistic relationships and in a way hinder mobilisation by trade unions as workers fear losing their jobs (job insecurity). An interview with a key informant from the largest union organising in this sector revealed that a very small fraction of workers in the food and beverages sector was unionised.[125] In its 2012 report, the Labour Research Services (LRS) identified high levels of informalisation in the sector as obstructing worker-to-worker solidarity because competition between workers was generated by management.

6.3 Presentation of results from the workplace census

This section presents data collected through the workplace census and supported by life histories, key informant interviews, participant observation and WhatsApp group chats. The strengths and challenges posed by these data collection methods were discussed in detail in chapter two. The workplace census was conducted at a leading chain restaurant which employs foreign nationals in Johannesburg, Gauteng demographic data.

It is important to understand age categories in the hospitality sector as they assist in a sociological analysis of other dynamics found in this sector. For instance, age might explain other variables like marital status, education, experience, and mobilisation which is a central unit of analysis in this study. A case in point might be the relationship between the digital era and use of social media platforms for mobilisation purposes, which is covered in depth in this study.

6.3.1 Age

In their study of the recent census of 2011, Obisie-Nmehielle & Adedini *(*2015) revealed that:

> in terms of age, the highest percentages of immigrants in South Africa were young people aged 25 to 34 years (34.3 percent) and 15 to 24 years (18.4 percent), who were followed by people in the age group 35 to 44 years (17.5 percent). Children under 5 years of age accounted for 3.5 percent of the total immigrant population, while school-going children, aged 5 to 14 years accounted for 4.8 percent of the immigrant population (Figure 2). The age profile of international migrants in 2011 showed that the majority (85.3 percent) belonged to economically active age groups.

[125] Interview with Patricia Nyman. SACCAWU Offices, Braamfontein

The table below shows age categories of participants against sex in the workplace census which to some extent almost reflect the census data.

Table 4: Age against sex of participants

	SEX					
Age	Males (n)	Males (Col %)	Females (n)	Females (Col %)	Total (N)	Total (%)
18-25	10	30.3	8	23.53	18	26.87
26-35	14	42.42	19	55.88	33	49.25
36-45	8	24.24	7	20.59	15	22.39
46-60	1	3.03	0	0	1	1.49

There are more women in the 26-35 age category and none in the 46-60 category and this could be attributed to the nature of the sector and kind of jobs predominantly occupied by immigrants such as waitering. Such kinds of jobs require young and attractive women while older women might be involved in cleaning and preparation of meals. Again, the only male found in the 46-60 category was a Chef while young males who constituted the majority within the 18-25 years category worked as waiters. Two male respondents within the 26-35 years range were supervisors while one was responsible for marketing.

In their study of the hospitality industry, Webster et al (2012) pointed out that the sector was predominantly female and the majority were within the youth age range. Similarly, this study reflects the same trends whereby out of sixty-seven workers who completed the questionnaire, more than half (51) were aged between 18 and 35 years; with fifteen constituting the 36 to 45 years age group while only one was reported in the 46-60 years age category. These demographics seem to be consistent with 'stereotyped' requirements of the sector which seeks young workers to undertake particular waitron and beauty therapy jobs. However, this is in sharp contrast to the mining sector where the majority of international workers are found within the 36 to 60 years category and have many years of experience working in the sector as revealed in Chapter 5.

6.3.2 Sex

Of those interviewed in the workplace census, thirty-four (34) were female while thirty-three (33) were male. Cross border migrants constituted the majority of waiters at shop floor level. In their study on the same sector, Cazarin and Jinnah (2014) ascribed the strong presence of foreign nationals in the sector to language proficiency. The high presence of males in the census data could be attributed to the fact that both males and females work as waiters these days thereby demystifying the myth around the gender dimension of the sector, which traditionally is believed to be more attractive to females than males. Also, it points to the changing nature of the contemporary workplace, as a result of migrancy. However, it is important to note that during colonial and apartheid times, male labour was contracted from countries like Malawi to work in hotels as chefs.

As the table above shows, the number of males who participated in the census is almost equal that of females and reflects the gender demographics of the sector. Today, a substantial number of men are joining traditionally defined female sectors although some studies show that gender wage disparities still persist such that men who find themselves in female-dominated sectors also succumb to such inequitable distribution of wages (see Cobble 2005; Munakamwe 2009). The large number of low paid women in particular immigrants and young workers in the sector, according to Zampoukos and Ioannides (2011) cited in Jordhus-Ler and Underthun (2015) shows "how divisions of labour is interwoven with race, class and gender categories" (2015:4). Both males and females who were interviewed for this study received roughly the same wages at the same workplace and the only wage differences were based on experience and positions within the company.

6.3.3 Marital status

Many of those interviewed were single although this variable was not aggregated against sex and age group. Face-to-face interviews with some young workers in the sector provided various reasons for procrastinating marriage follows:

> *Marriage for me at this moment will interfere with my career. You know most that once you get married then everyone expects you to have a baby. And here you cannot work as a waiter when you are pregnant*[126].

[126] Interview with Tabeth, Braamfontein. N.B the interview was not conducted at the respondent's workplace for fear of reprisal

Uhmm I don't think my fiancé would allow me to dress up like this once I get married (she points to her tight-fitting jeans and designer top which constitute part of the company uniform). *He is so jealousy that we have fought many times because he says I should not smile at my clients. But what else can I do because it's part of my job. So, I'm thinking of quitting this relationship. Sometimes a client requests for my number and calls at awkward times then I'm blamed for that!*[127]

I'm not yet ready to get married because I'm earning peanuts. I can't even afford to pay my own rentals and what more when I have a wife and kids to look after. I'm still searching for a better job then that's when I can think of getting married[128].

I'm still thinking of my studies and not yet ready to get married. I'm a part time student at UNISA and working for my fees. I will think about marriage once I complete my studies[129]

The above statements point to varying opinions around marriage in relation to work. Some young respondents said that they would rather delay marriage as this commitment would require them to reproduce and as such pregnancy might interfere with their career path in the industry as a result of maternity breaks. The other challenge is that the casual employment contracts do not provide for paid maternity leave or benefits such as the Unemployment Insurance Fund (UIF). Another reason given for delaying marriage due to working in the sector was the type of clothes expected, which one part-time student waitron described as 'sexy' and attractive; and added on to explain that some partners are very jealous and would not tolerate some of the attributes like 'smiling' to other men.

6.3.4 Place of origin

The table below presents the results regarding respondents' places of origin. Respondents were from various provinces within South Africa and other countries in the SADC region. The results show a mix of internal and international migrants who seek hospitality sector work in the big cities although some also seek work at large safari lodges for careers like beauty and massage therapy. Internal migrants came from Mpumalanga (2), Eastern Cape (6) and KZN (1).

[127] Inyerview with Nyalo. Braamfontein
[128] Interview with Pelagia. Braamfontein. N.B The interview was not conducted at the respondent's workplace for fear of repraissal
[129] Inteview with Charity. X Restaurant Johannesburg South

Table 5: Participants place of origin

MIGRATION STATUS – where exactly they are coming from	Total (N)
Mpumalanga	2
Eastern Cape	6
KZN	1
Mozambique	4
Botswana	2
Zimbabwe	45
Zambia	1
Other	6

When the internal migrants from Mpumalanga, Eastern Cape and KwaZulu-Natal were questioned about why they preferred to work in Johannesburg rather than in their home provinces, some of the respondents had this to say:

> They pay better in Johannesburg as compared to Mpumalanga. Even tips here are better. I have worked at a lodge in Mpumalanga but they did not pay very well. So my friends who came here sometimes ago encouraged me to come over this side. There in Mpumalanga we only got better tips if international guests visited. But they don't always come…many come during the festive season and all this time it is very quiet[130].
>
> I came to work here when my sister told me they are better paid. Also I just wanted to change environment. I was born in KZN, grew up there and now I decided it is time to move on to the 'big city' and have new experiences[131].
>
> You know what the situation in Zimbabwe is very bad. I graduated with a Higher National Diploma in Hotel Management. Unfortunately, when I completed my studies I faced the reality…I realised that almost all big hotels were shutting down or cutting their number of staff. That's when I realised that there are no hotels to manage at all.

[130] Nhlanha Johannesburg South. 07.11.15. Mall X
[131] Jabulile Johannesburg South. 08.11.15. Mall X

> And as a new graduate, I could not just qualify to be a manager as there were more senior workers. Wherever I knocked in search of a job, I was told that only if I was ready to start at the lowest level then they can recruit me. There was never any job advert in the newspaper since I graduated. So my cousin who was already working for this hotel invited me when they were recruiting during the festive season and that's when I got the job. I started as a waiter then was promoted to be a supervisor based on my qualifications[132].

The cohort labelled 'other' in the table was comprised of six people from Zambia and one from Malawi. According to anecdotal data, it is not surprising to find Malawians in this sector given their history of working as chefs in countries like Zimbabwe and South Africa since colonial times, it is however very rare to find Zambians in this sector. On a different but related note, some of the interviews with key informants revealed that cross-border migrants from West Africa, East Africa and Zambia are often involved in entrepreneurial activities in their host countries.

6.3.5 Race and Economic Status

In South Africa, race is still a dominant issue playing a very pivotal role in the way society is shaped, as it was a social category of exclusion which was used by the apartheid regime to side-line black[133] people economically and socially as well as reducing their life prospects (Munakamwe, 2014). On the same note, black women suffered in terms of race, gender and class and the same trend still persists today especially in economic sectors where black women earn their livelihoods (see Munakamwe, 2014. While clearly inequalities are rooted in race, class and gender, the reality is more complex as revealed in this study. The race categories used under apartheid is still prevalent in some workplaces and race is an important identifier of earnings/wages hierarchies, with Whites as the highest earners, then Asians, followed by Coloured and finally Blacks as the lowest earners (see Allanson et al 2002; Ledwith and Munakamwe 2014).

In 2013 the South African Institute of Race Relations reported that the median wages of white earners were four times as high as those of black earners, of skilled employees six

[132] Joyline. Johannesburg South. 08.11.15. Mall X
[133] Black as used here indicates Africans, coloureds and Indians.

times as high as those of unskilled employees, and of unionised employees twice as high as those of non-unionised workers (SAIRR, 2013).

Table 6: Racial profiles against economic status of participants

	ETHNICITY				
Economic status	**Black**	**White**	**Coloured**	**Indian**	**Total**
Poor	24 (38.1)	0	1 (50)	0	25 (37.3)
Below Average	14 (22.2)	0	0	0	14 (20.90)
Average	19 (30.1)	0	1 (50)	1 (100)	21 (31.3)
Above Average	5 (7.9)	1 (100)	0	0	6 (8.9)
Affluent	1 (1.5)	0	0	0	1 (1.4)

In South Africa, recording the race of workers is mandatory because of post-apartheid policies specifically crafted to redress inequalities and inequities associated with race. In particular, the Employment Equity Act (EEA), No 55 of 1998, aims "to achieve equity in the workplace by promoting equal opportunity and fair treatment in employment through elimination of unfair discrimination and implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups". In the context of South Africa, race is intricately intertwined with class and this is strongly reflected in the present study.

Black women constitute the majority of workers in the workplace census and earn very low wages which further relegate workers to the lowest class as mirrored in the variable. Thus, median wages of white earners are four times as high as those of black earners, of skilled employees six times as high as those of unskilled employees, and of unionised employees twice as high as those of non-unionised workers (SAIRR, 2013). The table below shows the racial distribution of respondents.

The study drew a racial bar ranging from blacks (the majority) with whites and Indian/Asians and coloureds being the minorities with frequencies of one or two in the workplace census. Both white and Asian respondents occupied managerial positions while one coloured worker was a beauty therapist at a hotel and the other was a waiter at a chain restaurant. Four (4) out of the sixty-three (63) black workers occupied middle management positions while three were supervisors. Five of those in top managerial positions were internal migrants from other provinces in South Africa.

As noted in the previously the majority of those working in the hospitality sector are predominantly black women who are generally affected by and live in abject poverty. The majority of lowest paid workers are black women; many of them work in private households, do not belong to a union, and are aged between 15 and 24 (StatsSA, 2013). There are a number of factors involved including black women continuing to have limited access to education and other services in contrast with white women and the majority of black men (Ledwith and Munakamwe, 2014).

Various economic statuses were determined by wages and also subjective responses based on how respondents view themselves. Twenty-five (25) out of sixty-seven (67) reported that they were poor while fourteen (14) were below average; twenty-one (21) defined their economic status as average; six (6) were above average while one belonged to the affluent category. The majority of respondents viewed themselves as poor and this was also reflected in their wages, which were far below the sectoral minimum wage. This was also explained by the prevailing 'tip wages' (wages based on tips without basic wage) which many of the large chains of restaurants seem to have adopted in South Africa (Author's own analysis). In addition, workers' wages fluctuate in accordance with the time of year and season; this made it difficult to often precise figures for wages.

In contrasts, those respondents who seemed to earn stable monthly wages often worked in large multinational hotels, for instance The Sun chain of hotels. Six reported that their wages were above average and these respondents were supervisors, managers and beauty therapists while the only affluent worker in the sample was a white manager. In other words, occupational positions and racial dynamics are strongly reflected in the sector and internal migrants occupy managerial positions.

6.3.6 Educational qualifications

The level of education attained acts as a key determinant of career choices and thus is critical in our analysis of the workforce in the hospitality sector. Very often the sector is associated with low skilled labour although this study contests this conventional association via the collected data.

Table 7: Educational qualifications of participants

HIGHEST EDUCATIONAL QUALIFICATION	Total (N)
Grade 11 of Lower (Std. 9 or lower)	27
Grade 12 (Matric, Std. 10)	24
Post-Matric Diploma or Certificate	13
Baccalaureate Degree	3

The educational qualifications of respondents ranged from as low as Standard nine (grade 11) or lower, who constituted the majority at 38.8 percent, to baccalaureate degrees at 4.5 percent. The number of graduate workers in the workplace census was not a surprise because of evidence provided by prior studies which revealed aspects like job mismatches as migrants sometimes do not possess the necessary permits to work in their professional careers in South Africa. There is evidence to suggest that job mismatch is significantly higher among migrants than citizens (see Galgoczi and Leschke, 2016; Madaba, 1998; Chiswick and Miller – 2014; Triandafyllidou, 2016). Job mismatch according to Mollard and Umar (2012) refers to "invisble under-employment" which occurs when a migrant fails to utilise their skills over time in their host country. Ultimately, according to Cuban (2013) this might result in de-skilling. The four graduates were foreign workers who were employed as waiters, and this mismatch between qualification and job can partly be explained by the restrictive immigration laws and policies as discussed in chapter four. It was hoped to conduct in-depth interviews with all of the hospitality workers with degrees; however, only two were available. When probed about why she had chosen to work in a restaurant although she had a degree in social work, Sharon explained:

I came to Egoli about ten months ago, and am still trying to sort out my paperwork. My cousin advised me to come this side and she works as a teacher at one of the private schools in town. Back home, I failed to find employment and worked as a temporary teacher in a very remote area where I struggled to get to work if ever I missed the only bus. Anyway, that was not the case why I left. Unfortunately, when my contract came to an end, I couldn't get another opportunity as you know Zimbabwe. Now we have many graduates on the streets and opportunities are very scarce. Also, many teachers are graduating every year and the government made a policy to ensure they prioritise those who are specifically trained for the sector. I also thought about my experience working in that remote area even if I really needed money, the conditions were very bad also considering my qualifications. I spoke to my cousin because I knew she was teaching this side. Unfortunately, I failed to get the English teacher's position which was advertised by her school. She looked after me for two months while I was job hunting. Of course, I didn't want to be a parasite forever considering her erratic wages and monthly bills. My neighbour advised that I try restaurants while I look for opportunities related to my sector. I also discovered during my job hunting that social workers here are affiliated to a professional body before they are recruited and for foreigners one had to be in possession of a work permit which I can only get when the professional body approves. So, I have been going back and forth as it is very difficult to register with the professional body. They also told me that it is difficult to get a job in the government since I'm a foreigner. To make matters worse, I don't have a work permit and my stay in South Africa has expired. One of my colleagues advised me to apply for asylum as we are approaching the festive season and inspectors from Home Affairs will be visiting suspicious 'hot spots' where they believe foreigners work.[134]

The other waitron with a degree was from Zambia and she explained her case as follows:

Kate: I'm a part-time student at UNISA. So, I studied my first degree in journalism in Zambia. My Aunt stays here and I came to join her. Well, I heard of opportunities to study and work in South Africa. In fact my first target was the United States but I do not have anyone I know that side but will continue searching. Perhaps, I can find connections through social media.

Janet: Do you trust social media? Have you heard of cases of human trafficking?

[134] Interview with Sharon. 13.7.2016. Braamfontein, Johannesburg.

Kate: Well, I know … er … but my starting point will be Zambian networks or other Africans like Zimbabweans and Malawi. Those ones might be reliable … you see they share much of our culture and I think can be trusted. Anyway, I will see but also depends on whether my parents and aunt will allow me.

Janet: So tell me, do you enjoy your work?

Kate*:* Oh yes, much fun for me and also makes me to be a responsible person. I like to be financially independent although I don't pay rentals and fees. I use my income to buy my clothes and also groceries to assist my Aunt. My parents still pay for my fees though. But I also pray that I get a better job with one of the national or private television and radio broadcasters here in South Africa if I don't find opportunities overseas. I'm much inspired by one of our own Zambian senior journalists (Sakala) who works at SABC. So, I believe one day I can find a good job in my field once I finish my honours then perhaps I might not think of advancing further to the US (smiling).

Two of those who possessed diplomas had exclusively studied towards hotel management qualifications and one of them went beyond diploma level in Zimbabwe to a higher national diploma. Before migration to South Africa from Zimbabwe, she had worked in the United Kingdom (UK) as a caregiver and then in Mozambique as a hotel supervisor. She claimed that the income from her work in the UK had enabled her to accumulate assets such as a family home and a car; she strongly felt that this could not have been possible if she had worked in her country of origin. She came back to Africa when her husband was involved in a fatal accident which claimed his life. For her, employment in the hospitality sector as a waitron was mainly to educate, feed and clothe her children as she no longer worries about rental costs. In fact, she rents out her backyard cottage and that is where her monthly municipal rates fees are derived from. On the side, her young sister runs a small second-hand clothes shop which she established while she was still working in Mozambique where they order the second-hand clothes that they sell.

6.3.7 Job mismatch

Largely because of continuing restrictions on work permits, many skilled Africans who enter South Africa do not work in their professional fields; instead, out of desperation, they take up positions that do not fully utilise their training and skills (see Mollard and Umar, 2012;

Thomas, 2016). Anecdotal evidence as well as research in progress suggests that a substantial number of highly qualified Zimbabweans, for example, often work as waiters, newspaper sellers, and parking attendants. Many may not be registered with any government department or agency (Polzer, Kiwanuka, and Takabvirwa, 2010) like the Department of Labour in order to access social security benefits like the Unemployment Insurance Fund (UIF). As revealed in the preceding section, the study's data includes some highly qualified professions working as waitrons.

6.3.8 Migration status

This was one of the central variables in this study and it revealed that while disparities like wages sometimes existed, however, all workers in this sector have been affected by workplace and economic restructuring as a result of globalisation.

Table 8: Migration status against income of participants

	MIGRATION STATUS			
Monthly Income (ZAR)	**Local**	**Internal**	**International**	**Total**
Under 1000	2	0	5	7
1001-1500	1	1	3	5
1501-2000	1	2	14	17
2000-2500	1	0	11	12
Above 2500	0	2	24	26

Respondents were classified into three categories: local to the area (had not migrated), internal migrants and international migrants. The largest percentage was international migrants while seven respondents were internal migrants and the smallest percentage was of locals from Johannesburg where the study was conducted. However, respondents were confused by the difference between local and internal migrants and the researcher had to clearly explain the distinction between the two categories. This information was very useful as it revealed universal exploitation among all workers in the sector irrespective of

nationality. For instance, locals were also underpaid as shown by the two workers who earned less than R1, 000 per month while the majority of those who earned above R2, 500 were international migrants. For instance, while locals complained about poor wages in the sector, they were quick to mention that, unlike migrants, they did not incur monthly expenses of paying for rent and utilities as they were living in their family homes or backyard rooms in family-owned spaces.

The strong presence of international migrants in the sector was also noted in a study conducted by SWOP in 2012. However, the difference between the present study and that of SWOP is that this study is more focused on the relationship of migrancy to the sector whereas the former SWOP study was a scoping study. Similar findings were made by MiWORC in their study of the agriculture sector (see Munakamwe and Jinnah, 2014) when they noted the frequency of paternalistic employment relationships between farm workers and their employers. At the same time, it is important to point out that unions have failed to address critical issues like documentation assumed to create an enabling environment for organising foreign workers. Also the problem of casualisation in the sector, further frustrate organising efforts as acknowledged by the union organiser.

6.3.9 Type of documentation

One of the major challenges faced by foreign workers in the hospitality industry is that of documentation which refers to the possession of the legal documents to live and work in South Africa. Many have devised ways of addressing this problem either through legal or illegal means.

Table 9: Types of documents used by participants

What kind of documentation do you have	Total (N)	Total (%)
Passport	44	65.67
Asylum	12	17.91
Refugee Status	2	2.99
South African I.D.	8	11.94
Other	1	1.49

The majority of respondents (65.7 percent) were in possession of passports although some admitted that they switched over to using the asylum system because obtaining the right to work and live in South Africa as an asylum seeker or refugee was easier than it was to obtain a work permit due to the level of bureaucracy and requirements regarding the latter. In other words, the use of asylum by labour migrants has been forced on them by the lack of policy or regulations which address permits for low-skilled foreign nationals.

As mentioned in chapter four, the key legal instruments which control movement and employment of international migrants in the labour market are the Immigration Act of 2002 and the Refugee Act of 1998 as amended in 2008. According to the Refugee Act of 1998 as amended in 2008 "refugees are entitled to study and work" in South Africa.[135] Because of delayed processing periods by the DHA, asylum seekers are, like refugees, are permitted to work as they await the outcomes of their applications for refugee status. However, asylum seeker papers have several limitations as observed by some of the respondents. Asylum seeker permits are temporary and are granted for periods from one month to six months; holders of them are required to renew them timeously, and failure to do so can result in a payment of a penalty fee of R1000. In addition, refugee and asylum seekers are not permitted to be part of state-provided social benefits like the Unemployment Insurance Fund (UIF). When applying, asylum seekers are requested to produce their passports and give valid reasons for claiming asylum. Nonetheless, respondents reported that these days many employers are rejecting the use of asylum permits as legal documentation and are more frequently demanding the submission of work permits. In addition, employers in other sectors are also rejecting asylum seeker permits as recorded in this excerpt from a Whatsapp discussion[136]:

> [10/19, 4:45 PM] +2774: *Most decent paying companies do not accept asylum permits*
> [10/19, 4:56 PM] *Cde: True and you cannot be a driver on asylum, UIF don't consider*

[135] However, The White Paper on International Migration adopted in March 2017 repealed the right to study and work for asylum seekers. "Asylum seekers will not automatically acquire the right to work, study or conduct business in the country while their status is being determined since their basic needs will be catered for in the processing centres. However, in exceptional circumstances such as judicial review, asylum seekers will be allowed to work and study" (Chapter 12 page 61).

[136] The researcher had the privilege of being added as an observer to some social media groups where she adhered to the requirements of the ethical code of the University of the Witwatersrand. For the purposes of maintaining anonymity, phone numbers of participants were deleted.

asylum seekers, the list is endless…Financial institutions, insurance companies and even domestic work employers don't want these anymore.

As mentioned above, applicants for asylum are required to submit their passports to DHA officials with their applications. According to the new rule, an asylum seeker can only request the return of their passport when they need to travel home but this then voids their asylum application in the eyes of DHA officials because valid asylum seekers and refugees do not travel home as seeking asylum is based on the danger of remaining or returning to one's home country. Nonetheless, respondents indicated that they are reluctant to leave their passports with DHA as this limits their transnational mobility as illustrated in the statements below:

[10/19, 2:42 AM] +2761: *Irikusara passport hanzi tozokupa wooda kudzokera kuZim coz assylms are for refugees, but vakaona hanzi anongokandwa mumazidrum mapassports acho ikoko kuhome affairs saka wakuzoita mheno kuti inozowanika easy here* (translation: one is required to leave one's passport at the DHA office where they have made an application for asylum and will only redeem them when they need to travel back home. But those who witnessed the process were not satisfied by the manner in which the passports are handled as they are just dumped in a big drum and are very worried if they will be able to find them easily when they need to travel).

[10/19, 2:45 AM] +2761: *Kunosiya passport zvoda kutanga vanatsogaya, but kare hapana chawaienda nacho vaingonotaura Zita rako nereason yaudodira assylm wotoiwana (translation: you need to meditate carefully before leaving your passport in exchange for an asylum paper… Long back it was easy to acquire an asylum paper as long as one provided their name and a very good reason for applying for such).*

Accordingly, respondents expressed disappointment in that a new system at DHA had replaced the old system which had only required them to submit their names or national identity cards. In response to this requirement regarding submission of an applicant's passport, some respondents pointed out that they had devised other strategies like use of the traffic register documents (prerequisite for foreigners to purchase vehicles in South Africa or to obtain a driver's licence) which could be obtained using one's passport even in the absence of a work permit. The new policy of declaring one's passport in exchange for asylum paper compels migrants to use backdoor means of acquiring permits and at times expose them to corrupt activities (see Amit 2015). One woman revealed that DHA officials sometimes

declined both national identity cards and birth certificates as was the case before, but also admitted that sometimes immigration officials are flexible if a bribe was paid as below:

> [10/19, 6:25 AM] *Ini zvandogara ndichiona Pretoria izvozvi vanongoti kandai mapassports enyu mose munerimwe zibox after that votanga kudeedera mazita aya muchipinda mukati, ukakanda chitupa unongodzoserwa asi mafirst days chaishanda chitupa even without anything, unobva watongosara panze pegedhi usina kuservewa* (translation: what I have witnessed in Pretoria is that people are ordered to drop off their passports in a very huge box and DHA officials call out names. These days they reject national identity cards although they used to accept them and sometimes we did not even have to submit anything before. These days, one cannot be served without a passport and are closed out of the gate).
>
> [10/19, 6:26 AM] +27 83: *Ini ndomboishandisa ndichiti passport ndasiya kumba kuitira isarasika uye handigoni kuva ne traffic register ndisina permit vamwe vanonzwisisa vamwe unotozosiya coke but nyaya yacho inenge isisina value* (translation: I use my traffic register instead of my passport to avoid getting it lost. The assumption and reasoning is that one cannot acquire a traffic register without a passport. Some understand but others do not and sometimes I'm compelled to incentivise the DHA officer with 'Coke' (Cold-drink) money (bribe).
>
> [10/19, 6:26 AM] +27 61: *Mwana vangu akarambirwa chitupa nebirth vaida passport but he was not ready kusiya passport yake* (translation: my child once produced a national identity and birth certificate card as she was not ready to leave her passport behind and they rejected both. So, they did not grant her asylum).

Some believe in prayer to help them succeed with their applications while others felt that stringency in application of this requirement varied from province to province. The Musina office was said to be more flexible and more accommodating while Pretoria's Marabastad office was regarded as being very strict and discriminatory towards economic migrants.

> [10/19, 6:27 AM] +27 6115: *But you can try mogona kuita lucky* (translation: you can try your luck).
>
> [10/19, 6:41 AM] Far: *KuMessina vanobvuma kuPretoria vanoti most are just economic migrants because asylum seeker report to port of entry not after travelling more than 500 kms* (translation: in Musina they are more tolerant but in Pretoria they

argue have applied for an asylum permit at the point of entry not after travelling for more than 500 kilometres (from the border to Pretoria).

[10/19, 6:49 AM] +2774: *They just need your passport even yaka overstayer or yakadhindwa out they don't mind as long iri passport* (translation: they [DHA] just need your passport in order to process an asylum permit and very often they do not care whether your visa or your passport has expired).

This DHA's practice of accepting expired passports may be due to their emphasis for security purposes on identification of individuals through their fingerprints. As indicated above, a respondent stated that the view of DHA officials was that an asylum seeker with a valid claim for asylum would not travel a distance of more than 500 kilometres without obtaining a permit, and that they cited the requirement of the legislation that they report to the first point of entry. Some mentioned that they preferred to hide their passports if confronted by immigration officers (on the streets) as being without papers was no different from having a passport without a work permit.

When those respondents who did not possess work permits were asked how they operate without them, besides mentioning the use of the asylum process as indicated above, some cited the use of forged asylum documents. Others reported that they would negotiate at the borders for seasonal work permits for work on farms. Some claimed that, as a last resort, they applied for passports from country Q because with such passports it is easier to acquire seasonal permits under the bilateral agreement signed by its government and South Africa, than with their own countries' passports. Country Q has offices in South Africa where it facilitates annual work permits for its citizens. Respondents reported that migrants from other countries negotiated with citizens of country Q to facilitate the permitting process for them in exchange for payments ranging from R1500 to R3000. There were risks related to this option as some respondents complained that some of these informal brokers cheated them by placing forged stamps or permits in their passports. On the other hand, some expressed faith in migrant rights organisations who they believed were fighting hard to ensure they could obtain legal documentation.

Some Zimbabweans working in the hospitality sector have established a WhatsApp group to share information and advice related to documentation. For Zimbabweans, the WhatsApp

platform keeps them informed of information related to renewal of their Zimbabwe Special Permit (ZSP) a special permit which was granted to them in 2010 as part of the regularisation process for undocumented Zimbabweans working and living in South Africa. Again, they use the platform to discuss other alternative permits available for those who did not get the opportunity to apply through ZSP or entered the country after the process was completed. They also advise each other against falling into traps of unscrupulous immigration agents who are always out there to defraud desperate immigrants in search of documentation. A good number of participants reported having been 'robbed' before by paying for fake work permits which they popularly refer to as "*chidhindo chepasi pemuti*" (metaphorically means a fake stamp designed under the tree). Further, in general, irrespective of nationality, participants share their frustrations and challenges in light of the asylum system for those who entered the country as refugees.

'Stamping out' of passports has become a common practice among Zimbabwean migrants as a means of avoiding penalties related to overstaying their visas for those who entered the country using visitor's visa while they live and work in South Africa using asylum papers. If one overstays they are suspended from entering South Africa again for a consecutive five-year period which means such labour migrants would not be able to enter the country through legal means using their passports. The implementation of this provision regarding overstays of visas may be one of the factors which have led to an escalation in informal or illegal migration in recent years as manifested in an interview with Advocate Shumba, a human rights lawyer who specialises in immigration matters[137].

He revealed that very often informal agents masquerade as 'connections' to DHA officials in order to defraud desperate immigrants. The use of unscrupulous immigration agents raises the question of accountability once one realises that the stamp endorsed is fake. As a result, they cannot report this anywhere as it is illegal to 'stamp out' passports while one is still in the country and at the same time it is an offense to send someone to 'stamp out' one's passport.

According to respondents, fake stamps are typically noticed as very often they omit the stamp of the immigration officer's identity number. In the event that one receives a passport back with a forged stamp in it, the only option is to apply for a new passport or pay large amounts to seek assistance from authentic immigration officers to rectify the problem. In such cases, participants claimed that they pay between R1, 000 and R1, 500 to reverse the fake stamp.

[137] Interview with Advocate Shumba. 23.01.2016. Johannesburg CBD

While the use of social media assists foreign workers with information about immigration or job opportunities, alleged incidents of fraudulent activities or intentions to defraud desperate migrants seeking work permits or employment have been recorded. In one instance, a female participant was removed and barred from the group because of suspicions that she was a bogus employment agent. It was alleged that she had robbed a number of participants through advertising her services via the group.

In addition, the new unpremeditated and less-thought of immigration regulations and policies being effected today exacerbate lack of trust in the immigration system. From my observation, many migrants have not yet come to reality with hasty regulations which the Department perceive as trying to respond to the current challenges as the Immigration Policy of 1999 is outdated as revealed by the then Home Affairs Minister, Malusi Gigaba in a consultative policy dialogue held at the School of Governance at the University of the Witwatersrand on 9 September 2016.

6.3.10 Any change of immigration document to match employment needs

This section discusses the process of changing documents in order to suit migrants' needs. The majority of respondents did not change to other documents from the initial documents they used to enter and work in South Africa. Respondents were asked if they had to change their initial immigration status upon entry into South Africa. A smaller proportion of the respondents reported having shifted the status of documents initially used to enter the country.

A few Zimbabweans reported having not changed their documents when the Zimbabwe Dispensation Permit (ZDP) was introduced in 2010 for those working in South Africa at the time. The ZDP was later renewed in 2014 as Zimbabwe Special Permit (ZSP). Approximately, 297 000 Zimbabweans initially applied in the first phase while about 250 000 permits were renewed in the second phase. Those who opted to ignore the call for amnesty said they had been afraid that, if they surrendered fraudulent documents under the blanket amnesty offered at that the time, they would lose properties they had bought in South Africa; this was because they admitted that they had used fraudulent documents (such as SA identity documents) in when concluding their purchases. However, some of those who decided not to surrender fraudulent documents for those reasons said, they later regretted having lost an

opportunity as they then realised that the special permit dispensation had turned out to be a genuine gesture by the South African government.

Zimbabweans who entered the country after the 2010 special permit dispensation said they were still hopeful that perhaps the opportunity would be presented again to obtain such special permits with minimum requirements.

6.3.11 Intention to go back to country of origin

The next section of the survey interrogated respondents about their future plans in South Africa and possibilities of going back to their countries of origin at some point. Respondents expressed a lot of ambivalence about going back to their countries of origin with many responding "if the economic situation improves" or "if the political situation in Zimbabwe improves". Nonetheless, some said they had accepted living in South Africa because at least once a year they found an opportunity to visit their families back home. Some respondents said they were not ready to settle down permanently in South Africa as some perceived the country as a springboard for migration further abroad: favourite destination mentioned were Europe and North America. Only one respondent who once worked in Mozambique and was very fluent in Portuguese aspired to migrate within Africa and her preferred destination was Angola where some of her former Mozambican colleagues had migrated. She mentioned that she believed that there were very lucrative wages there as tips were paid there in US dollars; she said she would be able to easily invest dollars back home unlike the Rands she is earning in South Africa.

Some cited marriage as attracting them back home as illustrated below:

> *"I'm getting married to a pastor so I can't continue to live and work in SA so I have to go and stay with him"*[138]
>
> *"I'm a manager. Am getting married and my husband works in Zimbabwe and doesn't want to come over this side."*[139]

Family obligations and responsibilities were cited by those who intended to migrate back to their countries of origin. In most cases, female respondents felt compelled to go back home if their partners and children were still there. It seems, while they might allow their wives to migrate for work during hard economic times, men reluctant to follow their spouses to South Africa as secondary migrants. Some female respondents pointed out that they had come to

[138] Interview with Ella. 18.02.16. Braamfontein
[139] Interview with Nyaradzo. 20.08.2015. Braamfontein

South Africa to join their spouses. A few male respondents expressed interest in going back to their countries of origin. They cited economic reasons as having forced them to migrate in order for them to continue their bread winner roles within the family structure as illuminated below:

> *I came to South Africa three years ago after I lost my job as a chef at one of the big hotels. I was still renting out accommodation for my family and thought I could only own a home if I migrate to greener pastures. I have a small plot in my rural home where my family is staying now. So, I'm building a house and as soon as it is completed, I will go back home. At least for now with the little that I earn, I'm able to send back money to build my own home,* [and send back] *groceries and clothes back home!*

Several factors attracted migrants to South Africa and interestingly, from the above statement, it was clear that the respondent was motivated to migrate in order to continue playing a traditional male breadwinner role in his family. This response is similar to the finding of a study conducted by Sefalafala (2016) on unemployed ex-miners in South Africa which revealed that some men felt that their manhood had been 'stripped off' them when they were unemployed. This, however, was a different finding to that of an earlier study by Coplan and Thoahlane (1995) that ex-miners from Lesotho were not perturbed about staying at home while their wives worked in South Africa as domestic workers.

6.3.12 Tip Wages

Wages in this sector are very low despite the fact that the work involves long working hours and very often without overtime pay. Huge wage disparities exist between groups of migrant workers as they are paid lower wages compared to their local counterparts. This is typical of predominantly female and vulnerable sectors of the economy like hospitality, care, domestic work, cleaning, security and call centres. Workers in these sectors are poorly paid due to their gendered dimension and men working in such sectors find themselves in the same wage categories as those of their female counterparts (see Cobble 1996). While wages in this sector are gazetted and enforced through the Sectoral Determination, still the figures are too low for a living wage.

According to the study, hourly rates ranged between R6–R13 per hour and with reference to the Sectoral Determination of the hospitality sector, the minimum wages for businesses with

ten or less employees were pegged at R2 760, 59 monthly; R637, 10 weekly and R14, 15 for the 2015/2016 period. For those who employed 10 or more employees, the minimum wages were gazetted at R3 076, 98 monthly; R710, 12 weekly and R15, 77 hourly for the same period. Be that as it may, respondents complained that in most cases, they receive less amounts than expected. For instances, if one breaks anything (for example dinner plates, glasses) in the restaurant, the employer deducts an amount equivalent for replacement from their salaries. Another respondent moaned that:

> As an employee I was told that if I am in an accident with a bike, I pay the costs for the delivery because I don't have a permit[140] (Gina is responsible for delivering ordered meals at a restaurant).

From the above statement it is very clear that employers care more about profits as opposed to health and safety of their employees. Several cases were reported whereby some workers suffer injuries like burns, falls, cuts and other occupation related diseases while on duty yet they receive no medical support from their employers. In fact, instead of meeting the medical costs, ironically, workers are fired while they recuperate at home. The majority of those interviewed reported that they rely on tips as a form of financial remuneration and none of them has social security coverage. Some, however, are satisfied with tip wages as expressed below:

> He is Italian and very nice, I'm the only foreigner here. I earn more money from tips. I have a fixed rate … R4, 500[141] and also get tips, you see tourists tip you for as much as R1000 for a job well done, massaging is not easy…so at least in a good month I can walk away with more than R10 000 because a lot of clients I have massaged will always come back looking for me. Last year I was awarded the 'Worker of the Year' award but my local colleagues were not happy at all[142].

Nonetheless**,** the collective agreement forbids workers from working for commission and in a subtle way; this might apply to working for tips. In the case of an employee working on a commission basis, the employer is required by the law to pay the employee over and above

[140] Interview with Gina. 18.05.15. Braamfontein, Johannesburg. By permit, he is referring to a work permit to work legally in the country

[141]The basic salary scale of beauty therapist, according to PayScale ranges between R70 – 90,000 with 5 years experience) – R150, 000 based on experience. According to the same scale, Vongai who possessed seven years experince by then, was supposed to be within the R80K –R90K range which translates to approximately R7,500 per month. https://www.payscale.com/research/ZA/Job=Beauty_Therapist/Salary

[142] Interview with Vongai: Johannesburg South 05.03.16

the recommended minimum wage. Very often, this law protects those working in marketing departments who bring in business to the company. One respondent from Malawi working as a marketing manager of a hotel expressed excessive satisfaction in the manner in which he earns commission through his job. He owns a top of the range car and lives in one of the 'poshy' suburbs in Johannesburg. Therapists working in hotel spas also claimed to be paid some lucrative commission and claimed that their commission sometimes doubled their monthly salaries. This is because some clients who would have received good treatments will now constantly visit the spa specifically for such services and thus become reliable clients to the entire business as revealed in the interview with Melody above. This in a way demonstrates how this sector, much like the care work sector, is intricately linked to the use of emotions propounded by Hochschild (1993). The section below briefly outlines this theory.

6.3.13 The "commodification of emotions" perspective

Several service jobs require workers to act emotions they do not really feel in order to impress their clients. For example, retail workers especially those from the marketing departments are expected to smile to their clients as a way of luring or persuading them to purchase their goods. In 1993, Hochschild coined the term "emotional labour" for this kind of employment requirement. Likewise, workers in the hospitality industry are frequently required to display a range of desired emotions which amounts to workers 'selling' services which require the use of the most intimate parts of them. In her analysis of various models related to care work, England (2005) refers to these employment requirements as the "commodification of emotions" perspective. Service workers are often required to regulate their emotions in order to create an enabling environment for 'guests' as well as to keep their jobs (see Hochschild, 1993). A pertinent example is that waiters are usually expected to be constantly smiling in order to appear hospitable, especially if the waiters rely on tips as remuneration which has become common in multinational chain restaurants.

Part of the orientation and training they receive deals with how they should display their emotions, for example, when they are expected to smile even if they are not content with the situation and this is clearly revealed through interviews with workers in this study. In trying to understand emotional labour, Wharton (1993; 1999) conducted a study to investigate the psychological implications of such "deep acting", although her results differed from what she had expected. She found out that many workers appreciate the social interaction their jobs

offer them. However, her results also revealed that the commodification of one's emotional labour was experienced by workers as alienating and exploitative. While both local and migrant workers in the hospitality sector are exploited in various and sometime similar ways, the latter suffer more in terms of their migration status and are poorly paid. As a result, their social status and bargaining power within the labour market is manipulated and compromised. To link this to the current study, several respondents admitted that their wages were heavily dependent on and boosted by tips, hence they needed to exhibit some of the key characteristics expected of them such as constant smiling at all costs in order to ensure they got tips from customers. In a way, those workers who depended on tips believed that they did not need unions to negotiate for the tips.

The issue of wages is intricately connected to remittances. Temporary migrant workers, on the other hand, earn wages in countries of employment while transferring a significant proportion of them to family members in home countries. As such, temporary migrant workers constitute the integrating links between labour markets of home and destination countries without enjoying full belonging in any of them.

Respondents in the workplace census reported that they send remittances back home in the form of both financial and non-financial forms and this is also directly linked to one's intention to go back to their country of origin at some point. Similarly to foreign miners, foreign-born workers in the hospitality sector reported that they send remittances, in various forms such as money, groceries and sometimes medicine, to their families back home. The majority cited the insecurity of their temporary work permits as a reason in influencing their decisions to invest back home. The table below explains the co-relation between intention to go back home and sending money back home.

Table 10: The co-relation between going back home and sending money back home

	DO YOU INTEND TO GO BACK HOME		
Do you send some money back home	Yes	No	Total
Yes	38 (71.7)	9 (75)	47 (72.3)
No	15 (28.3)	3 (25)	18 (27.2)
Total	53	12	65

N.B. Two did not respond

As shown in the table above, the majority of respondents (38 out of 67) reported that they sent remittances to their families and also that they intended to go back home. In a way, their earnings facilitated investments back home. The majority of the respondents sending remittances were Zimbabwean while one respondent from Zambia reported that she did not feel the need to remit money or groceries to her parents as they were in very good financial position. She said her earnings as a waitron would go towards her 'wardrobe' (own clothing, shoes and accessories). Because of the continuing harsh economic climate in Zimbabwe, many Zimbabweans have sought 'economic refuge' in South Africa in their efforts to support their families back home. Some of those who failed to remit expressed disappointment in not being able to do this; the meagre wages which they earned did not enable them to send remittances as all their earnings went to meet their own costs of living in the host country. Hence, foreign workers in the sector tend to accept any wages offered and 'turn a blind eye' to exploitative practices because of their primary obligation to send remittances home (see Valiani, 2012). As a result, in such an inequitable economy, South Africa's business owners continue to benefit from cheap labour without incurring very few of the social reproduction costs (see Burawoy, 1976) and social security responsibilities such as health insurance or pensions. Labour-sending countries benefit more from remittances resultant from foreign exchange flows if they are sent through formal channels (see Mukwedeya, 2009). However, the majority of Zimbabwean respondents in this study mentioned that they send their cash and grocery remittances through informal means, like *malayisha*[143] for groceries and goods while cash is send through social networks or drivers of cross-border buses.

6.3.14 Working conditions, hours, overtime

The collective agreement of the Bargaining Council for the Food Retail, Restaurant, Catering and Allied Trades (2013) was amended to also be responsive to non-parties and calls for decent working conditions in the industry. In practice, however, the sector is marred by deplorable working conditions (LRS, 2012). According to the provisions of the collective agreement, working hours should not exceed 45 hours in a total of six working days a week. On Sundays, a worker is entitled to double wages for each hour and is also eligible for paid time off duty[144]. Employers are forbidden by law from employing staff to work for more than

[143] Malayisha is a colloquial term referring to cross-border transport operators who ferry goods to Zimbabwe on behalf of immigrants working in South Africa

[144] Time off duty refers to rest periods which are granted to an employee and is a statutory requirement in accordance with the BCEA

45 hours in any week or for 9 hours in a day. However, some respondents in this study complained that they worked more than the provisions of statutory hours:

> And the hours before were less cos I was starting 10 am to 16:30 pm but now we knock off at 21:00 and we are not given food or transport allowance. The shop only close on Sunday so we work six days but now they started to give us Saturday in and off sometimes they can just tell you not to come whenever they want.[145]

Yet, while working more than statutory hours, workers remain underpaid as expressed below:

> 2015/09/20, 9:19 PM - Sarah: And they also promised to increase my salary since I started knocking off late and they also promised to hire another person to work with me but they didn't.[146]

Casual workers, who according to the study are predominantly immigrants, are eligible to work for a minimum of 24 hours (or 3 days) in any week; and a maximum of 9 hours per day remains statutory for casual workers. The permissible number of overtime hours should not exceed 10 hours in a week or three days in any week. Nonetheless, employers both infringe conditions of authorization and payment of overtime. Findings from the study revealed various inconsistencies between the law and implementation of it by employers. Workers in the hospitality industry sometimes work for more than 10 hours a day because they aim to reach their daily personal targets for income earned. For instance, some workers are paid R6 per hour; if they work the statutory 8 hours they would earn less than fifty rand per day. Most respondents in the study reported that they would rather work extra hours if they can earn more by doing so. This overworking, as many have admitted, leads to fatigue and psychological stress, which in turn increase the risk of workplace accidents like falling or breaking sharp equipment which might injure them. A few workers reported that they knew about their rights and this was also demonstrated through the closed WhatsApp group whereby they would share advice related to minimum wages and working conditions. In fact, the two of the group administrators were trained through the CCMA's department for empowerment of vulnerable workers.

[145] Interview with Melody. 2015/09/20. Braamfontein
[146] Interview with Sarah. 2015/09/20. Braamfontein

6.3.15 Maternity leave

Working women according to the Basic Conditions of Employment Act (BCEA) are entitled to the social benefit of maternity leave. Section 11B of the collective agreement stipulates that a pregnant employee is entitled to at least four consecutive months of unpaid maternity leave. During their maternity leave, women employees are expected to apply for the Unemployment Insurance Fund (UIF) which they are entitled to receive when on maternity leave; this is supposed to address some of the financial distress caused by unpaid maternity leave. Respondents pointed out that while contributions to UIF are deducted from their wages every month, many have found that in practice they are not registered as UIF contributors with the Department of Labour (DOL). They said that, as a result, when female employees were pregnant and took maternity leave they found that they could obtain no income from UIF; consequently it forced them to return to work in less than the stipulated four months of maternity leave.

Among the social and health consequences of mothers not being able to take the minimum of four months' maternity leave is that mothers then partially or fully wean their babies from breastmilk, as workplace child care facilities are almost non-existent in South Africa (see COSATU, 2012). The right to maternity leave is also provided for employees who suffer miscarriages in the third trimester of pregnancy or have given birth to a stillborn child; they are entitled to maternity leave for six weeks after the miscarriage or still birth, whether or not the employee had commenced maternity leave. However, this provision is frequently not afforded to workers in this sector who are often hired as casual workers and not covered by UIF. To compound this matter is the fact that South Africa has not yet ratified ILO Convention 183 on Maternity Protection.

South African labour law prohibits pregnant or breastfeeding (nursing) employees from performing work that is hazardous to both a mother's and a baby's health[147]. Such workers are therefore entitled to appropriate alternative light work during pregnancy and up to six months after childbirth to avoid physiological and psychological damage to their health.

[147] The Code of Good Practice on the Protection of Employees during Pregnancy and after the Birth of a Child issued in terms of section 87(1)(b) of the Basic Conditions of Employment Act (BCEA) 75 of 1997. Section 26(1) of the BCEA, prohibits employers from requiring or permitting pregnant or breastfeeding employees to perform work that is hazardous to the health of the employee or that of her child.

Night work is also deemed not suitable for pregnant and nursing mothers. If a worker opts to return to work soon after a birth or stillbirth (after less than six weeks), she is required to submit to her employer a certificate from a midwife confirming her state of readiness and suitability to resume work. Nonetheless, respondents reported that employers frequently did not request the certificate and ignored the requirement if employees returned to work before six weeks had elapsed. As most workers in this sector do not have job security, respondents said that consequently many women who take maternity leave prefer to return to work before the time stipulated by the law in an attempt to retain their jobs. Some respondents in the study reported that they tried to avoid becoming pregnant so that they would not risk losing their jobs:

> My sister, the problem is that if you fall pregnant you are on your own. You see our employer deducts UIF from our payslip. But one of our colleagues fell pregnant here! … the time she was supposed to go for maternity leave she went to DOL to get forms but was told that she was not registered. When she reported back to Mr Sol, he was mad at her saying she did not come here to make babies. So, I'm afraid that if they did this to a South African, how about me a foreigner? So, I don't think of falling pregnant any time soon until I get a better job. Who will pay for my expenses? … I need to send money back home to my other children and my mother[148].

As reflected in the transcript above, respondents said that it is common for employers to become defensive if confronted by their employees about their rights under the Basic Conditions of Employment Act. As reported above, they have an interest in workers' ignorance about their rights under the Basic Conditions of Employment Act, and sometimes respond by threatening pregnant women employees with dismissal; these practices equal exploitation, and in these instances also deprive employees of their reproductive rights. Foreign workers, due to unfamiliarity with South African law and practices, are the most vulnerable to being deprived of such rights. Such non-compliance with the law by employers is not only specific to this sector but also to more stable professions such as in the public sector where workers are warned not to become pregnant when they are newly employed.

[148] Interview with Tracy. 16.02.16. Braamfontein, Johannesburg

6.3.16 Promotions, certificate of service and termination of employment

While in terms of section 186(1) (b) of the amended Labour Relations Act, the law requires that casual workers are entitled to permanent jobs if they have served three consecutive months with the same employer, in practice this does not happen. Foreign workers in this sector expressed a lot of ignorance about this right as some claimed to have their contracts reviewed and renewed annually thus interfering with career progression. This is also exacerbated by fixed work permits which also contribute towards career breaks.

Upon termination of an employment contract, an employer is obliged to award an employee with a certificate of service. Respondents in this study revealed that many contracts ended abruptly and without due procedure having been followed (and therefore some employees took their disputes to the Commission for Conciliation, Mediation and Arbitration (CCMA)). They said many, among those who were aware of this provision, did not bother to request from employers any reference or certificate of service. They explained that because of the flexibility of the sector they are usually confident that they will secure other jobs in the sector which is very flexible; they also said that subsequent employers are more concerned with securing cheap labour than asking for such a certificate.

On the other hand, some participants said that referral letters were still relevant and useful when seeking other jobs. This was recorded in a WhatsApp discussion as follows:

> [10/10, 7:14 PM] +2784: *Talk to this lady. She is in Joza. She trained me and she told me she knows agencies in Joburg.*
> [10/10, 7:15 PM] +2784: *Which lady?*
> [10/10, 7:31 PM] +2761: *U are trained at those agencies*[149] *The do's and don'ts*
> [10/10, 7:56 PM] +2784: *But all agencies need reference letters of where u have worked before and that's easy if u don't have u find anyone who is fluent in English cause they phone that person to ask her if she knows u*
> [10/10, 7:57 PM] +2784: *So u have to sit down with that person and she must know everything like for how long u worked.*

As argued here, obtaining a certificate of service is important when workers are hired through agencies. This is because agencies are accountable to employers for workers they have

[149] According to an interview with one director of a placement agency, there are various training and placing agencies in the hospitality sector who also act more like labour brokers as they deduct a certain fee weekly or monthly from those they have placed in employment.

recruited. Once again, foreign workers in the sector were unaware that they are entitled to receive certificates of service or about the purpose of such certificates; if they were aware of them they believed that only locals could obtain them from employers. The other challenge is that of high staff turnover in the sector whereby former hospitality workers prefer to seek employment in other sectors like domestic work which results in career discontinuity[150]. Some respondents cited the reason such as the domestic sector is easy to enter and seek employment even without references as they are often connected through social networks (who by default become referees).

Suspensions from employment are also very frequent in this sector and frequently, workers are suspended for very petty offenses as illustrated in a conversation with one of the respondents who contacted me for advice after an abrupt suspension from employment by her employer. This conversation constitutes part of my participant observation during the data collection and writing phase.[151]

> 03/05, 5:37 PM] Ima: *Cde ndinokumbira kubvunza kuti munhu unogona kususpendwa kubasa mushure mekuita mhosva yakadii basa* (translation: please may I ask … when is it appropriate for an employer to suspend a worker?)
>
> [03/05, 9:10 PM] Jan: *Should be some prior warning verbal or written*
>
> [03/05, 9:10 PM] Jan: *Who has been suspended?*
>
> [03/05, 9:17 PM] Ima: *It's me and I was told to come back to work on Wednesday after my boss saw me using a bowl to eat my Morvite he say you are not allowed to use the guest cattiraly [*cutlery*] so he said to me u must not come to work u come on Wednesday coze [because] you have attitude: He even say if u keep on this attitude I will fire u and he say am not even afraid I don't know what he was talking about by saying he is not afraid.*

It is clear from the above conversation that this is an instance of an employer believing they have the latitude to suspend or dismiss a worker for very petty misdemeanours by taking

[150] Interview with organiser of a migrant rights organisation. 05.12.2015. Johannesburg

[151] Since I had interviewed her before, I requested her consent to include this conversation in my dissertation as a follow-up to her life history interview. It is important to point out that in accordance with my approved research ethics certificate, I had the right to distribute out referral lists of migrant rights organisations where workers could seek labour related advice. In addition, respondents were also welcome to consult me in my capacity as a labour activist for labour related advice which is the reason why I was able to access and include some informal conversations that took place with respondents through WhatsApp.

advantage of the latter's ignorance. There is also a hint of racial discrimination related to the offence (using of customers' crockery and cutlery) for which the worker was suspended. In a number of interviews, respondents narrated their experiences of workplace discrimination. Some were even forbidden to eat or drink any food from the restaurant they worked. Yet, according to the collective agreement, employees are entitled to any meals which fall within their working hours or else the employer is required to pay a weekly food allowance of R95.

In section 37 of the collective agreement it states that a contract of employment may only be terminated with notice of not less than one week, if the employee has been employed for six months or less; or with notice of not less than two weeks, if the employee has been employed for more than six months but not more than one year; or with notice of not less than four weeks if the employee has been employed for one year or more. A collective agreement may shorten the four weeks' notice period to not less than two weeks. Notice must be given in writing except when it is given verbally to an employee who cannot read. The notice of termination of employment by an employer in terms of the Act does not prevent the employee challenging the fairness or lawfulness of the dismissal in terms of the Labour Relations Act of 1995 or any other law.

Workers in the hospitality industry are classified into two main categories: weekly paid employees, and monthly-paid employees. According to the collective agreement, workers in both categories are expected to give not less than one day's notice of leaving the job during the first four weeks of employment; and a weekly employee is expected to give one week's notice of termination of employment after the first four weeks of employment whereas monthly employees should serve two weeks' notice, and give four weeks' notice after the first complete year of service. Most importantly, an employee should not be served with a termination notice while absent on sick, maternity or family bereavement leave.

Some respondents reported that in most cases of this type of absenteeism they had decided to protest against employers they regarded as ruthless by absenting themselves (without notice) from work during peak periods when their labour was needed the most. This, according to respondents was the only way they could fix employers who very often threaten them with deportation whenever they decide to terminate their employment.

6.3.17 Contracts

Contracts are central to any employment relations whether short-term or long-term and this is consistent with the Basic Conditions of Employment Act, No. 75/1997 including Section 12 of the Bargaining Council collective agreement for the hospitality industry. At the same time the law requires both parties to sign the agreement although in some instances oral agreements might be taken into consideration as long as there is ample evidence to show that an employment relationship does exist and this could be in the form of payslips and other supporting documents. In contrast, respondents indicated that they had not signed contracts even though some had worked for many years in the country. At the time of data gathering, respondents had worked in South Africa for periods of times which ranged from 0 to 20 years. The majority (42 out of 67) worked for between 0-5 years while the minority (4) fell within the 16-20 years range. Nevertheless, some had worked in various sectors like domestic, gardening, driving, farm work and some even in the private education sector which they had abandoned for non-payment of wages or failure to acquire or renew permits.

The table below shows the results from the workplace census in relation to the issue of contracts.

Table 11: Do you have a contract?

Do you have a contract	Total (N)	Total (%)
Yes	27	40.91
No	39	59.09

Of the sixty-seven (67) respondents, only twenty-seven (27) admitted having signed a contract while thirty-nine (39) had no contract and one (1) did not provide information. Employers are required by law to sign contracts on probation for at least three months of which an extension of this would automatically declare the employee as permanent with a credit for service from the date when first employed, according to the collective agreement. However, according to Marais (2011) cited in Pons-Vignon and Di Paola (2014) "out of a workforce of 13 million in 2008, 2.7 million did not have written contracts" (2014:2).

The study also examined workers' level of understanding of the significance of having contracts in their employment relations. Respondents demonstrated mixed knowledge about contracts as exemplified below:

> Contract is supposed to be there whether there is an agent involved or not. As long as you work for that employer even one day a week it is your right to be registered. My advice to all of us is that communication is the best key between employee & employer. Make sure that you stick to your agreement with your employer never compromise[152]

However, some elicited outright ignorance about contracts as shown below:

> Yes, I have heard of a contract but me and my boss agreed on what should be done and how much I should be paid…I trust her and she is very good to me so I don't see the reason why I should sign anything. I got this job after we spoke with my boss and she agreed and the next thing she let me into her restaurant to start work without even asking me about my passport. So, I'm so grateful and we work together very well. As you can see, we are only the four of us and we all didn't sign any contracts!

Drawing from data gathered some respondents expressed ignorance about contracts (nature and content). For instance, this research shows that some workers have worked for more than five years for the same employer without any contracts. While oral contracts are permissible, the challenge will be noticed in the event that the employment relationships become 'sour'. Absence of employment contracts has deleterious effects in situations where labour disputes arise and also when one is required to access their social benefits upon termination of employment or retirement. Many employers take advantage of this loophole in the law to exploit employees. Workers will only realise the importance of a contract when for instance they have to lodge disputes against their employers at the Bargaining Council or CCMA as some have revealed through interviews.

The absence of a signed contract also contributes to ignorance about one's employer and labour rights. In some cases, workers do not really know who their employer is especially those recruited through labour brokers. The above statement also reveals that to some extent foreign workers agree to verbal contracts as a way of evading immigration barriers to employment, where they are privy to the expectation that one is required to possess a work permit in order to take up employment in the country. The collective agreement is very clear as it spells out that "contracts of employment may not disregard or waive collective agreements or arbitration awards; representation of employees or employers and codes of good practice". Unfortunately, foreign workers are under-represented by unions and thus are

[152] Interview with Memo. 16.07.15. Braamfontein, Johannesburg

non-parties to some of the collective agreements granted through the bargaining council. Nonetheless, unscrupulous employers win labour disputes simply because of a dearth in contracts as exposed in the case of Thembi and this will be explained in a section below.

Data gathered for this study show that the majority of workers had no contracts even though some had worked for many years for the same employer. This could be explained by flexible employment relations like permanent casual and seasonal employment arrangements. For instance, Thembi was employed by Company SR from the 15th of January 2015 until the time of writing of this chapter, but she has not yet signed any contract. According to the new amended labour law of South Africa, once an employee has served a consecutive three months with an employer, they are eligible to be declared permanent in line with amendments of the Labour Relations Act No. 12 of 2002 [section 200A; 1(d)].

When I interviewed the employer, a Mr Mlau[153] he indicated that this was not his fault as he just adopted the company from the previous employer the previous month and so the latter had to be blamed for not having signed contracts with his employees. Further probing as to why he had not also undertaken the responsibility of signing up contracts when he took over, he dodged the question and mentioned that he was still trying to settle down.

6.3.18 Fronting

It seems from Mr Mlau's actions and utterances that he took over the business as way of fronting the previous employer. There is evidence to suggest so when he emotionally indicated that he is ready to give back the business to its original owner to avoid more problems he is already confronted with within the short space of time he has been running it. It is very rare for one to give up on a business which he had spent his capital on. Further, he could have adopted the business as a way of assisting his colleague to down-size workforce as new a strategy of 'current employer' unlike if the previous owner would have taken such measures given the fact that he already owed staff. Indeed, doing so, would have demonstrated irresponsibility and insensitivity towards loyal employees who had sustained his business during the times of his company's financial distress. But for the 'new employer', this would not mean much as he is not yet emotionally attached to the employees. Business fronting is now a common practice used by business to retrench workers, the study has revealed. One of the workers brought up this claim as she indicated that while Mr Joram[154]

[153] Not his real name.
[154] Not his real name

had indicated that he was handing over the business to Mr Mohamed, still he was running the business from the 'terraces', a point which was subtly raised by the later when he declared his intentions to render back business to the former.

Some employers are devising strategies to bail their distressed businesses by 'fronting' the family members or friends. In a way, they evade the responsibilities associated with retrenchments like payment of severance pay. The new management would cite change of hands and sometimes implement strategies of saving the business like down-sizing or wage-cuts. Some respondents cited such challenges where a new employer adopts an existing business and brings in new rules. However, according to the Amended Labour Relations Act (LRA), where transfer of business occurs, both the old and new employers are liable for settlements of all debts, costs including outstanding wages to employees by his predecessor such as severance (in the event that employees ought to be dismissed on the grounds of operational costs), leave pay accrued including social security benefits and contracts are also expected to continue unless an employee opts to retire or resign.

Employers often take advantage of workers' ignorance or their immigration status to circumvent the afore-mentioned responsibilities. Furthermore, Section 197 of the LRA which outlines rules in terms of transfer of contract of employment, accords employees the right to continue working in the same company in accordance with the previously signed contract with the old employer, with same rights. Any previous charges or disciplinary cases against employees will still hold under the new employer and the same applies to disputes lodged against employer (for example the commission of an unfair labour practice or act of unfair discrimination), according to the collective agreement.

The issue of contracts deleteriously affects both local and foreign workers as one union organiser openly expressed frustrations and challenges in organising casual or out-sourced or labour brokered workers as he was quoted saying:

> Of course, labour brokers in the hospitality industry give us a headache as a union. Well, how would you expect us to organise workers in a sector with a high turnover. Today, you see this face and tomorrow another. This really affects even our database systems and membership records. For example, during the busy periods like public holidays or festive season, you get to a restaurant and find many workers. After that go

there…you will find half or even a quarter of workers. So there is no guarantee even if workers sign up![155]

Chapter 9 of the collective agreement deals with Temporary Employment Services and in section 4 defines "a casual employee", as

> an employee, other than a special function casual employee, who is employed by the same employer on not more than three days in any week, provided that such casual employee may be employed on not more than four days in any week in which a paid public holiday falls, and may also be so employed during any one or more of the following periods: 6 December to 15 January; shows and exhibitions; the Easter weekend.

The collective agreement further provides the operational definition of "special function casual employee," as referring to:

> an employee who is employed by the day or the hour to work at a special function for not more than three days in any week, provided that such special function casual employee may be employed on not more than four days in any week in which a public holiday falls, and may also be so employed during any one or more of the following periods; 6 December to 15 January; shows and exhibitions; the Easter weekend.

In light of the above definitions, it is important to note that in practice, the majority of workers in this industry are classified as casuals contrary to this definition and can work for longer periods than stipulated and some for many years. '*AmaCasual'* as they are popularly known in the context of South Africa, perform the same duties as permanent workers but are poorly paid and precarious (see Pons-Vignon and Di Paola, 2014). An interview with a national organiser of one of the national unions organising in the sector unravelled the diminishing job security among workers as employers devise means to 'casualise' workers. For instance, some employers would create 'fake' financial and operational costs in line with the dictates of the law to retrench workers then rehire them as casuals while at the same time eroding their social security benefits. In the worst cases, they create conditions favourable to dismissals to fire workers in order to allow space to hire cheap labour in the form of casuals.

[155] Interview with Nat organiser X. 17.05.15. Johannesburg

The latter situation is only possible when there is an over-supply of labour (reserve army) Pons –Vignon and Di Paola (2014) posit that:

> Non-standard forms of employment are increasingly common throughout the South African labour market, in line with the global restructuring of work which has led, through a great diversification of employment arrangements, to widespread precariousness. This is not, unlike what is often assumed, restricted to the 'margins' of the labour market, but increasingly a feature of its core (2014:2).

While many sectors have been affected, the hospitality industry tends to suffer more as we witness a multitude of sub-contracting arrangements for the provision of core services like catering, cleaning and transporting (see Barrett, 2003) among large chain hotels or restaurants. In a way, workers involved along the value chain, work under very precarious conditions with low wages (sometimes well below the gazetted minimum wage) as well as appalling working conditions. Many of the respondents exposed some of the core features of precarity. One employer interviewed in this study appreciated the need to out-source some of the core services for example catering as he felt that it was no longer profitable to hire full time waiters or chefs these days as some guests would prefer to purchase external meals like dinner. According to him, the core of his business is to provide accommodation and perhaps breakfast. In the event that they are hosting conferences, they would certainly out-source catering and waitering services to provide lunches or sometimes dinners. This decision also came as result of their observation over the years that sometimes they are forced to throw away huge amounts of food if guests decide to eat out. He also emphasised the fact that out-sourcing of some of the core services in a way creates business for small business and jobs. This case, points to the universal exploitation of both local and foreign workers in the sector.

6.3.19 Intention to work in the Hospitality sector

When they were asked if they intended to continue working in the hospitality sector, thirty-five (35) out of sixty-seven (67) said yes; while thirty (30) said no and two (2) did not provide information as shown in the table below:

Reasons for deciding to leave sector varied as follows:

- I don't get enough money to support myself and family
- The money I'm earning is not enough for my basic needs

- I have a driver's license and contemplating quitting for greener pastures
- It doesn't satisfy me
- Working conditions are too bad and strenuous
- I'm not paid enough;
- The hours are too long but the pay is small
- I have a qualification in information & communication technology (ICT) and looking for a better job

While reasons to stay were cited as follows:

- I wish to study further within the industry
- Because of benefits I'm getting from the sector
- I like it and have always worked in the industry. It's easy and flexible
- This job is nice and flexible
- Tips help us make more money
-

6.3.20 Method of payment

Workers in the hospitality sector are paid through various ways. This to a greater extent depends on one's migration status as many respondents moaned that they did not possess the right documents to allow them to open bank accounts. Some years ago, those in possession of asylum papers were allowed to open bank accounts but the system changed based on allegations of fraudulent activities and sometimes use of 'fake' papers. Interestingly, some respondents admitted that they were in possession of backdoor asylum papers and were not very sure if they were in the system. The table below illuminates some of the methods of payment used by respondents.

Table 12: Method of payment

How do you get paid	Total (N)	Total (%)
Cash	34	50.75
Bank	33	49.25

The majority (34 out of 67) reported that they were paid cash while thirty-three (33) out of sixty-seven (67) were paid through the bank. Those who were paid through the bank were working for hotels or franchise restaurants and were in possession of either work permits or asylum papers for them to qualify to open accounts. Nonetheless, some mentioned that they were paid through their friends or relatives bank accounts based on trust. Three of the respondents mentioned that they were paid through their friend, sister and brother respectively. Some also reported that they were working under contractors who would deposit money into their EcoCash bank accounts which they opened using their Zimbabwean identity cards as opposed to passports. This, they said was advantageous to them as it was easier to send money back home through the money transfer services offered by the portal bank.

The collective agreement still allows for cash payments as long as this is recorded. So the fact that the majority of respondents received monthly pay slips did not come as a surprise. This is also consistent with claims that UIF and other social benefits were being deducted from their wages and that they were not paid overtime allowances. One of the respondent's (Pam) payslip reflected monthly deduction from a union (shown to the researcher). On further probing as to whether she had joined the particular union, she expressed great disappointment as she explained that she never joined the union but that all her colleagues were South African citizens and she was the only foreign national. To exacerbate her frustration, was the fact that at some point she encountered a problem which needed the union's intervention but was never assisted. In fact, deducting any subscription from an employee's wages without their consent conflicts with the Bargaining Council collective agreement section 3(b) which states that:

> No subscription shall be deducted from the wages of a trade union member unless he signed a stop order authorising a specific deduction from his wages, and the stop order shall be lodged with the employer by the trade union until the employee has furnished proof of being a member of that union and employed in the sector.

In the case of Pam, it is very clear that sometimes unions care more about subscription as opposed to service delivery. Wages in the hospitality industry as mentioned before are appalling from an outsider's perspective. So, it was important to solicit views from the

affected worker. The table below attempts to provide a picture of workers' subjectivities in relation to their wages.

6.3.21 Is your wage fair?

The table below shows responses from participants of what they thought about their wages in relation to the work they do.

Table 13: Is your wage fair?

Do you think your wage is fair	Total (N)	Total (%)
Yes	6	9.09
No	60	90.91

When asked if their wages were fair, six (6) out of sixty-seven (67) respondents answered 'yes' while sixty (60) out of sixty-seven (67) said 'no'. Not surprising, those who felt their wages were fair, were earning higher wages: one was a white manager, the other a coloured beauty therapist working at one of the lodges, and one was a black marketing manager and both respondents were South Africans. To some extent, the level of fairness depended upon satisfaction with one's net income. With reference to the results, it is crystal clear that workers' opinions about their wages resonate with public opinion and some scholarly work (see Alberti, 2014). Again, fairness was tied to social benefits which would in a way cut on other living costs.

Only nine (9) out of sixty-seven (67) respondents admitted that they received social benefits from their employers while fifty-eight (58) out of sixty-seven (67) did not receive any benefit. For those who received social benefits, these ranged from pension, health insurance, accommodation to UIF.

Foreign workers in the hospitality industry are disenfranchised from social security coverage as most employers offer temporary contract as a means to avoid contributing towards social security benefits. As shown in Chapter 4, short–term contracts are usually awarded in line with the lifespan of work permits (Alberti, 2014). The study reveals that some migrant workers actually contribute towards UIF and pension but do not receive any benefits in situations where they were eligible and needed the funds.

Another case encountered in the study involved medical insurance coverage whereby medical fees were deducted from workers at a particular workplace whereby when they fall ill, the company sends them to their own doctor. In a way, the contributions go towards a private company doctor and when one decides to consult any other doctor, then they are required to pay out of their pockets.

Aside social security benefits, some respondents mentioned that they receive free meals during their working hours. None of the respondents received meal allowances and some grumbled that they have to buy meals from their employer or neighbouring restaurants or shops because their employers would not agree and approve of food consumption in their restaurants. Where employers provide meals, this is usually restricted and if one opts to eat 'forbidden' meals then they are required to pay for it. If they fail to pay, this might be construed as theft or dishonesty and could amount to dismissal.

The collective agreement is also clear about provision of transport to employees involved in late night work that is later than 20:00 pm daily for a week. If no transport is provided, workers are entitled to an allowance of R210, 00 per month. However, considering inflation, this statutory allowance might not be helpful as it does not factor in the distance travelled by many poor workers who usually live in townships which are quite far from their workplaces. For instance, some workers live in Soweto and work in affluent suburbs like Rosebank, Sandton or Fourways. Respondents pointed out that they would prefer to work in further suburbs as they offer very lucrative tips.

The study shows that hotel or lodge owners were more likely to provide accommodation to their employees than restaurant owners. Nonetheless, one respondent working at a safari lodge complained that accommodation is racially allocated in favour of White or Coloured employees. In the situation that accommodation is offered to Black employees, these are often South African citizens or middle level managers. However, according to the collective agreement, employers are forbidden from boarding or lodging with their employees or at any place nominated by him. Where company accommodation was not provided, there was also no accommodation allowance that was provided yet employers are obliged to pay accommodation allowances. Both locals and foreign participant reported that they never received accommodation allowance which further reveals the fact that workers in this sector are exploited and suffer the same workplace-related grievances.

Foreign workers in the hospitality sector cited funeral cover as one of the key social benefits that they would really need from their employers. This is because they really value place of burial which is usually their countries of origin. Because of the paltry wages they earned, many reported that they end up burying their family members and colleagues in South Africa against their cultural beliefs that one should be buried on their own 'ancestral soil'. To address this problem, some have established burial societies through their social networks, whereby they contribute a certain amount of money monthly for repatriation purposes.

The study also seeks to understand level of knowledge about labour rights among workers assuming that mobilisation, participation and representation occur in a context whereby people are somehow educated on their rights. The table below shows responses from the workplace census.

Table 14: Knowledge of labour rights

Do you know your labour rights	Total (N)	Total (%)
Yes	35	53.03
No	31	46.97

N.B. 1 out of 67 did not respond to the question

6.3.22 Knowledge of labour rights

The majority of respondents admitted that they were aware and conscious of their labour rights. This did not really come as a surprise given the fact that the majority of them participate in social network groupings where they educate each other on their rights as workers. However, further probing of some of the respondents revealed that labour rights knowledge was intricately linked to workers' experiences with CCMA. Participants expressed their knowledge based on these two issues as they confidently shared that they know that if they are not paid or were unfairly dismissed and some of the statements are expressed below:

> Yes, when I'm fired I know that I go to CCMA at Ghandi Square. My friends were fired before and they went to report there and they were paid their money. Before they reported, their boss did not want to pay them their money[156]

[156] Interview with Tracy. 16.02.16. Braamfontein, Johannesburg

> What I know is that when I'm fired…you know these people can fire you any time; I will go and report to CCMA. Our organisation (name provided but not union) advised us that we can go and report even if we don't have passports. But I don't know if this is true that they can help us without passport[157].

For those who did express ignorance about their rights, they cited reasons like:

> You see, we are only four of us working with our boss so no one has told us what to do because nobody was ever fired. Our boss is very good to us and we only think of our work when we come here in the morning. I don't see the reason why somebody should come and tell us what to do. So far we are fine![158]

> I came here a few months ago and it is difficult to tell because this is my first time to work. But of course I'm interested to know more about these rights. Who knows what may happen[159].

> Our boss told us that we should not speak to anyone from outside. If we have any problems we should report straight to our supervisor[160].

The mixed feelings articulated in these statements point to a need for more education and awareness programmes. While there were those who seemed to be aware, still their knowledge was limited whereas those who were ignorant seemed to be more submissive towards their employers and did not want to interfere with their relationships. It is important to point out that some migrant rights organisations collaborated with CCMA's Dispute Prevention Department to educate both local and migrant workers falling within vulnerable sectors on their rights. The researcher attended some of the sessions hosted for those working in hospitality and domestic sectors. In this case the, the discourse around rights is formulated around wages and unfair dismissals.

In order to understand the question of solidarity among workers, the study also included a variable whose aim was to statistically attempt to measure solidarity among workers as shown in the table below.

[157] Interview with Chikanda, a waiter at a restaurant 22.11.15.Braamfontein.
[158] Interview with Melody. 2015/09/20. Braamfontein
[159] Interview with Sarah. 2015/09/20. Braamfontein
[160] Interview with 05.12.2015. Mall X, Johannesburg South

Table 15: How close are you to your colleagues?

How close are you to your work colleagues	Total (N)	Total (%)
Close	25	37.31
Very close	18	26.87
Somehow close	15	22.39
Not close	9	13.43

6.3.23 Relations/ closeness to work colleagues

A substantial number of respondents (25/67) divulged that they were close to their colleagues in the workplace while eighteen (18) out sixty-seven (67) mentioned that they were very close to their colleagues; fifteen (15) out of sixty-seven (67) acknowledged that they were somehow close. Only nine (9) out of sixty-seven (67) were not close to their colleagues. If the first three categories are combined, the results show that there is a high level of solidarity among workers in this sector albeit some xenophobic tendencies which are sometimes elicited in some workplaces. The high level of closeness could point to the nature of the industry where workers are more likely to be exploited at the same level through casual employment contracts. This closeness between local and foreign workers in the sector could point to solidarity which is probably based on inclusiveness and could present a good opportunity for union organising. Very often workers are suspicious of each other such that they would not disclose of their intentions to join unions.

Foreign workers prefer to remain 'invisible' to avoid the risk of losing their jobs or physical or psychological attacks related to xenophobia (see Segatti and Munakamwe, 2014).. Similarly, they fear joining unions as they fear losing their jobs as employers also threaten to dismiss them if ever they unionise just like their local counterparts. Thus, employers exploit the 'rule and divide principle' and in a way divide solidarity among workers. Xenophobia that occurs in township where workers live as the study reveals; stands out to be the major divisive although respondents reported that they had not experienced this directly in the workplace. Undocumented migrants are underpaid as employers threaten them with

deportation whenever they complain. Those who are affected related that they cannot reveal this to their colleagues as they are afraid about betrayal to Home Affairs. While there is a strong sense of unity among workers, still the element of mistrust was noted. This demonstrates the fact that while universally exploited, still the politics of difference based on nationality manifests in a very subtle way.

6.5 Mobilisation, Participation, Representation of foreign workers: Reflections from the hospitality sector

The LRA allows workers to organise participate and be represented by various collectives in the workplace and these include internal and external institutions. Internal institutions include workers committees or forums while externally they can affiliate to trade unions, social movements or seek help from worker advice offices. Nonetheless, this study revealed that the majority of respondents did not belong to a union or any other workers' forum in the workplace. The table below illustrates the various organisations to which participants were affiliated in relation to their participation in workplace related matters.

Table 16: Membership status

Are you a member of any of these	**Total (N)**
Workers committee	9
Trade union	6
Social movements	3
Worker Advice Centre	1
No response	5
Not member of any of the above	43

N.B. 5 out of 67 did not respond.

Only four (4) out of sixty-seven (67) belonged to a union, while nine (9) out of sixty-seven (67) pointed out that they were members of workers committees within their workplace and 3 did not participate in any workplace –related meetings. Three (3) out of sixty-seven (67) belonged to some social movements although no clarity was provided about the nature of such (whether workers or political groupings) and one out of sixty-seven (67) was affiliated

to an unspecified worker advice centre and did participated in workplace–related meetings which would discuss issues related to working conditions, wages, health & safety and other relevant matters affecting workers. The rest, 43 out of 67 did not belong to any worker collectives in the workplace.

Some of the reasons for not belonging to a union were presented as follows:

> At my workplace my colleague joined F union but because I'm a foreigner, they never approached me but they deduct monthly subscriptions from me!
>
> No… was just leaving school and not working there, so I never joined any union and all I know is that they strike
>
> No workers committee only have meetings
>
> No. as a manager I cannot join a union
>
> Union not allowed
>
> These unions are a problem and I don't see their relevance in my work… Government must hear us as foreigners …we are not represented by unions
>
> I do a lot of work as a chef assistant but the white man who is the chief chef gets paid a lot and I can't complain as I'm a foreigner. I wish the union could help me!

The first response points to a selective model of organising of workers by unions. As pointed out in Chapter 4, unions have not yet taken clear positions to embrace foreign workers and this is openly reflected in their constitutions and policy documents. This representation gap is consistent with the level of exploitation witnessed in this sector. Ignoring migrant workers would in a way water down gains made through the collective bargaining agreements as employers would resort to hiring those who fall outside of organised labour to evade compliance to such agreements.

Aside, the lack of conscientisation as illustrated in the second response dissuades workers from participating or joining unions or any other workers fora. This kind of response is closely associated with the concept of liminality (Underthun, 2015) as some workers enter this sector for convenience purposes with the hope of finding a job of their own profession in the near future (see Alberti, 2014). Job mismatch is rampant in this sector and it is perceived as a makeshift economic net which is easy to enter by many foreign nationals as they try to

settle down when they get to South Africa. One respondent substantiated this claim as she said:

> I have trained in marketing and if possible would like to look for a better paying job. So I can't join a union at the moment because this is not my profession[161]

One of the union organisers alluded to challenge of temporary contracts as compounding organising efforts as this is also associated with high turnover. As he argued that they invest substantial resources to organise workers who decide to leave the sector any time as soon as they find alternative employment. Aside, those in management are not allowed to join unions as they are in fact expected to defend the company as echoed by one of the respondents. She even outlined her duties and responsibilities key among them that she is sometimes delegated to represent the company when a labour dispute arises. Then, there are those workplaces where unionisation is totally banned and in this case, the respondent was working for a coffee shop. Some felt that unions were not relevant in their work and on the contrary, believed it was the work of the government to protect them as unions were not representing them. Racial wage gaps were also noted and the respondent felt that only the union could assist him. A striking comment came from one respondent who claimed to have been robbed by a migrant-rights union as stated below:

> *I joined a migrant workers union but they robbed me of my money after promising with a work permit*[162].

The above statement takes away faith and hope in trade unions and other worker organisations. Nonetheless, union responses towards foreign workers in this sector will be unpacked in detail in the subsequent chapter. Others reported harsh effects of unionisation as leading to unfair dismissals as revealed below:

> *I would like to further my education. I joined a union when I was working at spar but I was fired*[163]

Aside, employers devise various union busting strategies key among them being dismissal once employees join a union. They would create a scene and target unionised workers by looking for small mistakes which can justify their decisions to fire workers as they avoid breaching labour laws that allow workers to exercise their right to association.

[161] Interview with Chikanda, a waiter at a restaurant in, Braamfontein 22.11.15.
[162] Interview with Chip, 23.11.15. Braamfontein
[163] Interview with Thelma, 15.11.15. Mall X, Johannesburg South

A further question was posed on whether workers belonged to a union before migration. Only five (5) out of sixty-seven (67) proclaimed that they were members while nine (9) out of sixty-seven (67) were part of workers committee whereas forty-four (44) out of sixty-seven (67) never joined a union. Some indicated that they migrated straight from school while others cited bad experiences they had witnessed through trade union participation especially those from Zimbabwe. Others had not even worked due to high levels of competition and unemployment in their countries of origin. Only one (1) out of sixty-seven (67) participants belonged to an unnamed social movement. The level of conscientisation to trade unions before migration to some extent poses as a huge barrier to host unions in their efforts to organise workers as explained by the concept of liminality mentioned earlier. Drawing from the European context, it is mostly the efforts made by unions in the country of destination that undertake the responsibility of organising and conscietising workers about their rights as will be seen Chapter 7.

6.5.1 Would you like to join a union?

Having expressed ignorance and some sense of hesitation and despair in unions, respondents were asked if they were keen to join trade unions. The table below shows a cross tabulation of various variables (gender, age group, level of education and migration status) as they relate to the question of whether they were keen to join a union.

Table 17: Would you like to join a union?

	WOULD YOU JOIN A UNION					
	YES (n)	**Yes (%)**	**No (n)**	**No (%)**	**Total (n)**	**p-value**
Gender						0.95
Male	27	84.38	5	15.63	32	
Female	26	83.87	5	16.13	31	
Age group						0.54
18-25	13	76.47	4	23.53	17	
26-35	28	90.32	3	9.68	31	
36-45	11	78.57	3	21.43	14	
46-60	1	100.00	0	0	1	
Highest Education						0.36
Grade 11 or Lower	21	80.77	5	19.23	26	

(Std. 9 or lower)						
Grade 12 (Matric (Std. 10)	20	95.24	1	4.76	21	
Post-Matric Diploma or Certificate	10	76.92	3	23.08	13	
Baccalaureate Degree	2	100.00	0	0.00	2	
Migration Status						0.48
Local	3	100.00	0	0	3	
Internal migrant	5	71.43	2	28.57	7	
International Migrant	45	84.91	8	15.09	53	

More men were keen to join while those from the age group ranges of 26 to 35 and 36-45 expressed interest and this age group might be associated with individuals who have settled down and view their sector as their permanent career as supported by follow up in-depth interviews with some of them. Level of education seemed to also shape workers subjectivities to join unions as the majority who fall within the category of those who had achieved Grade 11 and below were keen to join unions.

Migration status, contrary to conventional discourse, does not always deleteriously shape political subjectivities among foreign workers as the majority (45 out of 67) international migrants were keen to join a union. All combined to include internal migrants and locals (employed as casuals) (53 out of 67) expressed interest although others did not have faith in unions. For those who expressed interest, some of the reasons were that South Africa is a democratic country and whatever workers demand, they are guaranteed of victory. For local respondents, they were of the view that their working conditions would improve if they are protected and represented by unions. In other words, the challenge really lies on unions themselves.

In contradiction, some expressed fear of unions although they envied their local counterparts who would receive representation services at bargaining council or CCMA, in the event of any arising labour disputes. Of note, is that it seems that some local workers and shop

stewards were raising awareness amongst their peers on the importance of joining unions. However, a study conducted by the Labour Research Services (LRS) in 2012 revealed that shop stewards were not fully conscientised on the importance of embracing foreign workers within the union ranks. As a result, they tend to target only local workers for organising purposes and union meetings and events. However, the situation seems to be changing as discussions regarding migrant workers are slowly becoming part of unions' strategies and focus.

6.5.2 Self-organising and representation

While progress has been very slow in organising foreign workers by unions in the hospitality industry in South Africa, it is important to point out that foreign workers are not docile. For instance, in October 2015, foreign waiters, predominantly Zimbabweans, employed by a renowned restaurant, Geet[164] Indian Restaurant, dragged their employer to CCMA on allegations of unfair labour practices. Central to the workers' grievances was a wage dispute. Employees reported that they were not paid basic salary and at the same time 15 percent was deducted from their tips (literally their wages) without consent yet this was their only source of income. In addition, workers were also forced to undertake domestic work at the employer's house outside of workplace related contracts and failure to do so would result in summary dismissals. Further, Mr Jivan deliberately employed undocumented immigrants and threatened them with deportation if they misbehaved. As such, workers were exposed to constant threats as the employer was quoted live on video shouting at his employees:

> *You are illegal here with me and I'm putting bread in your mouth or the restaurant is putting bread in your mouth (Mr Jivan, October 2015)*[165].

Such arrogant utterances are meant to submit workers and by so doing create paternalist employment relations. Some workers exhibited such kind of attitude and acknowledged that their employers were rendering them a favour by employing them without work permits, and this was all as a result of ignorance of their labour rights. The case went viral through state, private and social media and was exclusively covered by SABC 3 current affairs programme, Checkpoint, as workers led their own workplace struggle using the media as a form of

[164] This case was screened in the public domain through the SABC 3 programme -Checkpoint
[165] 'Restaurant owner denies claims of staff exploitation'. eNCA. Wednesday 14 October, 2015 Pretoria

representation. This brought the issue of exploited foreign workers in the spotlight for a while and most importantly, workers won their case at the bargaining council. This brave action undertaken by foreign workers is commendable and a promising sign that they are not passive. This is consistent with scholarly works of (Sita, 1984; Webster, 1985: Milkman, 2006; Alberti, 2014), who in their distinctive studies demystify perceptions of acquiescence among migrant workers.

In the post migrant labour regime, new platforms have been created which allow workers in general and immigrants in particular to manifest their agency and at times militancy. The subsequent session presents some of the findings emerging from the study in relation to mobilisation, participation and representation of foreign workers through social networks and platforms.

6.5.3 Mobilising through social media

As was already seen from the wealth of sources from Whatsapp groups, this section discusses in detail how social media has shaped foreign workers civic and labour mobilisation including new forms of organising and engagement (see Dahlgren, 2007:1). Today, foreign workers in the hospitality industry comprise of a young generation which is very articulate in the use of social media platforms as they share information about job opportunities; happy moments and challenges they face in the workplace and also about their general social environment. The most prevalent social media platforms used are WhatsApp and Facebook. Interviews with some of the group administrators revealed the motivations behind using such platforms as follows:

> We realised that most of us need social support related to our work and need to speak with others who share the same problems with us[166]
>
> Our platform was established to assist our members to report abusive case they face in the workplace. We belong to a migrant workers union. Members work far from each other and usually don't have anyone to share their problems with. So here, we help each other to find solutions. The group has experts who are associated with our union such as lawyers who advice on legal matters[167].

[166] Interview with Edna, Admin. WhatsApp of a closed group for those working in the hospitality sector. 12 October, 2015

[167] Interview with Smangaliso. Co-admin WhatsApp of a closed group for those working in the hospitality sector. 12 October, 2015

After some explaining my research and observing all ethical protocols, I was admitted and added to the closed group. In observation of ethics, the administrator of the group briefed members about my presence and also advised them that I can also assist them with labour related matters. Where personal cases are involved, members preferred to contact me directly in my inbox and I would refer them to relevant organisations where they could seek assistance[168]. Through this platform, I had an opportunity to shadow conversations and develop a deeper understanding of challenges and opportunities faced by workers in the hospitality sector.

During the 'Arab Spring' of 2010, the influence of Information Communication Technology (hereinafter referred to as ICT) on political movements became apparent and was well documented (Alqudsi-Ghabra *et al*., 2011). However, in migration studies thus far, limited empirical research has been done on how people actually utilise technology to engender change. This section address the ways in which ICT has become an essential component of foreign workers' lives in the hospitality sector by enhancing their social interactions to the point of mobilising their own voices in a foreign land though use of social media in particular WhatsApp (see Sana, 2014). In response to their alienation from trade unions, some foreign workers in the hospitality sector have established their own worker organisations. Landau and Haupt (2007) posit that social networks act as support systems in migrants' social lives although as will be explained in a section below, this comes along with its own challenges.

This section analyses original accounts to identify how the use of social media has enhanced mobilisation of foreign workers in the hospitality sector using qualitative analysis of WhatsApp posts as well as data from informal conversations with WhatsApp group members and also through participant observation in the form of shadowing. Following Ueno (2011) who conducted a study among the use of social media by live-in Filipino domestic workers in Singapore, this section shows how social media has emerged as a new platform for social interaction and political mobilisation of foreign workers in South Africa. Various social media platforms are used such as Facebook, WhatsApp and twitter and have arisen as a result of advanced technology. Today, many workers are in possession of smartphones which are compatible with social media facilities and the simplest of those are purchased at very

[168] The issue of referrals was included in my ethics application taking into account that I was working with vulnerable groups who would at some point require services and assistance in various ways

reasonable prices from as low as R250, 00. Several studies (Oiarzabal and Reips; 2012; Pearce *et al*., 2013; Ueno, 2011), illustrate convoluted relationship between labour migration and information, communication and technology (ICT) and the role it plays in the pre- and post –migration phases. However, according to Oiarzabal and Reips (2012), the effect of advanced information technology on labour migration is still a much understudied area yet vast literature on social capital exists.

Cyber activism as it is popularly known, is well pronounced among migrant domestic workers in the global north and has since gained traction in the global south recently. This kind of activism is consistent with the compression of time and space (globalisation) as it cuts across boundaries and bring together conversations between people living in different parts of the world at reasonable costs (Oiarzabal, 2012). As argued by Kissau, (2012: 1382), social media enhances freedom of expression and sharing of ideas among individual members of a particular social network grouping. It also allows migrant workers to constantly keep in touch with their families back home. A number of respondents indicated that they bought smart phones for their family members so they stay connected and updated on family social events. This, in a way, fills a vacuum particularly if one fails to attend events like funerals, weddings, birthday parties or other family gatherings. WhatsApp and Facebook groups facilitate sharing of audio-visual material (for example pictures and videos) which to some extent brings somebody closer to reality and information which brings one closer to the family. In order to enhance this facility, typically so, it is the obligation of the migrant worker to send resources which sustains this kind of communication to continue.

The study shows that trade unions and migrant rights organisations have also adopted the use of social media to enhance grassroots mobilisation and participation which I refer here as 'cyberpolitics' (see Choucri, 2012). Historically, trade unions and other social movements have relied on door to door mobilisation and use of hard printed posters, fliers, brochures or leaflets for recruitment and invitations to meetings or events. While these methods are still relevant, social media assists in cutting down printing or transport costs as these will be circulated widely through cyber spaces. In a way, this is very helpful to union organisers who are often barred from entering certain workplaces due to trespassing laws, for instance on farms or even in hotels. It is also easier to reach out to group members who might have already conscientised each other about trade unions and labour rights. Some respondents reported that they felt alienated (see Ueno, 2014) and dominated in those workplaces which comprise predominantly locals. Thus, social network groupings open up space for sharing

their frustrations and this provides a sense of relief and belonging even if they do not physically work at the same place.

From my observation through shadowing and interactions on WhatsApp groups, social media assists in building social capital and also for political empowerment (see Ueno, 2014) and allows participants to express their own agency. The advantage is that participants are able to express themselves in their own free spaces unlike in a face-to face-conversation. Also, nobody cares about language issues, such as grammatical errors, as revealed in excerpts extracted from group conversations. Unlike closed Facebook group posts, no prior vetting is done before posting. Vetting of messages promotes censorship which in a way violates freedom of expression and right to associate. Be that as it may, it is important to point out that subject and themes determine full participation of membership. The most popular theme which evoked greater participation was related to documentation, whereby members of the group would seek advice on renewal of work permits or asylum papers. Migrant rights organisations have used the common issue of documentation as a key organising tool. This will be discussed in further detail Chapter 7, drawing on examples from French and Italian unions and how they mobilised immigrant workers in Europe.

Back to the issue of social media, to regulate group discussions, very often group administrators define rules for the group for instance "no jokes" or "no prayers after 5am" and usually the penalty for defaulting is that of removal from the group. Sometimes, "WhatsApp wars" erupt stimulated by the need to observe principles and rules of the group. In her study, (Ueno, 2014) found out that "as their level of involvement with Facebook, Skype or other chat rooms increases, [they] experience more quarrels and conflict through emails or chat among friends and family members" (2014:15). Some migrant rights organisations appreciate the role of social media in their recruitment process as one organizer acknowledged this as reflected in this statement:

> The digital era has really assisted us in our job…it is now a common practice that workers make referrals to us through social media. So what we do is that where there are many of them in their workplace, we advise them to organise a day…preferably during lunch breaks so that we can go and speak to them. Sometimes, we use social

> media to mobilise workers to attend events or to communicate important information which we intend to send out to both our members and non-members[169]

However, social media according to Ueno (2014) has its own challenges. Restrictive government censorship laws, policies and surveillance are some of the major draw-backs. For instance after experiencing citizen protests stimulated through social media, the government of Zimbabwe in July 2016 declared interventionist measures to ban the use of social media and this was confronted by a colossal outcry from citizens, whose lives are now dependent on social media . Aside political interference, while, WhatsApp groups might be closed only for members, there is however, no security guarantee as participants determine what to do with any messages once it is in their inbox. Also infiltration is very possible considering the referral nature of recruiting participants in a group. Unlike Facebook where one can search for an aspiring member's profile, with WhatsApp, Administrator should have mobile numbers in order to add anyone to the group. Certainly, the group administrator cannot go out of their way to 'screen' all participants before adding them as they also rely on assumptions of loyalty among group members. Another shortfall of social media platforms has been the emergence of 'fake' news which paradoxically could facilitate or hinder mobilisation. For instance, gatherings convened through social media platforms could be sabotaged through counter messages depending on the political goal of the meeting.

Aside, it is also important to augment and strengthen social media interactions with face-to-face meetings to avoid 'bogus' membership (Nedelcu, 2012: 1347). In relation to trade unions and migrant rights organisations' mobilisation through social media platforms, through participant observation, the researcher witnessed a scenario whereby members of the group agreed through WhatsApp platform to host a migrant workers mass meeting. On the day of the meeting, only less than ten (out of 137) group members physically appeared at the venue on the actual day. While mobilisation of workers through social media could be a very powerful tool, it should not entirely substitute traditional strategies of physical face –to face engagements and thus both strategies ought to complement each other. If not well managed, mobilisation of workers through social media platforms might provide a false sense of worker empowerment yet foreign nationals could still fear public engagements on political issues.

[169] Interview with Tabs. 25.07.2016. Braamfontein, Johannesburg

Furthermore, some participants post controversial and sometimes misleading information. For example, a certain migrant-rights organisation once circulated a very controversial message on Facebook and WhatsApp platforms which stimulated a lot of controversy. The message clearly stated that one could join a union without a permit and this 'sparked' a heated debate on the subject.

While the LRA grants rights to all workers, in contrast, the Immigration Act of 2002 prohibits foreigners from working without a permit and this disjuncture between the two pieces of legislation (see Costello and Freedland, 2014) subjugates foreign workers in two ways. On the one hand, unions shun undocumented immigrants and on the other hand, employers threaten deportation in the case of undocumented workers. At times, misleading and inapt interpretation of information might subject the group to constant surveillance by state enforcement authorities if any of the members might decide to 'leak' information. This is very detrimental to those group members working in the country without permits or any other legal documentation.

6.5.4 Worker barriers to mobilisation

Having looked at opportunities for mobilising foreign workers in the hospitality sector, it is important to also examine factors that impede mobilisation, participation and representation. A plethora of challenges hinder mobilisation and key among them include legal and policy frameworks, political, socio-economic including work contracts such as casual which fall outside of traditional standard employment relations. For instance, as shown in Chapter 4, the immigration law of South Africa vests maximum power in employers in relation to policing and deportation of foreign workers and this poses a major challenge to mobilisation. Valiani (2012) notes that:

> Temporary legal status of workers, bound to employers, translates into an inordinate degree of power in employer's hands within the generally uneven power relationship between individual workers and employers. As a result of these and other complexities, the mobilisation of temporary migrant workers into a political force has taken various forms in the late twentieth and early twenty-first centuries (2012:2).

In addition to union and government policy constrains, worker related constrains to mobilisation were noted as related to xenophobia, lack of unity and solidarity whereby locals

blame foreign workers for under-cutting of wages. Collegial relationships are usually hostile and in worst cases xenophobic attacks sometimes occur between locals and foreign workers. Xenophobic tendencies are also reflected in interviews whereby respondents admitted that they are not keen to join unions as they are scared of their local counterparts who always blame them for taking away their jobs. Some even reported acts of confrontations and violence instigated against them either physically or psychologically. Foreign workers were accused of conniving with employers when locals were keen to embark on strikes or protests. Foreigners view protests and strikes as only eligible for locals as they lack a sense of belonging.

Lack of unity and solidarity among workers based on nationality also dissuades mobilisation. Further this impacts negatively on participation in workers for a in the workplace as very often foreign workers do not participate as they believe that such platforms are only meant for citizens. Some respondents mentioned that locals were only interested in wages and working conditions related grievances and usually ignore challenges that are specific to migrants such as documentation.

Workers are also intimidated by their immigration status and as such employers abuse their 'policing' power invested in them by the state to discourage their employees from unionising. A quote from Ima below is illustrative:

> I think he heard that I was one of the people influencing those workers because he just said to me am not afraid… I don't know what he was meaning by that[170]

While barriers to organising tend to overshadow opportunities, it is important to appreciate efforts by workers themselves to self–organise and self-representation strategies where disputes occur. Equally important to note are efforts by migrant-rights organisations, worker advice offices, community–based organisations and trade unions in educating workers about their rights and these will be discussed in-depth in the next chapter.

As shown in Chapter 4, the national Constitution of South Africa and the Labour Relations Act (LRA) guarantees workers freedom of association. In the same vein, the collective agreement states that:

[170] Interview with Ima. 03/05/2016. Braamfontein

> Employees may join a trade union (subject to its constitution) and to partake in its lawful activities. Employers may join an employer organisation and participate in its lawful activities.

It is clear from the above statement that both workers and employers have the right to associate or join unions of their choice. However, in practice, foreign workers are denied freedom of association because of short term casual contracts which are usually tied to the work permit regime. Indeed, many migrant workers are denied the right to join or form trade unions through subtle state crafted laws and policies. In some countries, they are implicitly excluded from the labour law. In addition, there is imposition of restrictions on migrant workers from holding offices in trade unions underpinned by union constitutions. Moreover, while subtle, some unions elicit xenophobic tendencies in some of their critical documents such as recruitment forms which emphasise 'Green book). Furthermore, there is a degree of incompetence in mobilising foreign workers on issues relevant to them such as documentation as popularised by the particularistic approach to organising.

While all casual workers in the hospitality industry are universally exploited, it is much worse for foreign nationals who struggle to secure work permits to work in South Africa. Some, however, are in possession of passports but without work permit and that makes it impossible for them to access rights such as UIF, union registration, and other benefits befitting of them. In addition, various factors contribute to poor mobilisation of foreign workers and among them is the issue of subscriptions which is procedurally a way of collecting members' contributions monthly as shown below:

> The employer shall deduct union subscriptions from the wages of union members and shall account for and pay to the trade union on or before the 15th of each following month the aggregate amount deducted.

The above clause points to various barriers to mobilisation and these include procedures which involve immigration although the law allows and accepts any form of identity document irrespective of nationality; as long as they are in possession of a legal passport and work permit. However, given the erratic payments noted among casual and foreign workers, it is always difficult to sustain and maintain payment of subscriptions. In the context of business unionism, subscriptions define one as a union member popularly described as

"members in good standing". At the same time, poor mobilisation translates in a representation gap as in the case of disputes, union representation is also dependent upon union membership.

Employers also target worker leaders to ensure that workers are unable to exercise and enforce their rights. Yet, the LRA No. 12 of 2002 promotes employee participation in decision-making through the establishment of workplace forums. In particular, Chapter two of the same Act provides for employees' right to freedom of association while the employer has the right to "utilise replacement labour' except in circumstances where such employer has implemented a lock-out or except in circumstances where the lock-out is in response to a strike" (LRA No. 12 of 2002). Paternalistic relationships which exist between employers and employees working in family restaurants also impacts negatively on mobilisation of hospitality sector and this point was well articulated by one union organiser. This is reflected in the statements below:

> Our sisters and brothers from outside have a problem … they still see their employers like 'helpers'. I mean they think these employers are helping them by employing them and so they can't be found behaving otherwise or going against them. We have tried several times to convince them to join the union so that we can help them to improve their wages and working conditions but they still fear losing their jobs. But also, we understand where they are coming from … to be honest, we have not looked into some of their special needs such as documentation which for me is the biggest challenge … yes we have struggled to organise South Africans working in this sector as casuals too. And of course, migrants are part of the casuals which makes it more complicated![171]

On the other hand, locals suspect the reluctance to participate by foreigners as 'selling out' or 'exposing' them. One of the respondents revealed that she once worked under threats after one of her colleagues, a local, was fired and the latter suspected that she was behind the dismissal. Workers are also divided along employment contracts as those with permanent contracts look down upon casual workers and would not like to mingle with each other. Thus, migrancy does not really matter as local casual workers are also discriminated against based on their contracts status and are also neglected by unions. In this way, workers do no share

[171] Interview with the national organiser of 'union T' who requested anonymity.

common grievances and this divides solidarity. In a way, lack of co-operation and unity divide worker solidarity and paves the way for exploitation by employers.

6.6 Summary

The study revealed a dearth of literature on the hospitality sector and thus the workplace census was a good point of departure for analysis in order to understand aspects like demographics of the sector, migration status, documentation, labour rights, employment contracts and mobilisation. Various issues related to this sector were unravelled ranging from political economy, remittances, informality, non-standard employment, collecting bargaining, working conditions, wages, socials security, labour rights, mobilisation, participation and representation of foreign workers in this sector and how this intersects with unions efforts to organise casual workers in the sector. Further, the Chapter also interrogated the concept of liminality (Underthun, 2015) and how it constrains mobilisation among workers in the sector who are divided along several reasons for joining the sector which include students, new immigrants who find a net and use the sector as a springboard to enter the labour market in a new host country. Skills, as the Chapter shows, are not the key determinant for wages as many migrants working in this sector have matriculated.

Social media platforms have enhanced social interactions and information sharing among workers across the globe. The most striking issue which emerged was that foreign workers were not docile and had begun to self-organise including self-representation in labour disputes underpinned by collegial support through their social media networks (in particular WhatsApp groups) which is referred to here as ‘cyberpolitics’ in this study. The current workforce in the hospitality sector comprises very young female and male workers who are very articulate with the use of modern technological and social media in order to improve their everyday working lives. Equally important to note is that trade unions and migrant rights organisations have adopted the use of social media to enhance grassroots mobilisation and participation as well. Be that as it may, cyberpolitics has its own challenges and thus need to be reinforced with traditional methods of communication and interaction with grassroots. However, mobilisation through social media platforms needs to be augmented with traditional methods of organising such as physical face-to-face meetings and door-to-door methods.

The current era requires that unions move beyond the rhetoric of union to union solidarity to union to worker solidarity, if a candid and cavernous meaning of the concept of solidarity was to be realised. The observation that foreign workers in the sector are already self-organising tends to create a 'springboard' and ripe platform for trade unions and other workers organisations to tap into this rich constituency.

Conversely, constraints to mobilisation seemed to overwhelm the opportunities and were also identified as legal, restrictive immigration policies, documentation, migration status, xenophobia, ignorance about rights, divided solidarity, rigid collective bargaining platform which is quite selective in its approach and also not able to accommodate emerging forms or structures of organising through such structures like migrant rights organisations or worker advice offices. Yet, foreign workers are compelled to affiliate to multiple service providers in order to augment efforts and close gaps where a service is deficient. For instance, trade unions are mandated to undertake the collective bargaining processes which include wage and working conditions negotiations as they are the only recognised party to the tripartite council while migrant rights organisations offer services related to documentation and worker advice offices assist with legal representation and sometimes class-based litigation. While a progressive Labour Relations Act (LRA) including a comprehensive collective agreement are in place, still transformation has not taken place in relation to working conditions and remuneration in the sector. A case in point is a lack of adherence to the dictates and spirit of the collective agreement of the Bargaining Council of the hospitality sector.

Overwhelming positive responses expressed by respondents towards unionisation through the workplace census demonstrate a strong desire to resolve workers problems through external institutionalised representation. Again, this could be as a result of elusive conscientisation about union work through social networks or through mainstream media. At the same time, respondents identified key issues which need to be addressed if for instance they are to be attracted to unions and given such an opportunity, it is up to trade unions to embrace a particularistic approach which considers the unique and 'special' needs of foreign workers first before bread and butter issues. In addition, they need to revisit their organising strategies including membership benefits that would attract foreign workers.

Moreover, the study shows that while unions have done little in organising foreign workers, the use of social media like WhatsApp has become very prominent as it enhances self-organising. Before the use of advanced technology, workers would feel alienated in the

workplace and at the same time lacked favourable platforms to express themselves and also to share ideas. This study, to some extent, builds on scanty studies which directly interrogate how advanced modern technology coupled with social networks has played a very central role in migration. In a way, social media plays a very central role in building social capital among foreign workers and also in promoting social media or online activism (for example signing of petitions) which could translate into self-organising efforts.

I contend that foreign workers are beginning to manifest their agency to self-organise into worker collectives crafted around their particular needs like documentation, which traditional unions are not yet ready to confront as exposed by the study. However, contrary to some scholars' suggestions (Sitas, 1984; Webster, 1985; Milkman, 2006) that social networks could be 'springboards' for union, it seems unions do not harness this social capital as some perceive self-organising among foreign workers as competition and against the principle of "one industry, one union". In addition to 'bread and butter' issues, as mentioned before, foreign workers have other needs outside of the conventional demands and as a result prefer to affiliate to multiple worker organisations in their attempt to seek holistic solutions to their everyday working lives. The chapter revealed that foreign workers are a key component of the sector's labour force and that their status is critical to the reproduction and expansion of the sector if they are embraced as a central component of the entire workforce.

Chapter 7: Alternative voices? An institutional analysis of trade unions strategies and responses to foreign labour in South Africa and the emergence of new forms of worker representation

7.0 Introduction

In the previous chapter, one of the key findings which emerged was that foreign workers face many challenges related to their livelihood strategies and the problem is the fact that local unions neither mobilise nor represent them in their daily struggles. While implicitly covered by the law, foreign workers in South Africa remain largely outside the protection of trade unions. Further, the chapter demonstrates that these workers are not docile as some have begun to self-organise and devised their own strategies to respond to their daily challenges which include police brutality in the case of zamazama or general harassment for undocumented migrants and to defend themselves in light of xenophobia. Most importantly, they consult alternative worker advice offices, probono legal advice offices or commercial private legal aid societies for services.

Findings in this chapter are consistent with those of Alberti, Holgate and Tapia (2013) who argue that "integrating universalistic and particularistic approaches to union organising and recruitment strategies is critical to promote the successful involvement of vulnerable migrants into trade unions". While it is important to treat workers in a more equal and homogenous manner (universalistic), my study shows that foreign workers have particular immigration needs (particularistic) which precede the enjoyment of labour rights as granted in the labour laws. In other words, immigration laws precede labour rights as foreign workers will only appreciate the importance of the later if only they have satisfied the requirements of the former (immigration laws). Thus, if unions do not address immigration needs of foreign workers then their organising efforts remain a fallacy.

As shown in the previous chapters, generally, the level of mobilisation and organisation of foreign workers in South Africa is very low and it seems trade unions have been very slow in embracing this category of workers in the same way they have responded to casualisation and outsourcing which are direct products of workplace restructuring. Yet, these workers are confronted with various challenges ranging from social, economic, political and legal in as far as documentation is concerned. Be that as it may, we noted in the previous chapter that foreign workers in the hospitality industry are beginning to self –organise through social networks and social media platforms readily accessible to them as a result of advancement in

technology. While self-organising is very essential, some scholars like Valiani (2012) maintain that:

> Workers, community activists and unions are all vital players, but without a major role played by unions – with their substantial financial resources, structural capacity, and institutional history – strategies to protect migrant workers' rights, and by extension, workers' rights broadly, are unlikely to expand to a scale proportional to the ever-increasing employer use of temporary migrant workers internationally (Valiani 2012: 9)

It is clear in the above statement that society in general, still views trade unions as the "messiah" of the working class poor due to their political power and resource base. Accordingly, Nel & Van Rooney (1993) contend that the role of labour movements is "to give firm political direction to workers" (1993: 133). Yet, as shown in previous chapters, unions are more involved in the socio-economic issues with the belief that "economic position of workers is only determined by wages and working conditions" (1993: 132) thus neglecting the socio-political aspects. Because of this, the new economic environment requires that the trade union movement changes its traditional role and social functions. This entails that the trade union movement expands its role to tackle issues in areas such as "education, environmental protection or sustainable development" and migration including human mobility agendas, among others (Heines *et al* 2004:5). The addition of new roles on the agenda requires a sound financial base for expanding the agenda of the labour movement and as such needs to consider the waning political influence of unions to society. In recent years, South Africa's trade unions have been faced with a huge crisis in various sectors, in particular, the mining sector where most workers have snubbed union representation and rather established their own workers committees; a case in point being that of the Marikana tragedy (see Alexander et al, 2013).

As some of the responses in the previous chapters have revealed, foreign workers are attracted to South Africa, partly because of the democratic dispensation which allows for freedom of association. In a way, the assumption is that political democracy would somehow translate into industrial democracy (see Nel and van Rooyen, 1993). For instance, COSATU has been instrumental in accelerating the struggle for a democratic South Africa from an authoritarian regime through forming partnerships with other labour movements and political parties in the country. During apartheid, COSATU was seen to be implementing a bottom up

approach through encouraging participation of workers, minorities and migrants; those in the formal and informal sectors (see Nel & van Rooney, 1993). When unions foster democratic principles, workers, migrants and minorities (those who bear the brunt of human rights violations) are bound to affiliate to such unions for protection (Jose, 2000). However, organising migrant workers, let alone informal migrants, is still to be realised. For instance, trade unions are confronted with problems of mobilizing casual, young workers and it is worse with migrants who do not have papers or citizenship documents (Hlatshwayo, 2008: 28). While some migrants reported that they feel safe to participate in South Africa because of the democratic space that exists (see Hlatshwayo, 2013), still unions seem not to be 'democratic' enough to embrace foreign workers into their rank and file.

Matte (2002: 23) argues that the selective political culture of trade unions appears to pose a significant threat to democracy in South Africa. This threat is exposed by the fact that 'South Africa has one of the highest rates of participation in violent protest action compared to other countries' in the region. For instance, it could be argued that the 2012 protests in the mining and transport sectors that resulted in loss of lives, demonstrate that South Africa is not yet mature enough to consolidate democratic practices. The existence of trade unions in South Africa is a paradox that demonstrates modesty, wherein "South Africans understand democracy to mean the delivery of a range of socio-economic goods" (Mattes 2002: 33). Unfortunately, progress towards this goal has been slow. For instance, in trying to attain democracy, we have witnessed the opposite, wherein social movements, like in the truck drivers' strikes, lives have been claimed. Hence, it could be argued that "South Africa as a people, have not progressed beyond the constitutional rhetoric" (Mail & Guardian 24.05.08; Balloert, 2008: 14). Recent events are also important in showing the challenges being faced by labour movements and in this instance, events show that the influence of unions is to control the course of policy. Thus, it seems reasonable to argue that trade union culture does not develop in a vacuum; rather it develops against the background of economic and political trends of a country. This chapter attempts to provide an understanding of how trade unions, social movements (SM), worker advice offices (WAOs) including migrants rights organisations (MROs) have responded and how this shapes mobilisation, participation and representation of foreign workers in South Africa. Union Responses to foreign workers in South Africa

While there has been an upsurge of foreign workers in the labour market, in general, trade unions in South Africa have responded very slowly with the exception of a few (Hlatshwayo,

2013: Lehulere, 2008). This is despite the fact that the national federations espouse the principle of solidarity among workers irrespective of nationality (see Hlatshwayo, 2013)[172]. Poor responses to foreign workers' needs are not specific to South Africa. In fact, there are well documented cases from Western societies where foreign workers have been excluded from mainstream trade unionism. For instance, in Britain, some unions once promoted the need to prioritise jobs for locals, which in a way resulted in foreign workers snubbing unions (see Bogg and Novitz, 2014). However, this kind of approach shifted over the years to pro-migration and pro-migrant worker, although unions still struggle to organise transnational migrants.

Lessons could be drawn from successful stories of organising immigrant workers which took place in Italy and France. In Italy, the largest federation, Italian General Confederation of Labour (CGIL) in collaboration with CISL, and UIL including independent unions; SI.COBAS or ADL COBAS, successfully mobilised immigrant workers in the warehouse sector to participate in a strike in 2013. According to Zebino (3013)[173], the unions managed to enforce the implementation of the national contract. By unifying all works and incorporating immigrant workers in the nationwide strike which took place on the 22nd of March, 2013, unions managed to curb the use of scab labour during strikes. In Italy, immigrants from Egypt, Peru, Romania, or Pakistan, are employed through co-operatives as 'associate workers' and are exploited without social benefits and sometimes they do not receive their meagre wages. This went on for fifteen years until immigrant workers began to organise against the national laws which required that they only stay in the country only if they are employed. As a result, many did not participate in strikes to defy exploitative working conditions as they feared dismissal and ultimately deportation. An instrumental co-ordinator of the strike was an immigrant worker, Arafat, an Egyptian who was inspired by the 2011 uprisings back in his country.

On a different but related note, the Confederation Generale du Travail Unitaire[174] (CGT) and the Confederation Fracaise Democratique du Travail [175](CFDT) in France collaborating with the sans-papiers movement have been quite successful in organising "sans-papiers" (irregular) workers. According to Freedman (2008), "the sans-papiers movement has been

[172] See also the national constitutions of the following national federations; COSATU, FEDUSA, SAFTU and
[173] Marco Zerbino "Immigrant Workers Strike Hits Warehouse Sector in Italy**"** April 08, 2013. Marco Zerbino is a freelance journalist based in Rome
[174] English translation: General Confederation of Labour
[175] English translation: The French Democratic Confederation of Labour

one of the major features of the contemporary political debate over immigration in France, highlighting the specific situation of those residing "illegally" in France, and organizing to resist the attempts of successive governments to expel "illegal" residents from their territory" (2008:1). The movement mobilised support through mainstream media thus demonstrating the power of the media in activism (see Dahlgren, 2007 & 2009; Oiarzabal, 2012) and transforming poor workers lives as shown in the context of the Arab Spring in Africa and also foreign domestic workers in Singapore (see Ueno, 2014). While the domestic work sector does not constitute selected case studies for this research, it is important to acknowledge the positive role that the union responsible for the sector, SADSAWU has played in organising migrant domestic workers in South Africa including at a global level through the ILO Domestic Workers Convention No.189 (Fredman, 2014) and in particular the International Domestic Workers Network (IDWN).

Due to poor responses by trade unions, migrants through their formal and informal social networks have established their own organisations. A study by Segatti and Polzer in 2011 revealed an element of social agency among immigrant organisations in South Africa in light of the brutal 2008 xenophobic attacks, a distinct sign that immigrants are not docile. In the Western context, several self-organising initiatives by migrants and locals' initiatives were established to address the dilemma of migrant workers which include among them the "Sans-Papiers" in France; Black Alliance for Just Immigration (BAJI) in the United States; Migrants' Rights Network (MNR) in the United Kingdom (Minter, 2011). Other networks include African Communities Together in the United States; Africa Diaspora Workers Network (ADWN) in South Africa; Migrant Workers Association in South Africa (MWASA); Isolated Women in South Africa (IWUSA) and the recently established Migrant Workers Union of South Africa (MIWUSA).

7.1 South African Unions' Responses to Foreign Workers

South Africa's labour movement is one of the largest worldwide and as of September 2017, there were 191 officially registered unions (DoL, 2017). Four national federations exist namely (from the largest in size to the smallest); COSATU with an approximate membership of almost 2 million members, followed by FEDUSA with approximately 400 000 members then NACTU (no exact figures) and lastly CONSAWU (no exact figures provided). However, during the progression of my thesis writing, a new development emerged whereby a new national federation was formed; the South African Federation of Trade Union

(SAFTU) bringing the total five national trade unions. Aside these, are independent unions, which do not belong to any of the aforementioned national federations and organise independently. In terms of the national outlook, 74 percent of workers fall outside of unions (Barrett, 2014). In support of this, Hamilton (2017: 5), notes that "the level of unionisation has declined from 46% at its height in the 1990s to 26%...fully 74% of workers are not unionised" (2017: 5). However, in its founding congress resolutions, SAFTU puts the figure of those falling outside of unions as 76% (SAFTU, 2017) and resolved to "immediately launch a recruitment campaign which must focus on the 76% of unorganised workers, but should also target COSATU affiliates because they are considered as unorganised and trapped in unions that are not independent, democratic and campaigning…shop stewards must be capacitated to take up recruitment and service" (SAFTU, 2017: 5)[176]. Furthermore, the federation declared its commitment to "protect migrant workers and ensure that we organise them to form part of our unions" (ibid: 5). The federation intends to implement these resolutions through a social movement unionism approach that entails collaboration with other progressive organisations such as #OutsourcingMustFall, Fees Must Fall, Treatment Action Campaign, Equal Education, Sect 27, SAITA (SA Informal Traders Alliance), COPAC (co-operatives), SAFSC (SA Food Sovereignty Campaign), and WIEGO (Women in Informal Employment Globalising and Organising) and others. Be that as it may, the list does not include migrant rights organisations which could augment efforts and services such as documentation, which is a prerequisite for one to be recognised as a legal immigrant worker in the country.

A 2012 study by SWOP revealed that there are thirteen unions organising in the hospitality sector while the South African Commercial, Catering and Allied Workers Union (SACCAWU) is the largest with a membership of approximately 40,000 workers (LRS, 2012). Nonetheless, the majority of workers in the hospitality sector who constitute more than 70% are still not covered by collective bargaining agreements (NALEDI, 2001) and these include atypical, casual, out-sourced and immigrants. The study shows that the low levels of unionisation are further exacerbated by workplace restructuring that continues to take place including flexible employment relations. Trade unions have paid little attention to challenges of outsourcing, labour broking and causalisation such that affected workers resort to seek protection from institutions outside trade unions like social movements such as

[176] The resolutions of SAFTU Inaugural National Congress held on the 21 -23 April, at Birchwood Hotel Conference Centre.

#OutsourcingMustFall (OMF) "as a vehicle to struggle for permanent jobs and improved wages and conditions" (Phanyeko, 2017:4).

A review of South African trade unions existing documents such as the most amended constitutions, revised policy documents and the most recent congress resolutions did not demonstrate commitment towards organising foreign workers. In fact, unions have mixed feelings on whether there should be specific policy to address the matter of foreign labour or if foreign workers need to be integrated into mainstream policy. An interview with a former national organiser of SACCAWU revealed that the union is keen to integrated foreign workers into existing policies. Nevertheless, migrant rights organisations such as Migrant Workers Union of South Africa (MIWUSA) prefer to organise separately as they are of the view that immigrants constitute a 'special' group that has its own specific challenges which need to be addressed separately from those of local workers. The 'blanket' approach to organising migrant workers into mainstream unions is based on trade union rhetoric and principle grounded on Marxist view of a common worker-based identity. While important, this somehow overshadows the additional vulnerabilities associated with migrancy.

A study conducted in 2009 by Mondli Hlatshwayo on union responses to xenophobia found that unions had no policies or strategies to deal with xenophobia in the workplace. A 2012 survey conducted by MiWORC at the African Centre for Migration and Society (ACMS), University of the Witwatersrand revealed that the majority of unions in South Africa have no policy or programmes to address matters related to foreign labour. This telephonic survey, conducted between October and December 2012, found that virtually all trade unions in South Africa (4 National Federations including independent unions) had no policy or strategy for mobilising foreign workers. Only one union affiliated to NACTU revealed that it had policy in place to address the question of foreign labour although they did not provide the evidence upon request by the researcher.

Table 18: Do you have a policy on migrant labour

Policy in place	No policy	International solidarity programmes in place	Other
1	53	5	1

Source: MiWORC 2012 data

From the results, as illustrated in the chart, only 1/60 unions in the survey had a policy on foreign labour; 1/60 saw no reason of having one while 5/60 had some programmes targeting foreign labour, and 53/ 60 had nothing in place related to foreign labour.

However, some unions, in particular those affiliated to COSATU, pointed that issues of foreign labour were espoused in their international solidarity policies and programmes. FEDUSA and affiliates neither had policies nor programmes related to foreign labour at the time of the survey. By the time of writing of the thesis and prior to submission in February, 2018, the five federations in the country had not yet developed any policies although some like COSATU, CONSAWU and SAFTU demonstrated some commitment through international programmes and campaigns.

Foreign labour, it has been noted, contributes immensely to the overall economic development in the South African economy. However, neither the government nor trade unions have committed to development and formulation of policy to deal with this category of workers. Yet, most trade unions embrace the principle of worker internationalism. If local trade unions are to realise the principle of "an injury to one is an injury to all", then it is time they take serious the agenda of foreign workers organising. At the same time, poor immigration policies have impacted negatively on immigrant workers mobilisation, participation and representation in the workplace.

7.1.1 COSATU Responses to Foreign Workers

While five national labour federations exist, this study will dwell mainly on COSATU, being the largest and thus an analysis of the broader union response is deduced. Again, the Federation through its affiliate, the NUM, has a long history of organising migrant workers although it is still paralysed by conflicting policy positions between worker international solidarity and what Hlatshwayo, (2013:1) refers to as 'national chauvinism'. This is also reflected in some of its public statements and responses to xenophobia including segregation of some immigrants as 'illegal' as dictated by national laws as revealed in chapter 4. It is also important to point out that whereas the Federation has a strong position on international worker solidarity, nonetheless, this has not translated into a clear organising strategy for foreign workers. In 2012 at its 11th National Congress, the federation adopted a resolution to organise migrant workers as sponsored by one of its affiliated union; the Food and Allied Workers Union (FAWU). Subsequently, the Federation attempted to implement this

resolution through the Vulnerable Workers Task Team which was initiated in 2013 in spite of political challenges. The subsequent section presents a brief description of the VWTT.

7.1.1.1 The Vulnerable Workers Task team (VWTT)

The 10th Congress of COSATU convened in 2009, recognised the vulnerability and super-exploitation of migrants in light of brutal xenophobic attacks that had occurred in 2008. Furthermore, the major challenge was that migrant workers were not educated of their labour rights such as the right to join unions and as result shunned the latter as they perceived them as only being there to fight for the interests of local workers. Following up on previously adopted resolutions, in June 2013, COSATU invited all affiliates as well as a range of non-affiliated membership organisations and labour research bodies to participate in a workshop to develop the terms of reference for the establishment of a Vulnerable Workers Task Team. The idea was to identify various sectors where migrants are concentrated and then collectively (with the assistance of affiliates) develop policies and organising strategies.

The Task Team itself met for the first time in August 2013. All nineteen affiliates were invited, as well as two non-affiliated membership based organisations - SAITA (South African Informal Traders Alliance) and SADSAWU (South Africa Domestic Workers Union), two international informal economy federations, WIEGO and StreetNet, four research organisations (NALEDI, the Chris Hani Institute, Labour Research Service and the Studies in Poverty and Inequality Institute (SPII), including the organising department of the African National Congress (ANC). The central objective of the VWTT is to support initiatives aimed at organising vulnerable workers who include casual, domestic, farm, taxi, construction informal and immigrant workers (Barrett, 2014).

Since its inception, the VWTT has met several times– almost once a month until political challenges emerged. Seven affiliates participated on a regular basis, namely SACCAWU, NUM, FAWU, CEPPWAWU, SATAWU, PAWUSA, NEHAWU, SADSAWU and SAITA while one affiliate, NUMSA has ceased to participate since its exit from COSATU. Invitation was also extended to migrant workers and as such the Migrant Workers Association of South Africa (MWASA) participated on behalf of foreign workers. This platform has opened up space for migrant workers to full amplify their voice, interact and share ideas with their local counterparts in a collective way seeking viable solutions to vulnerable workers challenges in general. The federation also hosted a workshop in 2014 whose aim was to collectively seek ways and strategies to organise cross –border migrants.

However, despite all positive efforts, a media statement was circulated by the Federation on the 4th of May 2015 entitled: *"Ruthless economic exploitation of workers at the point of production has no basis for nationality"* and the author was the then COSATU Acting National Spokesperson. Below is a full statement from COSATU through their spokesperson:

> COSATU since its inception has argued for the unity of workers in factories, mines, shops, farms and other workplaces. We organized across all industrial trade unions and also to combat the divisions of workers on the basis of their place of origin, ethnicity, race or gender. South African Trade Unionism has harsh experiences of legislated segregation based on occupations and colour and with the 1994 democratic dispensation, all was scrapped. It is regrettable that today in South Africa some people may harbour intentions to establish a Union based on their nationality. Majority of workers within COSATU are from neighbouring countries. The founding Deputy President of COSATU, Cde Chris Dlamini was a national from Swaziland and countless of others. And that did not disallow him to participate in Trade Unions. National struggle is a matter of class struggle. Capitalistic exploitation has no interest in a nationality of a worker!
>
> COSATU condemns minimalist and narrow tendencies to negate the genuine existence of Trade Unions in the country by establishing 'un-necessary' formations. The National Union of Mineworkers [NUM] has over many years organized mineworkers from various nationals in African continent on the basis of them being workers, who sell their labour. COSATU reiterates its call for the respect for One Union; One Industry; One Country; One Federation founding principles. COSATU urges all foreign nationals to participate in current Trade Union, to build and enhance solidarity of workers. COSATU will engage all workers about class consciousness and the enhancing of unity of all workers[177].

The statement acknowledges the fundamental role played by foreign workers in the economy including in the establishment of the first Black trade unions. To emphasise this, even today, COSATU still provides open room for election of worker leaders at the shopfloor irrespective of nationality and is currently led by Sidumo Dlamini, who hails from Swaziland. Further, it

[177] Norman Mampane, COSATU Acting National Spokesperson, 4 May 2015 in a Press Statement issued by COSATU entitled: "*Ruthless economic exploitation of workers at the point of production has no basis for nationality"*

reiterates the need for workers to unite against capitalism as their common enemy and forge working class solidarity irrespective of nationality, place of origin, ethnicity, race or gender, which is fully welcomed. In contrast, the statement denounces trade unionism founded on nationality binaries. Moreover, the statement denounces any intentions to establish new unions based on nationality as this is divisive to the working class. In a way, the Federation calls for a universalistic approach to trade unionism. What is missing is a critical analysis of the reasons leading to such a decision by migrant workers. Certainly, local trade unions need to embark on a self-introspection exercise with the aim of understanding the gaps in the representation style. Interestingly, the claim made about "'un-necessary' formations" clearly demonstrates that the federation seems not to acknowledge the importance of self-organising among migrants which points to a representation gap despite the universalistic rhetoric.

When reached for comments, a key leader of a migrant trade union explained that it was not their desire to establish a separate union specific to migrants. Thus, he admitted that circumstances had coerced them to react to the challenges faced by foreign workers in the workplace. For instance, many foreign workers failed to join trade unions because of immigration challenges, a task which the mainstream trade unions were not ready to undertake. The second last sentence of the statement above is too superficial and hypocritical. The reality is that trade unions seem to be selective in who to absorb or not and in most cases, their organising strategy tends to target locals compared to foreigners. While the Federation might deem this call possible, there is need for self-introspection of its affiliates in order to understand this very complex conundrum. It is also still to be seen if the Federation will commit itself to educate all workers about class consciousness and unity, a rhetoric that is often used to overshadow reality. In his study, Hlatshwayo (2013) strongly criticised COSATU for its ambivalent position in fighting xenophobia in the workplace, although its Western Cape provincial structure has been very proactive in the fight against xenophobia. In a positive response to fight xenophobia, the provincial structure forged alliance with progressive grassroots organisations[178] to establish the Migrant Workers Committee whose aim was to educate and raise awareness including facilitating mobilisation of migrants and refugees (Imbula-Bofale 2010:1 cited in Hlatshwayo (2013).

Hlatshwayo (2013) attributes COSATU's attitude and poor response to "national chauvinism which seems to be based on COSATU's privileging of South African workers at the expense

[178] Labour Research Services (LRS); the International Labour Research and Information Group (ILRIG) and the Ogoni Solidarity Forum

of immigrant workers" (2013: 269). Similarly, Lehulere (2008) also notes COSATU's chauvinism when it denounced the employment of foreign nationals in particular the undocumented although this was expressed in the context of employers taking advantage of exploiting 'illegal migrants'.

Surprisingly, COSATU'S history is grounded in social movement unionism which could be traced back to apartheid. It seems this project has since been abandoned at the dawn of democracy although its alliance with community-based organisations such as SACP and ANC seem to suggest otherwise (see Masiya, 2012). Again, during apartheid, the Federation forged alliances with the United Democratic Front (UDF) to establish the Mass Democratic Movement (MDM) which according to Spector (2013) cited in Masiya (2012) enticed membership from various social groupings; students, women, youth, community groups and churches. In the current political dispensation, the Federation participated in the constitution-making process thus ensuring a pro-worker concession of "non-discrimination in the workplace; right to fair labour practices, right to form, join and participate in union activities; right to strike and right to collective bargaining (Constitution of South Africa cited in Masiya, 2012). Aside, the federation has been very instrumental in the crafting of a very progressive Labour Relations Act (LRA) and Basic Conditions of Employment Act (BCEA) (Ranchod 2007); both meant to champion workers' rights irrespective of nationality.

Aside COSATU, it is important at this point to reflect on other national federations. At its inaugural congress held on the 21st to the 23rd of April 2017, the South African Federation of Trade Unions (SAFTU) made a very historical move by adopting a resolution to organise migrant workers including those falling outside standard employment like casual, informal and out-sourced workers at its founding declaration. While this is a very positive step, it is yet to be seen if affiliated unions as the custodians of members would fulfil this resolution.

Organised labour has existed for a long time in South Africa, stretching back to the industrialisation period (Parsley & Everatt, 2009: 4) although Black workers were denied the right the right to organise. Nonetheless, some Black workers were militant and defied some of these restrictive and oppressive laws against unionisation. A mentioned earlier, the first Black union linked to the hospitality, the Industrial and Commercial Union (ICU) which later became the Industrial and Commercial Workers' Union (ICU) was established in 1919 under the leadership of a Malawian national (Allan, 1992). In 1930, the first black union for mine

workers was formed under the leadership of T.W. Thibedi who was also the secretary[179] According to Nel & Rooyen, (1993: 49), during the apartheid era, industrial relations with trade unions involved, "worker representation from outside the enterprise, through trade unions and committee/ works council representation (that is, worker representation within the enterprise)". Despite the recognition of unions by workers of black origin, white unions dominated the body of the collective bargaining. Only in 1979, based on findings from the Wieham Commission is when Black workers except cross-border migrants were allowed to form their own unions. Subsequently, on the 5th of December in 1982, the National Union of Mineworkers (NUM) was established under the leadership of Cyril Ramaphosa as the first General Secretary while, James Motlatsi, a migrant from Lesotho became the first President of the union.

South Africa gained its independence during the era of the post-ideological battle between communism and capitalism, entailing that communism had been buried and that liberal democracy had become the order of the day. The death of a challenging ideology made South Africa to embark on an institutional and constitutional policy overhaul. At democracy, trade unions were very influential in drafting of the national constitution and the LRA such that many Black workers joined trade unions up until the point when the new ANC government adopted neoliberal policies in the 1990s. Workers lost jobs in the mining and manufacturing sectors although emerging sectors like hospitality opened up job opportunities in the service industry, which were by then lowly unionised. Further, this situation was exacerbated as unions failed to evade the influence of neoliberal economic policies and had to adjust accordingly. Thus, the new political dispensation, which came in the form of liberal democracy, introduced a new trend which changed the role of labour movements. For instance, today, "the basic functions of organised labour movements are to negotiate on wages and working conditions, and representing workers' interests" (Freeman & Medoff, 1984; in Jose, 2000). Again, the post-migrant labour period allowed for the establishment of many trade unions which according to DoL data are recorded at 191 registered unions in 2017 (DoL, 2017).

In post-apartheid trade unions gained strength through close alliances with political parties and personal links with the government (Heines, 2004: 17). These partnerships leveraged and positioned labour movements in the decision-making processes (collective bargaining) that shaped policies. For instance, NUM played a key role in the formation of COSATU, posing a

[179] Source: NUM archives and see also Allan, 1992

challenge to the apartheid system and promoted worker agency in solidarity with other forms of collective organisations that led to democracy. Today, according to Bezeduinhout and Buhlungu (2009), NUM views itself as a vanguard of the liberation movement. On the other hand, the *Labour Relations Act* was founded upon a tripartite process (negotiations between government, labour and employers) (Leibbrandt *et al*, 2008: 27). The formulation of Act 66 of 1995, *Labour Relations Act* is crucial in that it promotes employee participation in decision-making in matters that affect them at work places, for instance, issues of social security and minimum wages, though it is silent about migrant labour.

Maja & Nakanyane observe that after the collapse of the apartheid regime, the mining companies tended to "hire more vulnerable non- South African workers, particularly from Lesotho and Mozambique" (2007: 11). The significance of hiring the vulnerable had a direct impact on trade unionism, especially within the mining sector, in that subcontracting vulnerable people meant they could accept low wages and poor working conditions, while on the other hand, the role of trade unions have changed from empowering workers to bargain for their rights to that of bargaining on behalf of workers for their welfare. As a consequence, the role of unions is presenting a paradox to workers; hence they are facing a waning popularity. For instance, the relation between ANC and COSATU has become one of the major concerns (Iheduru 2001: 2). The alliance COSATU entered with ANC has led to a compromise that has haunted workers because the two organizations that are in alliance have different ideological beliefs. For instance, ANC as a political party adopted neoliberal ideologies while COSATU operates from a socialist perspective of strategic unionism (Iheduru 2001: 2). So COSATU finds it difficult to operate from socialist ideology in a liberal micro-economic environment. To that end, it is a challenge for the unions to remain relevant in a globalised neoliberal environment and in South Africa where the unemployment rate continues to escalate[180]. This is substantiated by Hlatshwayo (2008: 12) who reports that

> ...COSATU's organising strategy is still industrial based and it has not worked on the realities of emerging forms of work. COSATU is redefining employee in the traditional sense. COSATU will always be faced with the decline of membership. No

[180] Unemployment rate was recorded as 27.7% during the third quarter of 2017. Source: Arabile Gumede and Amogelang Mbatha. South African Jobless Rate at 14-Year High as Economy Stalls. Online: Bloomberg Markets https://www.bloomberg.com/news/articles/2017-10-31/south-africa-s-jobless-rate-stays-at-14-year-high-of-27-7

work has been done on the informal economy, migrant labour, casual and contract workers (2008:12).

Hence it can be argued that the new political dispensation encouraged trade unions to democratize their modes of operation but still they are restricted by the neoliberal policies which were adopted by the ANC government. Nonetheless, the significance of democratizing operations broadened the image of labour movements to impact the lives of the vulnerable categories of workers and broad-based organising in the form of social movement unionism (see Von Holdt, 2002). Be that as it may, these developments had implication for worker and union movement strategies. Though industrial democracy would emphasise that trade unions represent all workers irrespective of race, gender or nationality, unfortunately, twenty -four years into democracy, South African trade unions have not yet embraced all workers especially those operating in vulnerable sectors (domestic work, farm workers, cleaners, security) and migrant workers although some unions organising in sectors which have high statistics of migrants such as SACCAWU (hospitality sector); FAWU (agriculture); SADSAWU (domestic) and DENOSA (health) have begun to organise migrant workers; although they do not have clear policies and strategies.

Skills shortages in the health sector coupled with reluctance by locals to undertake employment in labour intensive sectors like agriculture underpins the continuous reliance on foreign labour. In contrast, the mining sector continues to shed jobs although unions in the sector continue to organise foreign miners. In the Western Cape, the response seems to be different because of a high concentration of worker advice offices which organise and represent workers who fall outside of standard employment such as casuals including categories of workers like farm workers and immigrants who are very often excluded from protection by organised labour (see International Labour Research and Information Group (ILRIG), 2009).

7.2 Organised labour's response to foreign labour mining and hospitality sectors

7.2.1 NUM Responses

This section builds on chapter 5 and will not delve into specific details of the mining sector as this has been dealt with at length in the previous chapter. It will therefore provide an analysis of NUM's response to foreign labour as one of the key case studies of this research.

The National Union of Mine Workers (NUM), whose members and leadership include many workers born outside of South Africa has always been associated with foreign workers since its inception in 1982 (see Allen, 1993) although De Lange (2012: 1) cited in Hlatshwayo (2013) argues that the number of foreign members in the union has dramatically declined from 60% to below 40% and has been overshadowed by white collar mining staff. In other words, foreign labour on the mines is gradually being replaced by local graduates who are filling in positions like engineering using modern technology. The decline could be as a result of post-apartheid policy reforms which prioritised locals for recruitment in mining jobs (see the Mining Charter) and also a very rigid post-apartheid immigration policy. Indeed, foreign workers played an equally important role as their local counterparts in the establishment of the union. Migrant miners particularly from Lesotho and Swaziland[181] also participated in the Marikana strike where 34 miners were brutally massacred by police as they protested for a living wage of R12, 500 per month (Hlatshwayo, 2013; Jika et al. 202; Vundla 2012).

Today, the union still embraces foreign workers in both its leadership structures and rank and file[182]. The founding president, James Motlatsi was from Lesotho. A key informant interview with the then Head of Research at the NUM in 2012 revealed that the union appreciates the role played by migrants in the formation of the union. For example, through their involvement with the Communist Party, William Thibedi and Motsupfunyane, both from Lesotho, played a key role in the formation of Black/ African unions as organiser and secretary respectively[183] (Allen, 1993). In a life history interview, Tata Mabea also explained the important role of foreign miners in sustaining the union struggles during and in the post-apartheid periods. As such, former union leaders and shop stewards from outside South Africa were rewarded with strategic positions in the post- apartheid government (see von Holdt, 2002) or other institutions like TEBA[184]. Today, a sizable number of shop stewards are cross-border migrants while there is none in the senior leadership positions; national office bearers (NOB). The recognition of foreign labour as equal partners in workers struggles could be the reason why few incidents of xenophobic attacks were witnessed among mining communities[185]. Be that as it may, the union still does not have any specific policy to address foreign labour issues as elucidated in the quote below:

[181] Four miners from Lesotho and one from Swaziland were also killed during the Marikana massacre http://marikana.mg.co.za/#families
[182] Interview with Tata Mabea. 15.03.2016. NUM Offices, Johannesburg.
[183] Source: NUM archival material
[184] Interview with Tata Mabea. 15.03.2016. NUM Offices, Johannesburg.
[185] Interview with the Vice Chairman of the NUM Branch at Mine A. 15.07.2016. South west of Johannesburg

> I don't think we have a documented policy as we are relying on COSATU, though we would need to appreciate that the NUM was started by migrants from Lesotho followed by the Eastern Cape between 1980s to late 2000 were migrant workers. In fact, we should remember that the economy of South Africa was built by migrant workers from Africa and Europe plus South African migrants from the Bantustans[186].

Nonetheless, in contrast to its recognition and acknowledgement of foreign workers in workers struggles, the union, through its participation in the drafting of the Mining Charter called for recruitment of locals and in a subtle way while denouncing the migrant labour system implicitly advocated for an end to hiring of foreign labour. The union was also claimed to have been fixated in national chauvinism at some point when it called for a "moratorium on hiring Mozambicans during wage negotiations" (Malceki (1991:1) cited in Hlatshwayo, 2013). An absence of policy points to some weaknesses of the union in providing equal service to all its members considering that foreign workers have their own unique needs related to documentation and contracts.

In addition to documentation, is the burden of disease whereby foreign workers in particular miners, suffer from occupational related disease like tuberculosis (TB), silicosis, asbestosis, asthma and many others. While for instance the NUM supports the Mineworkers Development Agency in Lesotho, their overall achievements in assisting former miners claim compensation have been very minimal. This is a clear case of discrimination given the additional challenges confronted by foreign citizenship upon their departure from South Africa after termination of employment and in terms of accessing social benefits (see Deacon, Olivier and Beremauro, (2015); Holzmann, Koettl, and Chernetsky, 2005; Southern Africa Trust Report, 2014). The 2017 Global Report on TB by the World Health Organisation (WHO), revealed that South Africa and Lesotho have among the highest TB incidence rates in the world (above 700 per 100,000), which is a direct consequence of global is mining. At the same time, the burden of care is borne by women (Fakier, 2009; Burawoy, 1976) from places (former homelands) for internal migrants; or countries of origin or labour sending countries to the South African gold mines such as Botswana, Lesotho, Malawi, Mozambique, Swaziland , Zambia and Zimbabwe. Mobilising foreign workers around social security issues would in a way strengthen the principle of union –to union solidarity as this

[186] Interview with Thomas Ketsise. NUM Head of Research. 07.12.2012

could be a good platform for collaboration between unions of labour sending and labour receiving countries.

The NUM uses the universal blanket approach to membership and similarly to its mother body argues that class is what defines workers as opposed to nationality hence when they mobilise or organise, the foremost prerequisite is their identity as workers. The union also believes that their victory in integrating foreign workers through regularising their stay in South Africa through the 1996 amnesty (see de Vletter, 1998) is a mere sign that they do care about foreign workers as expressed in the statement below:

> … when the NUM applied that mineworkers who have a certain number of years should be given South African citizen amnesty. It was in recognition of the role that migrants played contributing towards the economy of this country and shaping the political landscape because some of the shop stewards then were people in the liberation movement trained politically and otherwise from neighbouring countries[187].

Nonetheless, such statements are not enough as the union needs to be explicit about how it addresses foreign labour in a more positive and transparent manner. Yet, compared to other union responses, we could conclude that at least the union is one of the most accommodating to foreign workers as revealed in the statement below:

We feel at home in our union…we are all treated the same and can become shop stewards as long as workers at the shopfloor vote for us to lead them…the only problems is that for so many years I have been renewing my contract every year because we are only given one year work permits. We have approached the union for help many times but still no assistance. I'm growing old as you can see but still working on short term contracts because the union has failed to address our immigration problems[188]

Aside its responses to formal foreign mineworkers, the NUM has failed to address challenges of mineworkers falling outside of standard employment like zamazama. In an interview with two shop stewards on the union's responses to artisanal mining, they were very clear that the union has no strategy to deal with this sector for two major reasons. First, the sector is highly criminalised with a strong presence of undocumented immigrants and thus organising such workers was entirely about reinforcing criminality and also breaching the country's laws. Second, the depth of the gold mines in South Africa called for meticulous observation of

[187] Interview with Thomas Ketsise. NUM Head of Research.07.12.2012
[188] Interview with Loyiso, an NUM foreign shopsteward from Lesotho. 15.07.2016; Mine A

health and safety of those involved and since the activities occur in abandoned mines, no one would be accountable for the loss of lives. It is still yet to be seen if the union is ready to develop a specific policy on foreign labour taking into account that it the union has lost membership since the Marikana massacre. In 2011, the union boasted of a total membership of 308 628, dropping to 198 237[189] in 2015. Incorporating foreign labour into its ranks could statistically revitalise its membership.

7.2.2 SACCAWU Responses

Similarly, this section builds on chapter 6 and will not provide in-depth detail about the sector as this has been dealt with at length in the previous chapter. SACCAWU is one of the few affiliates of COSATU which has committed itself to organise workers who fall outside of standard employment like casual, outsourcing, scheduling, short term contracts and temporary employment status (see LRS, 2012; Hlatshwayo, 2013). In contrast, Buhlungu (2010) argues that unions have not yet fully devised policies or strategies to address challenges related to workers outside of standard employment. Nevertheless, for the purposes of maintaining focus, this section will discuss the union's response to foreign workers who constitute the bulk and are affected by the aforementioned flexible employment relations.

As mentioned before, while there is still a deficiency in explicit policy related to foreign workers, SACCAWU is one of the minority unions which has acknowledged the need to organise foreign workers within its scope. In fact, the union runs campaigns tilted towards foreigners such as anti-xenophobia and programmes on international worker solidarity. Moreover, it support its sister unions from within the SADC region such as Zimbabwe with material support such as office furniture, computers, stationery and others as part of its strategy to promote union to union solidarity. In the same vein, it also aspires to promote worker to worker solidarity through its global Union federation (GUF) which it is affiliated to. Aside, the union is also well known for its progressive attitude and is the first in the country to win gender related demands for workers such as maternity protection and workplace childcare facilities.

In its endeavour to organise foreign workers, the union has established links with some migrant rights organisations and worker advice offices, with the major idea of augmenting

[189] Heidi Giokos and Zintle Mahlati. Struggling NUM has lost 40% of members. 3 June 2016.

https://www.iol.co.za/business-report/economy/struggling-num-has-lost-40-of-members-2029959

efforts to fight xenophobia in the workplace. In an interview cited in Hlatshwayo (2013: 275), Mike Abrahams, the then spokesperson of the union declared the union's support towards organising and uniting "all workers regardless of their country of origin" (Abrahams 2009, interview with Mondli Hlatshwayo).

While the union has demonstrated a strong will to organise foreign workers in the hospitality sector, it still needs to clarify its position by developing policy to provide guidelines and clear organising strategy. For instance, the recruitment form still requires one to provide the 'Green' identity card number. In an informal interview with the then National Organiser about the content matter of the recruitment form, he acknowledged that indeed it needed revision to accommodate passport holders.

In its endeavour to organise foreign workers, the union is confronted by a plethora of challenges which include meagre financial resources, material and human resources. Quality organising and service delivery requires ample resources which could be derived from workers subscriptions; the most reliable source of revenue for unions. Given the kind of flexible contracts in the sector coupled with a high turnover, prospects of achieving this goal might be futile. Aside, an attempt to reconcile local and foreign workers needs adequate human resources to service such members. Thus, while there exists a strong political will to organise foreign workers, still the project might be paralysed by inadequate resources.

The other challenge is that of unrealistic expectations by migrant rights organisations (MROs) as partners. For example, in November 2016, I witnessed a situation whereby one of the MRO leaders called the national organiser with the impression that a group of foreign migrants were keen to join the union. The national organiser abandoned his schedule for the day (of which one of such was a follow-up interview with me) with the hope of recruiting new members. Unexpectedly, he landed himself in a hearing for one of the foreign workers without any briefing and later advised the affected worker to postpone the case until such a date when the union had been fully informed and also after she had formalised her relationship with the union in order to be allowed external representation in the internal hearing. This observation was such an eye opener as it revealed some of the underlying technicalities of forging alliances. Trade unions operate in a more formalised environment while MROs are often informal structures established out of emotions and limited in service delivery to their members. The majorities of MROs do not fall within the formal tripartite

arrangement which is formally recognised at NEDLAC and in many ways are not eligible to represent workers in labour disputes.

Another technical challenge is that of undocumented migrants. While the union is clear about embracing foreign workers, still it cannot be found operating outside of the country's laws although there is room to assist and advice undocumented workers with their CCMA cases. In totality, one could argue that compared to other unions in the country, SACCAWU stands out as a good example of a proactive union in relation to positive responses to the quandary of foreign workers. However, while there is a high level of conscientisation at national level, the opposite could be said about the union's shop stewards at shopfloor level who still need to be educated about the need to embrace foreign nationals into the union's ranks (see LRS, 2012).

7.4 Other initiatives by unions

Outside of the two selected studies, it is important to highlight some interesting initiatives by some trade unions in other sectors. Two of these stand out and will be briefly explained for the purposes of sharing and learning. First is the initiative by South African Domestic Service & Allied Workers Union (SADSAWU), a union for domestic workers union in South Africa to organise foreign migrant domestic workers. Second, is the Public Services International (PSI) initiative to ensure its affiliates in South Africa organise all foreign public services workers, a project coordinated at global level.

7.4.1 Mobilising migrant domestic workers in South Africa: The Case of SADSAWU

The South African Domestic Service & Allied Workers Union (SADSAWU) is a union for the domestic sector that includes all domestic workers full time or part time; sleep in or *out; gardeners*, child minders, home care workers, chauffeurs or drivers for employers at private homes and those looking after the elderly. Domestic workers have the same rights as other workers and are eligible to both UIF and the compensation fund although it is hardly ever applied in practice.

Domestic workers comprise a significant part of the global workforce in informal employment and are among the most vulnerable groups of workers. Currently it is estimated that there are 53 million domestic workers worldwide (ITUC, 2013) and this accounts to between 4 to 10 per cent of the total workforce in developing countries and 1 to 2.5 per cent in developed countries (WIEGO, 2013b). Women and children, especially migrants,

significantly contribute to the domestic workers workforce and approximately 96 per cent of domestic workers are women.

A plethora of problems face domestic workers in South Africa such as poor working conditions, labour exploitation, and abuses of human rights. This is aggravated by the uniqueness of domestic work; that it is performed in a private household (see Ally, 2007) and involves very personal relationships which make it very difficult to be regulated and as such poses great challenges in organising domestic workers into a unified force. Overall, a national census conducted in 2011 revealed that 1.51 million workers in private households, accounting for 11% of all employed people are domestic workers.

A number of international frameworks are available to protect both domestic and migrant domestic workers. The ILO Constitution and ILO Declaration on Fundamental Principles and Rights at Work, 1998, state that member States must adhere to principles in the 8 fundamental ILO Conventions even when they have not ratified the specific instrument/s in question. South Africa has since ratified ILO C189 – Domestic Workers Convention, 2011 (No. 189) on June 20, 2013. In addition to international instruments, national legislation that cover and recognise domestic workers exist such as the Basic Condition of Employment Act (BCEA) which was promulgated in 1997 and amended in 2002; the Labour Relations Act (LRA), the Sectoral Determination (SD 7) amended on the 29th of August 2014. In 1999 the ECC – within the Department of Labour (DoL) – was established to advise the Minister of Labour on establishing minimum wages for South Africa's 11 vulnerable sectors including domestic work. In 2002 minimum wages were set for the sector for the first.

SADSAWU committed to continue to champion the struggles for the most vulnerable workers aimed at transforming the atrocious working conditions faced by poor working women and men; foreign nations included. To reinforce this commitment, SADSAWU participated in a global campaign to organise foreign domestic workers in South Africa and this was coordinated at global level by the International Labour Organisation (ILO). The aim was to support national unions in their organising efforts targeting foreign domestic workers.

In December 2014, SADSAWU participated in a national workshop aimed at seeking ways to organise and integrate domestic workers from Zimbabwe, Mozambique, Malawi, Swaziland and Lesotho in South Africa. Again, the purpose of the workshop was to provide a forum for local and migrant domestic workers in South Africa to interact and share experiences on the challenges they experience in the sector as well as to educate them on their labour rights

irrespective of their nationality. In addition, part of the objectives was to create partnerships and establish cooperation between different stakeholders within different unions representing domestic workers and to raise awareness on human and labour rights issues facing women migrant domestic workers in South Africa.

According to the national organiser of the union[190], integration of foreign domestic workers in its ranks is believed to strengthen the organised domestic workers movement and assist them to have a stronger voice on policy issues and on leveraging their numbers to improve individual benefits for members. The union suffers from a very low unionisation rate and as shown in chapter 4, the major challenge is that employers prefer foreign domestic workers for exploitation purposes.

In addition, domestic workers, especially those from outside South Africa tend to be ignorant of the protection offered by labour-friendly legislation in South Africa. Part of its aims is to ensure that all domestic workers irrespective of nationality are able to be educated on their rights; updated on national policy and legislation around matters of BCEA, sectoral determination, severance pay, UIF, technical guidelines to termination and other relevant policy guidelines for the protection of domestic workers including ILO Convention 189 and Recommendation 201 on Decent Work for Domestic Workers. All domestic workers have the same rights except that foreign workers need to be legal in the country in order for them to be registered for UIF, and receive benefits if they decide to go back to their countries of origin. Many foreign migrants are undocumented although the union emphasises that it is not Home Affairs to judge and thus would organise all domestic workers in the country irrespective of their migration status. The union has since partnered with migrant rights organisations to achieve its goals of organising all domestic workers.

Migrant rights organisations in this partnership assist with legal documentation of foreign workers to ensure compliance with national immigration and regulatory frameworks. The union also utilises social media platforms like WhatsApp to reach out to foreign domestic workers. Owing to the positive political will by its top leadership, the union has so far made inroads in as far as organising foreign workers is concerned albeit conventional challenges like private workplaces (see Ally, 2007). In spite of challenges, SADSAWU has managed to forge alliance with migrant rights organisations to augment efforts in organising domestic

[190] Interview with Mama Monica at a workshop - Towards a Common Convergence: 'SADSAWU/Migrant domestic workers dialogue workshop'. 6-7 December, 2014. Booysens Hotel. Chris Hani Institute

workers. The case of SADSAWU stands out as a good case which other unions organising in other sectors could emulate and learn from some of positive aspects of the union's organising strategy such as establishing partnerships with migrant rights organisations to augment efforts.

7.4.2 Public Services International (PSI) and its South African affiliates organising strategy

Public Services International (PSI) is a global union federation (GUF) of public sector trade unions, representing 20 million workers involved in the delivery of public services such as health, social services, utilities, municipal and state services. The GUF represents over 7 million workers in the health and social care sectors, which are currently seeing an increasing phenomenon of migration and thus supports legal channels for migration as a way of avoiding exploitation. The GUF also promotes a Migration Programme through partnerships with its affiliated public service trade unions worldwide in defending the human and trade union rights of migrant workers while promoting equality, access to justice and quality public services for all (see www.world-psi.org)

PSI has since begun to coordinate and develop transnational partnerships between trade unions in labour-supplying and host countries with the primary goal of attempting to facilitate enabling factors to support migrant workers. The aim of the migration programme is to provide basic information to migrant workers within or those who intend to immigrate to other countries. Thus, the GUF has developed a migration passport with the hope of assisting both sending and receiving trade unions in their endeavours to service migrant workers and to ensure a humane and dignified migration process. In the view that the world has become a global village, this tool is part of the process of addressing inequities, inequalities and injustices faced by all workers in the face of globalisation. According to the World Health Organisation (WHO):

> Globally, health workforce shortages continue to be greatest in sub-Saharan African countries that together bear 24% of the world's disease burden today, but have only 3% of health workers and less than 1% of the world's financial resources to respond to this burden (WHO, 2006).

Due to shortages and inequitable distribution of the health workforce, the past few decades have witnessed expansion in the international migration of health workers, with patterns of migration becoming increasingly complex (Nair & Webster, 2013; Taylor & Dhillon, 2011).

In this period, developed nations have become more and more reliant on international migrants to fill health workforce positions across the skill spectrum, from home health aides and assistants to nurses, physicians, and medical specialists. With rising life expectancy and expanding elderly populations, this reliance is expected to continue in coming decades and – in several health occupations – intensify. Migration, together with other factors in many source countries such as insufficient health systems, low wages, and poor working conditions, are key factors determining low health worker density in countries with the lowest health indicators. WHO estimates that the basic health-care system of 57 countries is affected by shortage of human resources and about one third of these countries are the emerging market economies (Nair & Webster, 2013) cited in www.who.int/hrh/migration). Indeed, like any other workers, health professionals are migrating in search of greener pastures to wealth countries like Europe, North America, Australasia and elsewhere leaving a huge gap in human resources for sending countries.

In their host countries, foreign workers face a myriad of challenges which include difficulties with documentation; confiscation of passports by employers; poverty, xenophobia, racism, enslavement; erratic payment of wages; absence of social security; sexual harassment, gender-based violence, and human trafficking. Above all, these workers are deprived of their basic labour rights most notably, the right of association. In the global South, health professionals are often attracted to those countries with strong economies albeit legal and policy challenges (see Segatti, 2014). Several barriers impede integration of foreign health professionals in for example South Africa, whereby certain SADC agreements forbid countries from 'poaching' health personnel from each other. Trade unions have played a very little role to ensure mobilisation and representation of health care workers. Against this background, the PSI as an overarching body for health workers initiated and funds programmes to ensure that its affiliates prioritise foreign health professionals into their ranks.

As such, the GUF works closely with its affiliates from sending and receiving countries and since 2012 has been running a four year programme aimed at supporting its affiliates in their efforts to organise foreign health workers. The senior leadership of PSI are very supportive of this initiative and acknowledges the fundamental role played by foreign workers in their host countries as revealed in the opening remarks by Thandeka Msibi at a *Decent Work and Social protection for Migrant Workers in the Public Services* Workshop:

> Migrant workers are part of us. I would like to encourage all participants today to look back at where we came from as workers. Our brothers and sisters have supported us against apartheid…We are living in a Global Village and as unions, we should Organise, Recruit and Embrace all workers as we believe in "Decent work for all workers" irrespective of where we come from. Let's reflect back on our principle of "Equal pay for work of equal value" and ensure Social Protection for all workers. Above all, let's denounce xenophobia in our workplaces and say: "Xenophobia –Not in My Name" Amandla![191]

In addition, a passport of migrant rights was developed to conscientise foreign workers of their rights as the starting point for organising. This was out of the realisation that many migrant workers have unrealistic expectations and insufficient information about recruitment procedures, labour and immigration laws, and employment opportunities including living conditions in their host countries including curbing human trafficking. This lack of information has placed a staggering number of migrant workers in precarious situations. The availability and accessibility of adequate and up-to-date information is crucial for individuals in order to make informed decisions, avoid fraudulent practices and other pitfalls in the migration process.

The idea of the PSI passport of rights came out of the PSI Health Sector Strategic Meeting held in Geneva on 18-19 November 2013, and echoed at the PSI-ILO Decent Work Across Borders Project Meeting on "Social Protection for Migrant Workers" held in Berlin on 28-29 November2013. In June 2014, the PSI Executive Board endorsed the development of the PSI Passport. The South African chapter of PSI has been successful in developing essential tools for foreign health professionals including hosting of dialogues between hosting unions, migrant rights organisations and migrant workers. However, at the time of writing, affiliates had not yet succeeded in establishing migrant desks within their own unions, a challenge attributed to lack of political will. Workplace restructuring such as casualisation, 'moonlighting' and labour broking have resulted in declining union numbers over the years. Many foreign health professionals are keen to join unions as revealed by some of the migrant rights organisations. Overall, if foreign health professionals are absorbed into the mainstream

[191] Thandeka Msibi, President of the Democratic Nurses Organisation of South Africa (DENOSA). Also the National Chairperson National Working Group (NWG) for the Migration Project and PSI Vice- President for Africa and Arab Region, Opening Remarks: Decent Work and Social protection for Migrant Workers in the Public Services Workshop; 23 -24th of June 2015, Parktonian Hotel, Braamfontein, Johannesburg.

trade unions, then they would more likely boost up membership. In her book: L.A. Story: Immigrant Workers and the Future of the U.S. Labor Movement, Milkman, (2006) argues that organising immigrants is essential as this would enhance unions numerically. This is supported by Lopez (2004) based on his work on organising home care workers in the US where he argues that embracing atypical workers who fall outside of standard employment would revitalize unions. In South Africa and in many parts of the world, the public sector has become the largest employer and is also host to many immigrant health workers such as doctors, nurses and home-based care. Thus, ignoring immigrants is would to some extent lead to undermining of the collective bargaining process as employers will hire foreign health personnel through labour brokers or moonlighting and undercut wages in the sector.

7.4.3 Social movements and mobilisation of foreign workers in South Africa

7.4.3.1 #OutsourcingMustFall (#OMF)

While trade unions have to a greater extent paid a little attention towards foreign workers, emerging social movements like **#OutsourcingMustFall** have attempted to cover up this gap. In August 2016, workers from various sectors came together to establish a loose network of workers in their efforts to intensify their struggle against flexible contracts like causalisation and outsourcing in the workplace. Strategic meetings were convened in townships such as Soweto and Thokoza Park with the aim of building a strong and militant workers organisation guided by the belief that "workers are their own liberators" (Phanyeko, 2017: 4). This social movement has its roots in the Workers and Socialist Party (WASP) and was stimulated by the desire to end outsourcing which had become rampant. As Phanyeko (2017) puts it:

> Some workers had already learned through experience that the majority of trade unions were doing absolutely nothing to fight outsourcing and that some union bosses owned or were in partnership with outsourcing companies. These workers therefore welcomed the opportunity to use #OMF as a vehicle to struggle for permanent jobs and improved wages and conditions"(Phanyeko, 2017: 4)

Despite challenges related to rivalry and workplace victimisation, the #OMF gained momentum and spread from Johannesburg to other cities such as Pretoria as more emphasis was placed on "building maximum unity and support including with other progressive forces and communities" (ibid). In particular, the movement forged alliance with the General

Industrial Workers Union (GIWUSA) to represent workers in labour disputes and at the CCMA.

According to Masiya (2012), social movement unionism:

> …involves trade union movement struggles characterised by shop-floor participatory processes, broader socio-political struggles and trade union alliances with community and political organisations. This perspective transcends economistic trade union struggles that are limited to the workplace (2014: 444).

Again, according to Bezuidenhout (2000) cited in Masiya (2012) contends that social movement unionism entails a socio-political character which transcends beyond 'workerist' ideology towards social justice; human rights including democracy (see also Yu, 2013). Ross (2008) posits that workplace relations are shaped by the structure of power. Accordingly, Carola, Heery, and Turner (2004) view trade unions as intricately connected to social movements such as community-based organisations, faith-based organisations and charity organisations. The study adopted social movement unionism in its attempt to unpack potential representation models for foreign workers in South Africa based on integration and participation in communities where they live.

Interestingly social movements are not only limited to workplace issues but go beyond in seeking social change to community challenges such as xenophobia and also promoting programmes around integration. An informal conversation with one of the key co-ordinators, Sebei Mametlwe revealed that the *#outsourcingmustfall* is playing a very influential role in its attempt to unite locals and foreigners in communities, a task that mainstream trade unions have failed to undertake over the years other than being reactionary whenever xenophobic attacks explode. Aside workers issue, the movement has also been very instrumental in championing students' struggles in the university ensuring that foreign students also fully participate in the *#feesmustfall campaign.* The movement also extends its role in fighting against capitalism to fighting against dictatorship in Africa. This is grounded on the belief that foreigner workers stream into South Africa because of poor governance, lack of democracy and endemic corruption. As such, the movement plays a very significant role in a loose network; Zimbabwe Solidarity Network (ZSN), supporting its struggles for the realisation of a democratic Zimbabwe. It is also extensively involved in lobbying organised labour in South Africa in particular independent trade unions to embrace all workers irrespective of nationality.

7.5 Workers Advice Offices: An alternative to foreign workers representation?

Civil society organisations and community-based organisations have always played a very practical and complementary role in the everyday lives of migrants in their host countries. They offer various services ranging from legal, documentation, socio-economic including psych-social support. In addition, through their advocacy role at grassroots level, they attempt to bind communities together though integration of both locals and migrants including rehabilitation of those mentally affected by the migration process albeit limited resources. Worker advice offices could be identified as a hybrid of both civil society and political organisations due to their intervention on labour matters.

In many countries such as the United States of America, before the establishment of trade unions, worker advice offices (WAOs) were responsible for organising and representing workers and thus laid the foundation for the former. In South Africa, WAOs were very prominent during apartheid when Black workers were denied the right to form unions of their own choice. With the prevalence of trade union influence, WAOs somehow diminished and played a marginal role in worker politics. However, since the workplace restructuring which has taken place due to neoliberal policies, WAOs are beginning to regain their space and recognition as vehicles for representing workers while trade unions are weakened and workers are gradually becoming precarious. For instance, in the United States, according to Janice Fine (2013), a leading scholar focusing on worker advice centers in North America, the number of such centers grew from only five nationwide in 1992 to at least 135 in 2005, spreading across 80 US cities and rural areas. Fine defines worker advice offices as "community-based mediating institutions that provide support to communities of low-wage workers", and notes the particular growth of these centers among the vulnerable migrant workers. However, from the context of South Africa, it is difficult to make a distinction between worker advice offices (WAOs) and migrant-rights organisations (MROs). My study shows that a 'grey' area exists and the characteristics tend to overlap each other. The cross-cutting feature is that both render services for free.

Worker centers take various forms depending on national context and at times offer support to workers beyond the scope or in different ways than many traditional unions. According to Fine, worker centers use a combination of approaches to their work, the main three being: Service delivery, including legal representation to recover unpaid wages; English classes; worker rights education; access to health clinics; bank accounts and loans; advocacy, including researching and releasing exposes about conditions in low wage industries;

lobbying for new laws and changes in existing ones; working with government agencies to improve monitoring and grievance processes; and bringing suits against employers; organizing, building ongoing organizations and engaging in leadership development among workers to take action on their own behalf for economic and political change. For instance, in South Africa, worker advice offices serve workers according to contextual needs as reflected in the interview extract below:

> We have signed a COIDA contract with the department of labour whereby we hold workshops addressing and making workers aware about their rights and COIDA issues. We also work with Mpumalanga Access to Justice Cluster and pro bono lawyers who represent these members where such representation is required. Also, we have recently signed a contract with Legal Aid South Africa… We also met with government and other stakeholders to discuss issues like access to government buildings and as well as other service facilities as there were no ramps or special entrances made for people with disabilities. We succeeded with this as we saw a lot of places such as clinics, halls and most government services buildings as ramps were put in[192]

> We cooperate with a number of organizations such as the Department of Labour and CCMA for attendance of workshops and referrals, with CPF and SAPS, Streets and Ward committees, and also Black Sash where we refer some labour cases for further help and representation… In cooperation with Human Rights Commission and Black Sash, we distribute pamphlets produced by Human Rights Commission to workers and organize Campaigns to make workers aware of their human and labour rights[193]

In South Africa, according to a study conducted by Wilderman et al. (2016), there are approximately 500 advice offices although only a few offer labour-related services. WAOs or worker centers may function according to different models, depending on the social context; the changing nature of the workforce, and the history of the labour movement in that particular region. Unlike unions, in South Africa, WAOs very often depend on philanthropic funding and funding from Legal Aid Society in the case of law clinics. This is because they are not membership organisations who rely on income from member subscription. They are registered under the Department of Social Development (DSD) as non-profit organisations (NPOs). An interview with the general secretary of ZIWUSA revealed the red tape involved

[192] Interview with Lebohang. 09.11.2014
[193] Interview with Joseph. 10.11.2014

in registering a union and also the annual reporting conditions which are cumbersome. As such, many organisations would rather avoid registering as trade unions and remain independent of the Department of Labour bureaucracy.

Looking at worker advice offices in relation to trade unions in other countries, one may note three main models; as a first step towards the creation of trade unions; as a parallel structure to trade unions to assist workers and as a replacement of unions when unions lose their power (Wilderman et al, 2014). While trade unions in South Africa acknowledge the important role played by WAOs, still there have been ideological tensions between the two. WAOs are very often associated socialist ideology which previously abides COSATU and its affiliates during the struggles against apartheid and not until the introduction of neoliberal policies by the ANC which is a tripartite partner to the federation. The negative effects of tripartite alliances could be well explained in the context of France as Broder (2008)[194] rightly puts it:

> When making such alliances the party was keen to keep the labour movement in check, denouncing struggles not under its control as "provocations" against the PCF and defining itself as a respectable party of law and order. Given the party's reliance on the dogma of "socialism with French colours" working-class revolution was placed far off the agenda — calling for a reforming government to nationalise industry and maintain France's independence from American foreign policy, the PCF's aim was to use parliament to gradually introduce a state-capitalist version of "socialism from above".

It is clear in this statement that bipartite alliances between political parties and unions to a greater extent undermine working class struggles and collectivisation in exchange for government positions. Similarly, as the above statement demonstrates, through its confluence in the tripartite alliance, COSATU's voice and commitment to objectively represent workers seems to have been derailed thus resulting in the emerging alternative voices to represent and lead workers voices. It could be argued that the political 'marriage' between the left (COSATU) and right (ANC) further expands the bridge between trade unions and foreign workers as the former conforms and responds in line with immigration laws that are crafted by its tripartite partner.

[194] David Broder. French Immigrants Struggles/ Class struggle in France May-June 1968**.** Submitted by AWL on 4 July, 2008

Turning back to alternative models of representation, WAOs also offer services at an individual basis while trade unions very often are involved in group or class-based services through the collective bargaining process although they also represent workers in individual labor disputes. A very interesting defining feature of WAOs is that they establish short-term loose relationships with their clients while that of trade unions seems to be long-term relationship until one decides to terminate their membership or if they lose their jobs. Again, WAOs offer their services for free while trade unions can only provide service to members in good standing when it relates to subscriptions which are deducted from their wages on a monthly basis. As shown below:

> Advice offices are more attractive because we offer free services and the workers come and leave anytime unlike in the unions who only represent full-time employees and someone is required to pay a subscription fee every month[195].

While there are no monetary attachment in the relationship between WAOs and beneficiaries, however, some tend to develop some mutual relationships as shown below:

> We only ask professional workers, such as teachers and police officers to come and help when they have time. This is just a voluntary participation we ask from them, not that they are obliged or compelled because they were helped. Furthermore, we established a strong link with SAPS whereby they refer light or small cases brought up by the community to us to solve at our office[196].

Worker advice offices are responding to the new challenges of migration and flexible labour, that traditional union structures are unable or unwilling to address, or in sectors where unions are weak or absent as insinuated in a statement below:

> Most of the construction workers who come here are union members and one family man once told us that the union was not helping him as he was told by the union officials that they went to speak to his employer on behalf of the union and were not representing[197]

In light of the above statement, it is clear that WAOs and trade unions complement each other in different ways. This is partly evident in the context of South Africa today as revealed by the study that the primary goal of trade unions is to respond to labour matters while WAOs to

[195] Interview with Lebohang 09.11.2014
[196] Interview with Lebohang 09.11.2014
[197] Interview with Lerato. 08.11.2014. Telephonic interview.

migration related questions. Nonetheless, it is still to be seen whether the two worker organisations could establish formal relationships for the long-term benefit of all foreign workers. Above all, the there is need to eradicate competition and maximise co-operation and collaboration as the key enemy is the capitalist society in which workers live in.

7.5.1 Nature of worker advice offices in South Africa

Worker advice centre as revealed in the quote above, in general, service even unionised workers and thus collaborate with trade unions in their efforts to assist on labour matters. They often refer workers to trade unions although it is not always the case that all those that are referred join unions. Again, sometimes trade unions tend to ignore workers falling outside of standard employment relations. Some key informants attempted to describe the nature and challenges of worker advice offices as illustrated below:

> We have a lot of unionized workers, specifically construction workers, who come to seek for advice and some, especially farm workers, who are not workers. We have SAMWU offices around but only municipality workers are members of it. We once received a proposal from SACTWU that it would like to recruit through us and only few members joined when we informed them and SACTWU only came once and never came back[198].

> I am not sure which unions represent farm workers and construction workers. Asking these workers if they are part of the unions is part of the questions we ask but we do not go in-depth because we do not have any ties and do not want to seem as if we choose sides. On the side of farm workers, they seem to know about the unions but the power of their employers seems to be threatening them about joining unions. When we ask them about organizing one another or join a trade union, some farm workers told us that they have a representative who was appointed by the employer, and it is this individual who talks to employer on their behalf[199].

> There are an increasing number of people who come here to seek for advice. This could be because there are no law firms, no other advice offices and not even CCMA, which is about 120km, around this place. However, we have increasingly been

[198] Interview with Lebohang 09.11.2014. Telephonic Interview.
[199] Interview with Lerato. 08.11.2014. Telephonic interview.

> working with the department of labour and they have a periodical office which opens only on Wednesdays[200].

While some unions in South Africa are making efforts to forge alliances with migrant rights organisations, however, this is still a slow process as they are still confronted by several challenges such as resistance and lack of political support. WAOs are also confronted by lack of expertise and specialised knowledge on some labour matters. On a positive note, the main union organising in the hospitality sector has managed to forge a loose relationship with a migrant rights organisation; Migrant workers Union of South Africa (MWASA). However, at the time of writing, the two partners were yet to clearly ground and define the kind of relationship they envisaged. Aside, some key informants from WAOs shared some of the victories encountered in the course of their work as follows:

> There was a case last year of a woman working under some contractor at Sasol. She got pregnant and after the management realized she was pregnant, they told her she can go home and they will pay her while at home and this was at around the 3rd or 4th month of pregnancy. She was only paid for two months and after that she never received any payment. After that she was unfairly dismissed as they told her they had hired someone and they stopped paying her because they had to pay that new employee. We therefore referred the matter to CCMA and the employer was ordered to reinstate her. After reinstatement the employee found the environment to be intolerable to her and she resigned and received her benefits[201].

In attempting to understand how worker advice offices operate in the context of South Africa, the study focused on two specific examples elaborated below.

7.5.1.1 Masisukumeni Women's Crisis Centre (MWCC)

Located at the margins of Mpumalanga province where the country shares its borders with Mozambique and Swaziland is a worker advice office known as Masisukumeni Women's Crisis Centre (MWCC). The Advice Office was founded twenty years ago by Mrs. Rachel Nkosi, a former volunteer in a community stakeholders' forum which rendered services to Mozambican refugees at the height of that country's civil war. In 1994, when the ceasefire in Mozambique was pronounced, all stakeholders withdrew their services while in reality, ordinary civilians still entered South Africa seeking refuge and medical services for those

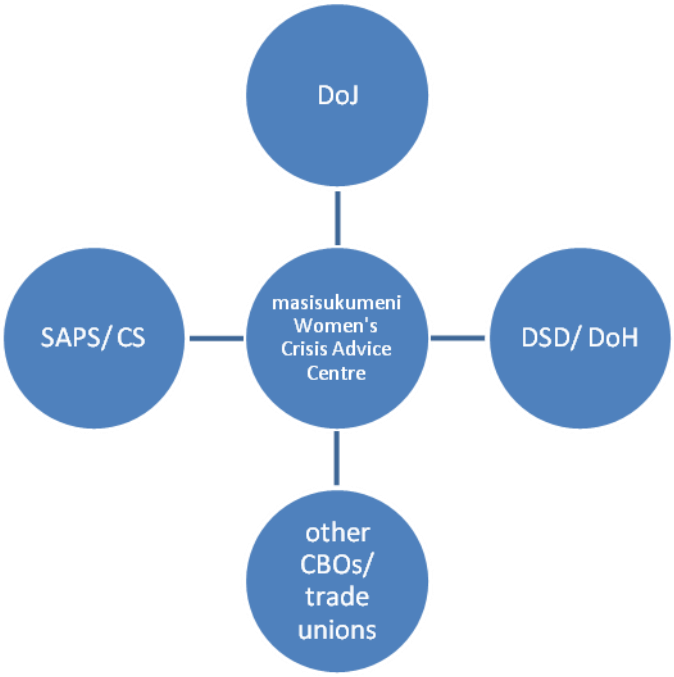
[200] Interview with Fatima 08.11.2014. Telephonic Interview
[201] Interview with Fatima 08.11.2014. Telephonic interview

wounded in landmine accidents. Today, the centre continues to service almost 80% cross-border migrants predominantly from Mozambique and Swaziland, as well as a few from Zimbabwe, including the Pakistani and Indian communities.

The advice office deals with work-related cases ranging between 10-25% of its time and predominantly assists migrant farm, domestic workers and a few who work in safari lodges that surround the area. The most common workplace focused cases received by the office are connected to wages and documentation for migrants, including unfair deportations where employers orchestrate deportation of cross-border employees on pay days. The advice centre has a small legal department handling worker related issues, and, where possible, represents clients at workplace hearing cases and supports advocacy work. In addition, the centre carries out labour and human rights educational training including victim empowerment programmes and assistance with application for documentation like citizenship. To some extent, the office makes referrals to its partners for some of the cases where it lacks expertise and capacity. Services offered by the office are open to all, irrespective of nationality or documentation status.

Partnerships

The advice centre is part of a stakeholders' forum called Mpumalanga Access to Justice (MAJ), which includes government departments, trade unions, and community–based organisations. Government departments include the Department of Justice (DoJ), Department of Social Development (DSD), Department of Health (DoH), South African Police Services (SAPs), DoL and Correctional Services; the trade union Farm Workers of South Africa (FAWSA), which is an independent farm workers union, is also part of the forum. The office works closely with DoJ to ensure fair treatment of its clients and to "win the hearts of prosecutors" in cases which involve rape and domestic violence in particular. In addition, the centre partners with "Friends of the Court" who report back challenges clients face at the courts and assist with "missing dockets", which is a common problem in the justice system. MAJ usually stands-in for Masisukumeni at CCMA if the former is not available to attend cases because of limited human and financial resources. There exists an integrated referral system between these different organisations as summarised in the diagram below. The referral system is reciprocal, meaning that the various groups are constantly referring clients to each other.



Source: Author's own analysis based on interviews with MWCC staff as key informants

Services

The MWCC advice office provides services for free to clients irrespective of nationality. These services include counselling, documentation for migrant workers, support to contest unfair dismissals, application help for UIF and COIDA benefits, self-defence life lessons aimed at curbing women and children abuse, labour and human rights education, and, through partnerships with government, training on income generating projects to encourage women workers to form co-operatives. For domestic workers, the centre directly contacts employers in cases of reported disputes. In the agriculture cases, the Centre works, as mentioned previously, with a trade union called FAWSA which deals directly with farmers owners. According to one of the interviewees, this union is an employer initiated body which commercial farmers in this region of Mpumalanga collaborate with in matters related to farm workers; this union also tends to serve as a barrier to outside unions like FAWU. While this union may have some connections with employers, leaders at Masisukumeni still feel like FAWSA is a more specialised workers representative body which stands in a good position to articulate workers grievances and influence policy. MWCC tries to capitalise on the relationship which exists between FAWSA and commercial farmers to win cases and further workers' interests. The staff also felt that workers may approach MWCC first, rather than approaching unions directly, because receiving support from the union is based on

compulsory membership. Yet, as a community service collaborating partner to Masisukumeni, FAWSA is mandated to take up issues referred to it from its partner organisations irrespective of membership status.

MWCC has offered service to many vulnerable workers and has also managed to establish linkages with specific workplaces. While the formal trade unions appoint shop stewards at shop-floor level, MWCC as an advice office is limited in terms of its constitution and Labour Relations Act (LRA) to supporting activists rather than establish more formal workplace structures. Instead, beneficiaries of the centre's services inform other workers of the services at the centre and become volunteers-- crudely referred to as "i*nformers"*. The purpose of the informers is to keep the centre posted about workplace related problems and also to solicit advice from MWCC on behalf of their fellow workers, advice which is usually offered over the phone. These same informers might also represent their fellows in workplace hearings, relying on telephonic guidance from paralegal officers. This strategy proves very effective, according to one interviewee, as it assists in addressing under-staffing barriers to service delivery; the centre has only one professionally trained paralegal officer who cannot be physically present in several places at one time but can only offer service to many clients in a day through the phone.

Training of informers occurs upon having gone through their own conflict/ grievance process with the assistance of the advice office and friends of the court. MWCC educates its clients about their labour and civic rights which they impart to their co-workers and communities. Where group cases are involved, the centre often embarks on confrontational actions like mass protests, marches, or pickets while utilising these same opportunities to roll out mass sensitisation and workers' rights awareness campaigns.

The office also mobilises communities around issues that affect all community members like domestic violence, rape, physical abuse, police arrests of undocumented migrant workers, workplace exploitation and unpaid wages. For instance, in 2013, the centre mobilised community members against a perpetrator who was involved in child abuse of his 12 years old domestic worker. The young girl was trafficked from Mozambique to work as a domestic worker for the family but ended up as a sex slave. MWCC took up the case and the young girl has been rehabilitated at one of its partner organisation's shelters.

Opportunities and challenges

While partnerships were established in particular with the DoJ, the major challenge is still the justice system whereby cases of "missing dockets" and delayed cases continue to be recorded. The worst cases involve corruption where perpetrators of sexual offences serve a few months or years in prison thereby traumatising communities upon their release. Women workers are alleged to be sexually exploited for job opportunities. "Bad young boys" are accused of protecting their employers as they get promoted as *nduna*. Labour cases have stagnated, in particular those related to COIDA and UIF claims for migrant workers. Employers continue to deduct UIF from cross-border migrants which the latter are then unable to access in the time of need. The same category of workers do not have contracts and are often employed as casuals while their employee numbers continuously change, making it difficult to claim benefits. Some cross-border migrants have worked for several years - some up to 15 years on three month contracts, with constant alteration of their employee codes making it impossible to qualify for UIF claims. These are the kinds of issues that the advice office, along with its partners, continues to struggle to change.

For the centre itself, organisational challenges include poor funding which hinders recruitment of more human resources to service clients. Sometimes, the advice office relies on donations from well-wishers. At the time of interview, the executive director, Mrs Nkosi, reported that the core funding had run out and the remaining financial resources were projects-based. Some government departments like DSD, to some extent, subsidise wages for the Community Advocacy Officer(s). In the spring of 2014, it was unfortunate to learn that the Centre was ambivalent about its future, as all contracts were ending in December 2014. A recent follow up on MWCC in December 2017, showed that is that the organisation survived the financial crisis as it was still in existence and operating by the time of writing of the thesis. By 2017, the organisation had extended its financial resource base and received funding from African Women's Development Fund[202]; International Organisation for Migration (IOM) and Comic Relief. The office received voluntary labour in the past but this created its own challenges; at the end of the month, volunteers "sounded" like they were exploited when others in the organisation received their wages and this did not fit well with the organisation's principles.

[202] To cover counselling, education and paralegal services

7.5.1.2 The Zimbabwe Workers Union in South Africa (ZIWUSA)

This is a union based in South Africa which exclusively represents Zimbabwean workers on labour issues. The Union fights against unfair treatment of workers by their employers while protecting and defending workers against all forms of discrimination or exploitation. The union also offers funeral assistance, repatriation services, protection from unlawful arrest, and assists Zimbabweans to acquire legal immigration documentation such as permits and passports as expressed below through its Facebook page:

> We help you with documentation, unfairly treated at your work place, representation at CCMA, Unfairly dismissed at work, Salary disputes, struggling to access your benefits after serving your employer for some years, Underpaid, massive labour and immigration awareness to educate and empower migrants on their rights.

To become a member, one needs to pay a minimal joining fee of R20. 00 and thereafter a monthly subscription of R20. 00. The union has over a thousand members across all nine provinces of South Africa. Leaders are elected from bona fide members of the union who have fully paid-up their subscriptions.

The union organises Zimbabwe migrant workers based in South Africa and is not industry based, cutting across all sectors (domestic, farm, hospitality, casual, and highly skilled workers). The organisation declares that it is not tribal, racial, religious, ethnic, or gender biased.

ZIWUSA is headquartered in Johannesburg and claims to have fully functional structures in other provinces of South Africa; efforts are underway to have offices in all the provinces of South Africa. The organisation is not federated but instead has decentralised its operations to various provinces. They believe the union should organise workers to enable them to speak with one voice and also to advocate for anything that pertains to their needs as they believe there is power in numbers.

Zimbabwean migrant workers in South Africa approach the union seeking advice or services to resolve various labour and immigration related matters. ZIWUSA was established after realising that Zimbabweans were struggling to access the immigration information easily from the department of Home Affairs. Furthermore, some of the migrant workers lack basic education hence they need assistance in labour related matters and on acquiring legal documents.

While ZIWUSA presents itself as a union, it is not necessarily able to use the same vehicles as traditional and recognised trade unions for organising and advocacy. The leadership of the union admitted that they came up with the term "union" simply because they were dealing with worker related matters. In practice, the "union" operates more like an advice office as it lacks some characteristics of trade unions and is not involved in tripartite negotiations or collective bargaining processes. However, the union hopes to link up and partner with local trade unions and national federations to magnify its voice.

In a follow-up interview with the secretary general of ZIWUSA, four months after our first interview, he mentioned that the organisation had recently signed up for a partnership with a local independent union. The idea is that the local independent union will be responsible for administrative work such as collection of subscriptions through employer payroll stop-order system. It turned out though that ZIWUSA is registered as a Non-Profit Organisation and is not able to generate income through payroll subscriptions while the local independent union, as a formally registered trade union under the Labour Relations Act, is permitted to generate funds through subscriptions.

ZIWUSA is also part of a Zimbabwe Special Permit Stakeholders forum, which is responsible for engaging the Department of Home Affairs Minister and Directorate to ensure documentation of Zimbabwean workers in South Africa. As mentioned previously, the organisation is not involved in any formal collective bargaining processes but it does engage employers directly in certain sectors like domestic, hospitality and farm work. The majority of its membership is drawn from these sectors and the organisation managed to mobilise and sign up members through the Zimbabwe Special Permit (ZSP) documentation process which took place between October and December 2014. In 2014, the DHA migrated to online applications and the office assisted computer illiterate and poor workers who could not apply for renewal of their permits on-line. While at this point it offers direct individual and group service for Zimbabweans, ZIWUSA has a long-term vision of expanding its services to other workers from the region and entire continent. As part of the ZSP Stakeholders' forum, the union is participating in the ministerial engagements with the Minister of Home Affairs in South Africa to ensure amnesty and special dispensations are also extended to other workers from the SADC region namely Mozambique, Swaziland, Malawi, Lesotho and DRC.

The advice centre's existence is, however, threatened by serious challenges. At a very embryonic stage, about eight months after establishment - the organisation has been

distressed by political in-fighting including tribalism. While the union serves Zimbabweans, it is however polarised along ethnic lines which could be traced back to the pre-migration experiences encountered while still in Zimbabwe. Indeed, the 'gukurahundi[203]' ghost still haunts Zimbabweans in whatever destinations and organisations they find themselves, even in their new host countries. It has become a norm that wherever Ndebele and Shona meet to build up institutions, clashes and confrontations usually occur, with the former accusing the latter for persecuting them through the 'gukurahundi' massacres. To counter such challenges, organisations often try to strike a balance in terms of leadership representation from both groups; this is not the case with ZIWUSA, where Shona complained that they are under-represented in the leadership structure. This is a potential time bomb which the union is sitting on and is already creating cases of factionalism.

To summarise the key points emerging, the two case studies provide a picture of how migrant workers are finding ways to more effectively engage around labour and immigration issues in South Africa. Both Masisukumeni Women Crisis Centre (MWCC) and Zimbabwe Unions in South Africa (ZIWUSA) have acknowledged the fundamental role they play in servicing migrant workers, with the former claiming to service 80% immigrants and the latter declares to be advising and assisting 100% Zimbabweans. It is interesting to note that, at least in these two cases, immigrant workers tend to invest much of their trust in these "advice offices" which are more deeply connected and related to their nationalities and experiences as immigrants; this stands in contrast to the local trade unions, who, to some extent, workers may view as being xenophobic in as far as service delivery to membership is concerned. Advice offices oriented to workers nationality and status as immigrants might also be advantageous to immigrant workers in terms of language and general political and socio-economic understanding. What also seemed to emerge from these case studies is that undocumented migrants in particular, may feel freer to approach advice offices than South African trade unions because there is less fear of reprisal and deportation.

To illustrate these points about how worker advice offices that provide services to immigrants and how they speak more directly to immigrant workers, I have been following

[203] Gukurahundi refers to the "early rain that washes away chaff" and was a form of genocide that lasted for four years and was perpetrated by the Mugabe and ZANU PF regime against the Ndebele people in Zimbabwe in the early 1980s. A special military unit – the Fifth brigade was responsible for the massacre of close to 20, 000 people from Matebeleland and Midlands regions. Later on, in 1999, Mugabe described this phenomenon as "moment of madness" (see Alistair Boddy-Evans, 2017). What Was Gukurahundi in Zimbabwe? Online Humanities and Culture & history.

conversations of the ZIWUSA "WhatsApp" group for the last two years. Members communicate in Zimbabwean vernacular languages like Shona and Ndebele. They use this group chat to advise each other about available jobs and courses. Some have posted testimonies of the good work being done by the union, especially with hearing representations (through referral systems) which they, as immigrants, have not experienced before. Some working in vulnerable sectors like domestic, hospitality and farm work admit that this is the first time that they would dare to be affiliated to a union. The ZIWUSA case demonstrates that many immigrant workers may be "union phobic" towards unions that do not reflect their own immigrant experience yet they have a strong demand for the kind of networking, services, and basic support that collective organisation could offer, finding comfort in worker oriented organisations established and connected by those with the same nationality and experience as their own.

These case studies suggest that partnerships between trade unions and immigrant-oriented advice offices could serve to not only restore confidence but might invigorate trust in traditional national trade unions amongst immigrant workers. These organisations might also have complementary strengths in the kinds of services, knowledge, and collective issues they are able to address; for example, migrant organisations could assist in identifying and mobilising migrant workers while registered trade unions could take up migrant specific needs and issues at the collective bargaining table, targeting specific employers and institutions as well as bringing added resources and capacity to organise and advocate. In these ways, these two case studies help highlight the strengths and shortcomings of migrant oriented advice offices and the possibilities for collaboration with trade unions in a way that might allow both sides to build greater power and unity for workers.

7.5.2 Paralegal Advice Offices; Law Clinics and Public Interest Organisations as subsets of WAOs

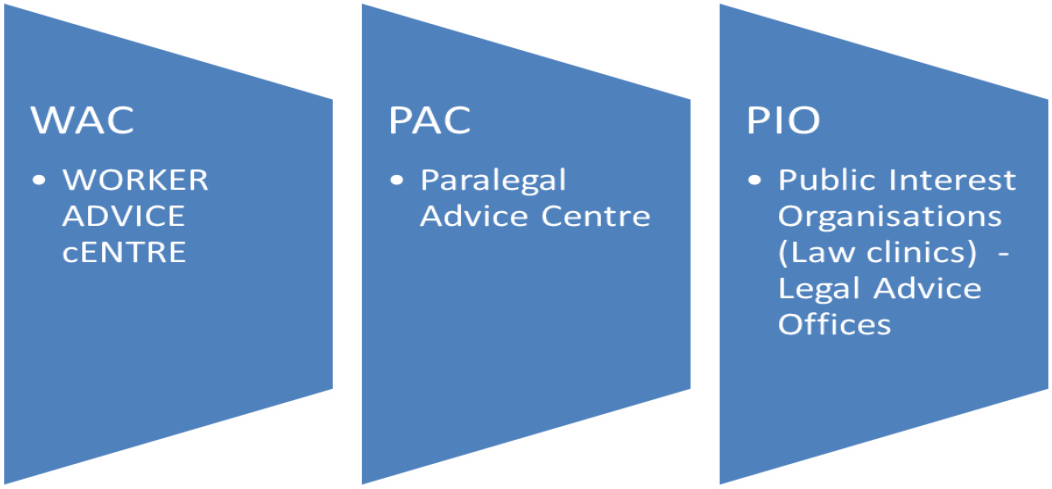
Paralegal advice offices (PAOs) play an important role in promoting workers' rights as manifested in the two case studies above. Moreover, they play an important role in promoting the values and obligations contained in the country's Constitution. Law clinics assist with more legally complex matters while PAOs play a very fundamental role in providing legal services to rural communities, as shown in the case of Masisukumeni.

In many instances, worker advice offices do not have the capacity to address legally-related matters and disputes and thus community paralegal offices play a very fundamental role in

closing the gaps. Many poor working people in particular those who fall within vulnerable sectors cannot afford exorbitant fees for professional legal representation in courts or labour tribunals and thus seek such services on a pro bono basis through paralegal advice offices. Paralegal offices seem much more approachable than legal professionals as at times people find it quite daunting to present their cases to legal professionals or to appear in courts.

As mentioned before, Masisukumeni Women's Crisis Centre relies on trained in-house paralegal officers while ZIWUSA was yet to send some of its officers for paralegal training. In a number of cases, labour disputes require legal services especially at CCMA level and many trade unions are reported to be spending more of their overall annual income on this. Very often, paralegal services are provided by ordinary community members who understand the context of communities of their beneficiaries and are found in both rural and urban settings. Community-based paralegal advice offices are often responsible for mediation and conflict resolution in a local context. However, more legally complex matters are escalated to law clinics which are usually concentrated in urban areas and universities. Class- based litigation is usually undertaken by public interest organisations such the legal resource centre (LRC) and Lawyers for Human Rights (LHR) in South Africa. The diagram below illustrates the trajectory through which labour matters could be resolved using pro bono services:

Figure 3: Probono Services



Source: Author's own analysis

Aside pro bono legal services, as revealed in chapter 5, workers also seek the services of private legal companies such as Scorpion Legal Aid or Clientele Legal in South Africa. However, similar to trade unions, private legal services are provided subject to subscription of a monthly fee. This study discovered that very often those workers involved in livelihood

activities in criminalised sectors like Zama-Zama usually prefer private legal services. To substantiate this assertion, through shadowing a court case[204] involving three foreign ZamaZama, the researcher observed that free legal service was not always reliable. Families of detained *Zama-Zama* approached two prominent public interest organisations only to be declined representation on the grounds that their case involved criminal activities which were openly against the laws of the country and as such fell out of the service scope of the organisations. To further complicate the matter, the detainees were undocumented. The PIOs claimed that their mandate involved human rights related cases even though it was clear that the zamazama were unlawfully detained. This raises questions of structural xenophobia and hypocrisy amongst some of these local PIOs. Nevertheless, the three Zama-Zama were later rescued by an independent private legal practitioner after being 'robbed' by the first attorney whom they had paid a huge sum of money only to give up on the case. In total, they parted with over twenty thousand dollars, which their families raised with the assistance of their social networks. So, in a nutshell, it is not always the case and neither is it easy for worker advice offices, paralegal advice offices or public interest organisations to resolve legally and criminal related labour disputes compared to clearly labour disputes.

Thus, it would somehow sound very naïve and insincere to entirely discredit WAOs, PAOs and PIOs based on the Zama-Zama case. Nevertheless, based on observations, the researcher is of the view that similar to trade unions, pro bono service providers need to revisit some of their stringent conditions in order to be able to fully represent all workers irrespective of nationality and economic status as it seems much of the services are somehow limited.

Overall chart summarising the position of unions, social movement organisations, WAOs, and the type of services they render to migrant workers.

[204] In September 2016, an informal mining shaft collapsed at Langlaangt in the Westrand area and illegal miners (Zama-Zama) were trapped underground. Unfortunately, rescue team officials took long to intervene and fellow zamazama went underground to rescue their colleagues. By the time they came out with one of the victims, police were already on the ground and immediately arrested them despite witnesses testifying that they had not gone underground for the purposes of mining. They were detained in prison for almost two months on unsubstantiated charges only to be acquitted after languishing in cells.

Table 19: Summary table of responses to migrant workers and services offered by various institutions

Representative mode	Position on Foreign Workers	Services Offered
Trade unions	No policies in place Ambivalent although few organising in sectors with a high concentration of foreign labour have begun programmes aimed at organizing	Collective bargaining on economic needs like wages and social security
Worker Advice Offices (WAOs) – WACs, PACs, PIOs	There are about 500 WAOs in the country but not all provide services to migrants. Their main focus is casual, subcontracted, labour-brokered and outsourced workers	Legal support and class litigation related to immigration matters or access to services (e.g. education, health, banking, etc)
Migrant Rights Organisations (MROs)	Key objective and mandate is to assist migrants from a holistic perspective through direct services or referrals	Immigration services-through lobbying including advocacy for favourable policies like special dispensations to regularise undocumented migrants Social services like shelter, counselling, mass education on migrant rights; advocacy through campaigns such as anti-xenophobia
Social Movement Organisations (SMOs)	Many are pro-migrant workers struggles and forge alliances with communities, progressive workers and students movements including MROs to champion migrant and casual workers' rights	Advocacy work through direct confrontations e.g against outsourcing and for immigration law reforms

7.6 Summary

The chapter attempted to unpack various alternative models available for potential mobilisation, participation and representation of foreign workers in South Africa. Given the low level of political will by trade unions to organise foreign workers, it is crystal clear in this chapter that for the moment the best model of representation of foreign workers could be through other external models of representation outside of internal models like worker committees and forums. While unions like NUM appreciate the important role played by foreign workers in democratising the general political environment including the workplace, however, they are still to develop clear policies and strategies.

Emerging social movements, worker advice offices, migrant rights organisations, probono legal centres including private legal firms tend to cover the representation gap and a broader spectrum of issues beyond the workplace to community challenges like xenophobia. However, such model of representation to a greater extent addresses social and legal needs leaving out economic demands such as wages and working conditions which are usually undertaken through the collective bargaining process at NEDLAC level. Thus, efforts should be invested to reconcile the binaries between trade unions and MROs or worker advice offices (WAOs). In other words, the idea is to augment efforts such that they complement each other's efforts as shown in the two cases of Masisukumeni and ZIWUSA.

The chapter also noted that trade unions are still reluctant to organise and represent workers who fall outside of standard employment such as in the informal economy (like zamazama, casual, outsourced and many others (see Buhlungu 2010). While trade unions cannot mobilise illegal miners (Zama-Zama) because of their 'criminal status, the study revealed that various resistance strategies evolved over the years as miners seek to resolve problems which they face in their daily working lives. The miners have resorted to worker advice offices (see Wilderman, et al 2015) and or commercial legal aid companies like Scorpion for representation in court cases.

The study suggests that partnerships between trade unions and immigrant-oriented advice offices could serve to not only restore confidence but might invigorate trust in traditional national trade unions amongst immigrant workers. These organisations might also have complementary strengths in the kinds of services, knowledge, and collective issues they are able to address. For example, migrant organisations could assist in identifying and mobilising

migrant workers while registered trade unions could take up migrant specific needs and issues at the collective bargaining table, targeting specific employers and institutions as well as bringing added resources and capacity to organise and advocate, precisely the primary purpose which the COSATU VWTT aimed to serve. In this way, the study unravelled the strengths and shortcomings of migrant oriented advice centres and the possibilities for collaboration with trade unions in a way that might allow both sides to build greater power and unity for workers.

The power of emerging social movements like *#outsourcingmustfall* as described earlier, should not be under-estimated as these could be vehicles to unite all workers based on their status in the labour market as causals, outsourced and labour brokered irrespective of nationality. Furthermore, as revealed in the cases of SADSAWU and PSI, GUFs also shape trade union responses to foreign workers in a very positive way in spite of resistance and challenges dependent on national contexts. Drawing from success cases of SADSAWU and PSI, the study shows that there is a great potential for local unions in South Africa to organise foreign workers with the support of global labour federations. In a way, this serves to ensure all workers enjoy their universal labour rights and the fruits of democracy irrespective of nationality or geo-political dynamics.

For trade unions, the availability of significant numbers of foreign workers in the labour market requires a shift from a traditional "national outlook" model (Ryan, 2005) of organising to a fresh scope for labour mobilising. Considering the challenges facing South African unions and the global unions at large, mobilising foreign workers, offers a platform for labour to organise, on a strategic basis in a way that departs from orthodox "citizenship or local worker" approaches towards worker internationalism (see Webster et al, 2009). With worker internationalism, workers are organised irrespective of nationality or boundaries based on the principle of them qualifying to be regarded as workers whether on a contract or a permanent basis.

While NUMSA has quit its affiliation to COSATU on claims of the latter supporting the newly emergent black capitalists and elite (Masiya, 2012), it is yet to be realised if the union (the largest affiliate of the newly formed SAFTU) is ready to embrace foreign workers into its ranks; an area of future research. Again, while this study failed to solicit views from independent unions like AMCU in the mining sector and the National Union of Hotel Restaurant Catering Commercial Health and Allied Workers (NUHRCCHAW) in the

hospitality sector, future studies might be essential in order to fully understand mobilisation dynamics and responses by trade unions to foreign workers in South Africa. While efforts were made to contact the respective unions, they never responded. In response to the provocative discussions in this chapter, further research seems to be of essence in order to provide a clearer representative outlook of union responses to foreign workers in South Africa.

As this chapter shows, a myriad of factors shape unions responses and attitude towards mobilisation and representation of foreign workers which include but not limited to political questions such as absence of political will and commitment to influence the process of immigration laws that would remove barriers to legal employment; xenophobia including the universalist approach to organising that maintains the rhetoric that the working class is homogenous thus neglecting the particularistic needs such as documentation. Foreign workers participation in decision-making is still limited particularly in situations where they are undocumented as revealed in the case study of the hospitality sector. Here, we witness how the national immigration laws acquiesce and emasculate foreign workers power.

Chapter 8: Foreign Workers, and the Future of Unions: Where to from here?

8.0 Introduction

The study has critically examined political subjectivities of foreign workers in an attempt to fully understand mobilisation trajectories, agency and solidarity between local and foreign workers from a class stand point and within the labour rights framework for the period 1980 to 2013. The mining sector has been used as a lens to understand mobilisation trajectories of foreign workers given its historic nature and appreciating that it was the first to attract labour from outside of the country's borders dating back to early industrialisation period. Further, as the study shows, trade unionism was imported into South Africa's labour relations by foreign workers in particular British miners who were hired to provide technical skills upon the discovery of minerals; diamond in Kimberly and gold in the Witwatersrand region (Callinicos, 2014) and it is within the very sector that foreign workers mobilisation and resistance began. In contrast, the hospitality sector represents the contemporary period of movement of foreign workers into South Africa and is the fastest growing industry to attract many immigrants. The dynamics and nuances of the two sectors included as case studies have assisted in providing in–depth insights of key factors shaping political subjectivities in a post-migrant labour regime in spite of the commonalities and dissimilarities noted.

With reference to the case study of the hospitality sector, it is discernible that factors like nationality, gender, race, education, age and social media played a very central role in influencing mobilisation, participation and representation of foreign workers in South Africa including worker solidarity while the opposite was observed in the formal mining sector where foreign miners are somewhat integrated. In view of how the capitalist system works, it is evident from the research that in comparison to their local counterparts, the class position, racial profiling, nationality of foreign workers coupled with a representation gap, permeate inhumane exploitation whereby "employers extract immigrants their maximum labour power in return for minimum rewards" (Allen, 1992:5) and further denigrate them on the socio-economic ladder. Thus, Gramsci's theory stands as the most appropriate framework of analysis for the current foreign workforce which depends mostly on civil society for alternative representation outside the traditional trade union model.

In particular, the study builds on literature on trade union responses and strategies towards migrant labour (see Connolly and Martinez Lucio, 2010: Krings, 2009: Pennix and Roosblad, 2000), an area that is understudied in the context of the global south. Furthermore, an in-

depth analysis of migration and labour laws and how these contradict or complement each other and also influence inclusion and exclusion of foreign workers in the workplace was undertaken. Various factors that shape political subjectivities among foreign workers were also identified and key among them were restrictive migration laws and policies that subordinate foreign workers to particular conditions in line with the work permit regime. Yet, even if labour laws are not sufficiently explicit in terms of discrimination against foreign workers, as opposed to migration laws and policies which remain fixated on securitisation, they adopt equality of treatment as their core principle and open up space for migrant labour in response to labour market needs and skills shortages in critical sectors of the economy.

Following the work by Marino, Penninx and Roosblad, (2015:3) on union attitudes towards immigrants in Europe, the thesis outlines and summarises the various factors that shape union responses to foreign workers. Key among them are national migration laws and policies; socio-economic aspects such as the availability of employment opportunities in the labour market (see Alho, 2015; Fine, 2015); workplace restructuring and atypical forms of work including the power and leverage of unions in national policy development and decision-making. Furthermore, based on the context of Europe, authors like Marino et al, (2015) assume that "the more powerful a trade union is, the more effective it will be in influencing the policies of government and employers' associations in union –advocated directions" (2015:3).

In contrast, the thesis shows otherwise as it is apparent that the trade union movement in South Africa is very strong and powerful in general but weak at influencing some of the economic policies that are relevant in order to equally represent all workers. This is shown by unions' poor responses to workers who fall outside of standard employment like casuals, outsourced and immigrants who constitute the category of vulnerable workers. Unions, as noted in this study, have played a very minimal role in the development of migration laws and policies. As a result, unions are ambivalent on their position vis-à-vis foreign workers; that is whether to include or exclude foreign workers within their ranks.

In a context where union membership continues to decline as a result of workplace restructuring and is also informed by the need for union renewal, unions have begun to seek ways to organise foreign and casual workers. Nonetheless, union experiences, responses and attitudes towards foreign labour vary (Connolly and Martinez Lucio, 2010) and in many cases are dependent on economic sectors in which migrants are concentrated. Thus, some unions

are still ambivalent and as a result, have failed to develop coherent organising strategies. This is further exacerbated by poor co-ordination which undermines mobilisation efforts and further creates a representation gap. Despite multiple challenges but supported by the South African institutional context where freedom of association is respected, foreign workers have begun to self-organise through various social networks and social media platforms. While alternative models of representation have begun to emerge such as migrant-rights organisations (MROs), social movements and worker advice offices (WAOs), the national collective bargaining structure in its current form continues to exclude any other form of representation and only recognises formally established trade unions. Thus, organised labour remain the sole vehicle for socio-economic bargaining while MROs, WAOs and social movements provide social and legal services such as those related to documentation. This calls for the need to pay special attention to foreign workers' needs which affect equal employment in the labour market like work permits (Pennix and Roosblad, 2000). This further reiterates and points to the heterogeneity of the working class.

In this concluding chapter, I attempt to consolidate discussions and key findings related to mobilisation, participation and representation of foreign workers in a post migrant labour regime. Central to the discussions is the analysis of how changes in the workplace, recruitment trends stimulated by policy changes have shaped the mobility of foreign workers which has become individualistic, clandestine and informal and how these dynamics influence foreign workers mobilisation, participation and representation in the workplace. In a way, informal migration has coincided with workplace restructuring including flexible employment relations outside of standard employment such that many foreign workers find themselves entangled in the complexities of informal employment, casualisation, out-sourcing and subcontracting thus posing as major constraints to mobilisation and enjoyment of labour rights.

Drawing together key findings, the chapter provides insightful methodological and theoretical contributions including areas requiring further research. The subsequent sections provide summaries of key findings, arguments and contributions drawn from various chapters; both theoretical and empirical.

8.1 A brief overview of key findings

8.1.1 Rethinking union organising strategies in a post migrant labour regime

Migrant labour was a key feature of the southern African region during the early years of industrialisation although the statistical data shows a decline in the 1970s. However, the 1980s period witnessed the opposite as capital itself became mobile. During the same period, in South Africa, policies were introduced which called for the reduction in recruitment of foreign labour. Globalisation has allowed hyper-capital mobility in search of cheap labour such that where unions are strong (high unionisation rate), capital has either closed its shop floors or implemented workplace restructuring or down-sizing in order to cut on labour costs whilst maximizing on profits. As a consequence, workers migrate in pursuit of capital as they search for employment opportunities. It is however important to point out that one of the key inputs for mining is land such that when capital in other sectors such as manufacturing became mobile; mining companies could not relocate but rather resorted to mechanisation to decrease their costs and increase productivity.

Thus, it is important to understand the mobilisation dynamics in situations whereby both capital and the working class have conflicting goals; the former striving to maximise profits and the latter confronted with job insecurity and diminishing labour rights coupled with restrictive immigration laws. For trade unions, globalisation calls for a shift from a traditional "national outlook" model (Ryan, 2005) of organising to a fresh scope for labour mobilising. Considering the challenges facing South African unions and the global unions at large, mobilising foreign workers, offers a platform for labour to organise, on a strategic basis in a way that departs from orthodox "citizenship or local worker" approaches towards worker internationalism (see Webster et al, 2009). With worker internationalism, workers are organised irrespective of nationality or boundaries based on the principle of being a worker regardless of employment contract or migrant status.

8.1.2 Union approaches to foreign labour: Universalist versus particularistic or both

Central to the thesis is the argument that unions' rhetoric that is premised on the universal Marxist class perspective tends to undermine special needs of certain categories of workers in particular those of foreign origin prompting spontaneous models of representation. The most compelling demand from foreign workers is legal documentation and many of the alternative models of representation attempt to address this. Here, I attempt to locate my findings within the debates raised by scholars such as Pennix and Roosblad (2010) who present two

approaches to migrant workers organising by unions which are universalist and particularistic (see also Fine, 2014; Alberti, Holgate and Tapia, 2013). The Universalist approach treats all workers as essentially the same with the assumption that they forge unity as the proletariat or subaltern while the latter pays particular attention to the special needs and interests of foreign workers. Findings from data gathered in this research show that union approaches to organising foreign workers is universalist and as a result, their particular needs beyond bread and butter issues such as documentation are neglected. Yet, in contrast to what is on paper, the work permit regime precedes the right to labour rights. Labour laws in South Africa such as the LRA including the Bill of Rights, by and large; protect the rights of all workers regardless of migrant status. However, the problem is that if a person is found outside the boundaries of the Immigration laws, they may be deported before they had the chance to challenge a violation of any of their rights of freedom of association.

The tendency to treat workers as a homogenous category and class tends to overshadow foreign workers' struggles, lived experiences and challenges in a foreign country and, in a way, justifies trade unions' discriminatory and exclusionary practices. However, the need to consider the heterogeneity nature of the working class does not mean migrant workers need 'special treatment' (see Penninx and Roosblad, 2000); neither does this imply unequal treatment of workers based on nationality. In other words, we need to be cautious not to confuse 'special treatment' as referring to special attention and benefits. In fact 'special needs' in this context refer to essential documents which allow them to work legally in South Africa.

The study maintains the idea that while trade unions cite the Marxist framework of class as a key form of identity for all workers (Universalist), however, it is important to point out that the working class is not homogenous. While workers are united around bread and butter issues including the long-standing struggles against capitalism; it is important to note that they are also divided around particular needs and struggles based on gender, race, age ethnicity and nationality. As a result, by treating workers as a homogenous group, unions indirectly discriminate and selectively represent the voice of workers. Moreover, by categorising workers as 'documented' and 'undocumented migrants', unions allude to the dictates of the country's immigration laws and policies, which are selective and divisive as fully explained in Chapters 4 and 7. Most importantly, drawing from empirical data, the study suggests that there is need for more understanding and less stereotyping of foreign workers as vulnerable, passive and unorganisable. Stereotyping migrants as 'vulnerable' tends to

undermine their agency yet at the point of decision-making to migrate, they are already exercising their autonomy and individual power. Moreover, their agency is very often expressed through their decisions and strategies which they exploit to navigate through the borders and the restrictive immigration barriers including in the labour market.

8.1.3 Gramsci vs Marx

Theoretically, the study used the Gramsci theory which is an extension of the Marxist theory in an attempt to broaden the analysis of mobilisation, participation and representation of foreign workers not only from a class perspective and universalist approach as popularised by unions but also in an attempt to bring in civil society hegemony and the role it plays in the balance of power and forces. This framework was essential in my quest to also understand social movement unionism in light of the need to extend focus from bread and butter to social issues such as documentation and xenophobia which affect foreign workers in communities and ultimately hinder mobilisation and participation in the political realm, workplace and communities where they live. An extension of the Marxist theory, Gramsci's theory provides an analysis of power and resistance as fundamental factors necessary for any successful class struggle; political emancipation and mobilisation (see Hoare and Smith, 1971; Clark, 1977). Analysing power as an institution is one of the most effective ways of understanding key factors that shape political subjectivities among foreign workers in a post migrant labour regime.

Gramsci's theory was more appropriate to theoretically direct my research taking into account the gaps and weaknesses of the Marxist perspective which assumes that class constitutes the foundation for a united workforce thus neglecting other factors which make workers heterogeneous. The mere fact that unions have done little to organise foreign workers but are also quick to strongly criticise self-organising reflects some conflicting power relations, inequalities and citizenship biases among what Gramsci refers to as the 'subaltern'. Yet, Marx could have overlooked such essential aspects in his analysis; that indeed, workers are not a homogenous category. On a separate but related note, aspects of race were also neglected as within the discourse of the subaltern, the working class is divided by particular social markers such as gender, income, skills, and race. Wage disparities and race and sometimes nationality stand out to be a defining characteristic of inequalities among the poor working class as demonstrated in the case of the hospitality sector (Chapter 6). Data from the hospitality sector revealed that some foreign workers in the sector are highly qualified with some possessing baccalaureate degrees yet they are underpaid. Homogenising

workers struggles tends to overshadow the politics of difference even within various economic classes.

8.1.4 The changing nature of migration, labour demand and supply in a post migrant labour regime

Migration trends from countries in the southern African region to South Africa have dismally declined in the post migrant labour regime, partly as a result of policy changes and also due to dwindling job opportunities in traditional sectors such as agriculture and mining which historically attracted migrant labour to the country. The study unravelled the acute shift in migration and labour policies in which the emphasis is placed on recruitment of locals as opposed to foreigners. For instance, today, foreign miners are no longer replaced by their family members while at the same time massive retrenchments have occurred prompting ex-miners to resort to informal abandoned shafts sometimes referred to as 'illegal' mining. Moreover, foreign miners still work under short–term contracts intricately tied to the lifespan of their contracts (Crush 1995) and thus, in the liminal phase, seek alternative livelihood opportunities in abandoned mines in between contracts.

Labour demand, supply and recruitment from southern African countries have dwindled over the years as a result of rigid immigration laws, new recruitment policies and retrenchments which have occurred in the post-migrant labour regime prompting informal migration to South Africa outside of existing but obsolete and inadequate government-to-government bilateral agreements. Initial declines in foreign workers recruitment was noted in the 1970s period but the impact was low and still the 1980s recorded yet another upsurge in foreign labour recruitment. While the employment of contract migrant workers in the mining industry has declined, clandestine or illegal migration has escalated and correspondingly clandestine economic migration to South Africa continues, driven by poverty and unemployment in home countries, an area which has been neglected by migration scholars and sociologists.

Both sectors under study have been affected by post-apartheid labour policies which emphasise recruitment of locals as opposed to migrants. It is important to point out that even internal migrants in the mining sector are also affected by such policies; with such rhetoric having been experienced more in recent years. For instance, on the 31st of January 2017, the then Minister of Home Affairs, Malusi Gigaba emphasised the need to strike a balance between serving citizens and approaches towards management of international migration[205].

[205] Gigaba, Malusi "Hire 60% South Africans". Interview with Siyabonga Sesant. The Cape Argus 13.02. 2017

8.1.5 Legislative and policy framework as facilitating and constraining factors

Key findings that emerged are that migration laws herein the Immigration Act of 2002 and the Employment Service Act of 2014, are to some extent 'violent' (in its metaphorical sense towards) towards foreign workers in particular those possessing low skills. In other words, immigration laws are selective towards the types of immigrants they allow to enter and work in the country, of which, is to a greater extent biased towards those in possession of essential critical skills required by the labour market. Further, these two pieces of legislation, in a way tend to undermine the objects of labour law and thereby impede mobilisation. For example, various categories of migration status attached to foreign workers including the length of time permissible to work in South Africa expose them to different levels of vulnerability and paternalistic relationships with their employers.

As discussed in–depth in Chapter 4, legislative and policy gaps result in increasing precarity, low wages, and unchecked safety hazards for foreign workers. Some studies attempted to explain the hospitality sector from a skills standpoint and thus argue that workers are poorly paid because of low levels of skills. This study challenges this notion based on collected statistical data that shows that of the sixty-seven (67) respondents, twenty-four (24) matriculated, while thirteen (13) were in possession of post-matric diploma or certificate and 3 attained university degrees. In fact, job mismatches characterised the hospitality sector such that even those with high skills who joined the sector were also disenfranchised from acquiring critical work permits as a result of stereotyping associated with the sector.

State laws and policies on migration and labour shape foreign workers mobilisation, participation and representation in a post-migrant labour regime in various ways. South Africa is believed to have some of the best laws and policies such as its national Constitution and labour laws which abide by its democratic principles. However, its immigration laws and policies are somehow still embedded in the draconian apartheid Aliens Control Act 96 of 1991 which results in constant conflict with the progressive labour laws (see Castello, 2014). Restrictive and bureaucratic conditions make it difficult to acquire work permits especially for those in possession of low skills. As a result, many are compelled to work without legal documentation and employers would prefer to hire undocumented migrants to undercut gazetted wages as a means to make more profits. To make it worse, employers have the prerogative of monitoring foreign employees' work permits which in a way creates patronage as the latter attempt to enchant their bosses in return for immigration related nepotism and

again, to avoid deportations. While labour policies are perceived as advanced, gaps still exist. Where gaps are noted in national laws, legal recourse could be pursued through international human rights, equality laws, regional and ILO instruments as revealed in Chapter 4. However, the challenge is that beneficiaries, in most cases are not conscientised and educated about international human rights and labour instruments which makes it difficult to seek recourse through that route.

Data gathered through key informant interviews, in Chapters 5, 6 and 7, reveal that unions prefer a Universalist approach to organising workers which ultimately influence policy development. While the Immigration Act upholds human rights of all migrants, the problem resides in implementation and coordination between immigration and labour legislation and the issue of the hierarchy of norms for instance in terms of allowing undocumented workers to claim their dues before deportation. While South African labour laws allow for the right to join unions (Fine, 2014), in practice, unions prefer to reach out to documented migrants only. This is also because local unions also shun undocumented migrant workers and this could be well explained by the strong relations between the ruling party and some unions. For example, the political 'marriage' between the left (COSATU) and right (ANC) further expands the bridge between trade unions and foreign workers as the former's responses are shaped by the need to conform to immigration laws that are crafted by its tripartite partner.

In relation to union policies and praxis, most of the recruitment forms still request for Green Book identity, thus suggesting that only those with the national identity cards are eligible to join unions. Trade unions have thus far been reluctant to revisiting their organising tools including other forms of identity such as passports or refugee cards. Furthermore, unions are still fixated on the corporatist kind of unionism based on membership subscriptions. In this context, foreign workers could only be eligible to join unions if they are working legally in the country and in possession of work permits. This calls for policy reforms in unions with greater flexibility on subscription payments, type of employment contracts and work permit regime. As the study shows, trade union culture in South Africa and in most parts of the world does not develop in a vacuum; rather it develops against the laws and policies of a country. As opposed to many European trade unions such as CGT in France and CGIL in Italy which have extensively mobilised in favour of undocumented workers and campaigned for their regularisation, the dominant rhetoric among South African trade unions remains that they need to comply with national immigration laws in their efforts to organise migrant workers and that they cannot reach out to the undocumented.

8.1.6 Constraints and challenges to mobilising foreign workers in a post-migrant labour regime

The study revealed that unlike the apartheid formal contract migrant labour system, contemporary migration has become individualistic, clandestine and informal and at the same time exploitation by employers taking advantage of undocumented migrants has intensified. While employment in the mining sector has dwindled, a new emerging sector to attract foreign workers is hospitality in spite of the absence of any formal arrangements between sending and hosting countries as was the case with the migrant labour system to the mines and commercial farms. As such, many are undocumented and for those who are in possession of work permits, the lifespan of their work contracts is habitually benchmarked along the former as demonstrated in Chapter 4.

My thesis is that foreign workers' political subjectivities towards mobilisation, participation and representation are inherently shaped by migration laws and policies. Nonetheless, the study revealed new sources of power through for example, social media platforms which provide open spaces for both documented and undocumented migrants to fully participate in political actions aimed at changing their working conditions without fear. As foreign workers begin to self-organise, and seek alternative models of representation, trade unions are slowly beginning to open up their doors as they also seek strategies to include vulnerable workers into their ranks and statistically revitalise their structures. Put together, these two observations demonstrate that foreign workers while somehow restricted from full participation at their physical workplaces find an alternative space for interaction through sharing and exchanging ideas using social media platforms.

For example, through WhatsApp groups, they share information on how to handle labour disputes including how to self-represent or seek representation through the Worker Advice Offices (WAOs), the Migrant Rights Organisations (MROs), the Public Interest Litigation Organisations (PILOs) or the Private Legal Firms (PLF). Having noted such developments and potential competition, unions are beginning to respond positively in their efforts to retain power within the working class. This is underpinned by the tripartite collective bargaining process in South Africa, which is biased towards organised labour as opposed to alternative forms of worker representation. Thus, tensions and conflicts were noted between unions and migrant rights organisations whereby the former strongly believe foreign workers need not self-organise separately (see Chapter 7) while the latter strongly feel alienated in particular arguing that migrant workers have 'special' needs specifically related to documentation.

It is also important to point out that unions are somehow inconsistent and ambivalent in their responses and attitude towards organising migrants with some believing that the best way is to collaborate with MROs in order to enhance workers confidence while some are still very conservative that they can undertake the task on their own and harshly criticise independent organising by foreign workers. Evidently so, the "Big Brother" mentality still haunts trade unions as they attempt to protect and close spaces for alternative players in as far as workers' representation is concerned in the broader sense of industrial relations.

Drawing from collected evidence in this study, and following Milkman, 2006; Webster 1985; Sitas, 1983; and Alberti, 2015, the study challenges conventional studies which postulate and perceive migrants as unorganisable based on the dominant discourse of vulnerabilities associated with migrancy. The two cases clearly demonstrate foreign workers' agency dating back to the 1920 mine workers strike which was led by immigrant British miners and the dockworkers strike of 1919 which was led by the Industrial and Commercial Union (ICU), founded by a Malawian, Clement Kadali[206]. Hence stereotyping migrants as docile tends to ubiquitously threaten and undermine their agency, thus positioning them on a vulnerability continuum. Nonetheless, workers' mobilisation has been dynamic over the years. From relying on ethnic networks (Sitas 1983; Webster 1985; Milkman, 2006) under apartheid, foreign workers are now self-organising through social networks and social media platforms (see Ueno, 2014) although divisions along ethnic binaries somehow exists as revealed in the case of ZIWUSA in Chapter 7.

A significant finding in this study which is premised on the historical context of the two sectors is that foreign miners are more embedded and integrated into unions than those in the hospitality sector. Based on such conclusions, there is evidence to suggest that the level of participation and representation of foreign workers in the mining sector is more pronounced than in the hospitality sector.

While documentation and non-standard employment relations (such as for example, casualisation) stand out as common inhibiting factors for organising; somehow, there are specificities associated with each sector such as poor working conditions. For instance, because foreign workers in the mining sector constitute a substantial number of union members, they are to a large extent better protected and covered by the law in relation to working hours while in the hospitality sector a large number is not unionised thus both local

[206] See South African History Online. N.B. Hospitality and service workers were also organised by the ICU

and foreign workers experience very poor working conditions irrespective of nationality as locals are also inherently affected by casual contracts. Thus, the study revealed the universal suffering of the 'subaltern' working in the hospitality sector while foreign miners are better protected by unions as those organising in the sector are not rigid and biased towards citizens given the fact that the union was founded by both local and foreign miners. Nonetheless, documentation is still much of a challenge and affects foreign miners to a greater extent, in terms of employment contracts and casualisation as revealed in Chapter 5

. Documentation stands out to be a key factor inhibiting mobilisation, participation and representation of foreign workers yet trade unions continue to pay a blind eye prompted by what Hlatshwayo (2013) refers to as 'national chauvinism'. Aside, unions also fail to acknowledge the growing trend away from formal and permanent employment towards flexible employment relations among local workers as well. Thus, migrancy does not really matter much as local casual workers are also discriminated against based on their contracts status and are also neglected by unions. In this way, workers do no share common grievances and this divides solidarity. In a way, lack of co-operation and unity divide worker solidarity and paves the way for exploitation by employers

In the mining sector, foreign workers have played a very central role in establishing the first Black union and as such their efforts are well recognised and acknowledged making it possible for them to easily 'blend' while in the hospitality sector no history other than the 'sweeping' statements about Clements Kadali, of Malawian origin who is mentioned as having founded the first African trade union (ICU). Again, the ICU organised across sectors and thus did not exclusively organised hospitality workers. Therefore, in a way, because they did not contribute much towards the foundation of trade unions in the sector, unlike in the case of foreign miners, foreign workers in hospitality somehow feel alienated hence they strongly believe that trade unions are meant only for locals while foreign miners have a strong sense of belonging. Such beliefs have prompted the proliferation of alternative models of representation such as migrant rights organisations, worker advice offices, probono legal aid and private legal firms.

In a way, the study (Chapter 4) also exposed the contradictions and at times conflicting views between migration and labour policies whereby the former tends to dictate on the latter. There is overwhelming evidence to suggest such as explained in almost all empirical chapters. While vulnerabilities which threaten mobilisation emanating from immigration laws

and policies exist, nonetheless, they have not deterred foreign workers from seeking alternatives in search of solutions to their participation and representation gap. Social media as revealed in Chapter 6 stands out as a key emerging strategy for participation and mobilisation of foreign workers.

While social media platforms might not substitute physical representation in for example workplace hearings, they to a greater extent function as platforms for sharing legal advice related to labour disputes. Furthermore, participants in these groups share and exchange information related to their social, political, health including job opportunities. This is well articulated by Ueno (2014) in her study of Filipino migrant domestic workers Facebook page – Gabriella, where she reveals how social media has played a fundamental role in its attempt to 'close' distance between migrants and their families and also as a tool for mobilisation. Similarly, while his conclusions are based on the Western context, Dahlgren (2007) also contends that social media has generated an empowering platform for mobilising citizens on critical issues that affect them. My study attempted to understand this phenomenon of mobilisation from a global south perspective and shows that the influence of social media mobilisation on foreign workers is very effective although this needs not substitute conventional and nuanced traditional strategies employed by trade unions which include workplace face-to face recruitment methods. Moreover, the study offers new insights into various emerging models of representation for foreign workers in particular those falling outside of standard employment relations such as informal, *Zama-Zama* (informal miners), and casual, out-sourced and labour brokered workers.

8.2 Summary of key points emerging from chapters

International migration is inevitable with the world increasingly experiencing the movement of people across borders in the form of political and economic refugees. Labour migration to South Africa is one of the key defining features of the southern African region and is animated by numerous factors which include socio-economic, political (Sachikonye, 1998; Taylor, 1981) and more recently medical and access to health needs (see Vearey, 2017) including a rapid demand for skilled and unskilled labour in certain industries like engineering, medical and agriculture (see Segatti, 2013; Munakamwe and Jinnah, 2014). In his study, Tylor (1981) alludes to "two conflicting sets of forces associated with migrants: centrifugal ones that induce them to leave their domicile and centripetal ones that draw them back again" (Tylor, 1981: 211). Some studies show that in a purely subsistence economy, it is

virtually impossible for migrant workers to forget about their homelands and families as Wilson (1970), an authority on migrant labour contends that:

> As long as Africans have secure rights to the use of tribal land, they will cling to the land, to the subsistence it provides, and to their tribalism, for this offers a security they understand (Wilson, 1970: 198).

Contrary to Wilson's findings, my study revealed that contemporary migrants who hail mostly from urban areas in their countries of origin very often do not own land and as a result become more and more dependent on remittances. Economic migrants very often prefer to settle down in urban spaces (Kihato and Landau 2006) as they seek livelihood opportunities notwithstanding risks associated with xenophobic violence, a recurring theme throughout the study.

On a different note, building on literature on social networks, the study showed how strong social networks in conjunction with new social media platforms have unlocked spaces for foreign workers to express their agency in South Africa outside of organised labour. While covered by the law, foreign workers in South Africa remain largely outside the protection of trade unions and this study was animated by the need to understand alternative spaces and models of mobilisation, participation and representation as this relates to political subjectivities among foreign workers.

The study aimed to extend knowledge on the complexity and dynamics of foreign workers political mobilisation trajectories in the period 1980 to 2013 and make an important contribution towards existing literature on labour and migration. Fundamentally, the study was more interested in the post migrant labour regime informed by historical dynamics and legacies to determine factors shaping political subjectivities of foreigners in contemporary South Africa. The study interrogated the intersection of migrancy, class, gender, and agency and how these intersected to shape political subjectivities of workers towards mobilisation. It is important to point out that variables related to migrancy are often overlooked in orthodox analysis related to class and agency and this tends to neglect migrants within the discourse of class thus painting a homogenous picture of the working class (Author's own analysis). In addition, the study explored the notions of power including gender and how these shape political subjectivities and responses of foreign workers towards mobilisation; mining sector being predominantly male while the hospitality sector has a strong female presence.

On a separate but related note, some scholars like Milkman (2006) and Martiniello (1997) challenge the notion of acquiescence associated with immigrants and go beyond the rhetoric of migrants apathy to demonstrate how immigrants in the U.S have managed to self-organise. The problem with these studies is that they are presented from a Western perspective yet contexts are different. This study provided a new insight on immigrant workers mobilisation from a global south perspective and thus made significant contribution towards labour migration literature. In particular, it disentangles the various models of representation which foreign workers navigate through in the global south. This study how migrants self-organise through their social networks underpinned by social media platforms and how through such spaces, they manifest their agency. In the same way, the research unpacks some of the alternative models of representation available to foreign workers in South Africa outside of institutionalised trade union movement which include for example worker advice offices (see Fine, 2013).

In addition, the research unpacked some of the key factors shaping political subjectivities among foreign workers which in the main are structural and related to migration laws and policies. It has emerged that the complex and restrictive immigration laws and policies of South Africa are ironically in conflict with labour laws and policies, making it very difficult to reconcile the two to allow for full participation of foreign workers. Furthermore, the study interrogated union strategies and responses to foreign labour in South Africa and argues that unions are still very ambivalent and have no clear position and polices related to immigrant workers. Unions are caught up within the duality and contradictions and sometimes conflicting views of how to respond to migrant labour (see Fine, 2014: Hyman, 2011). On the one hand is the desire to preserve jobs for natives and to enforce immigration laws that are crafted by proponents of neoliberalism while on the other hand; the aim is to seek legitimacy by responding to the dictates and principles of international solidarity (see Fine, 2014). However, in some sectors where initiatives to organise migrant workers have been noted; they are somehow much co-ordinated at global level through global union federations and in some instances are donor-driven.

As spaces and opportunities for migrants in the formal labour market continue to shrink, the contemporary migrants at times land themselves in the informal economy and where they are employed in the formal economy, very often work under precarious conditions (see Standing, 2011) as casuals or out-sourced. The panorama of a dual economy was long predicted by Houghton (1964) although by then he was referring to the distinction between urban

industrial economy, and rural subsistence economy, both of which migrant labourers economically dependent upon. Thus, according to Wilson and Mafeje (1963) migratory labour served as a means to earn wages to subsidise the family in the rural areas and at the same time conserving the traditional way of living.

Today, it is difficult for migrants, who in many cases originate from other cities or towns in their countries of origin to depend on subsistence farming as the majority are landless hence they are very much dependent on remittances. The proliferation of informal mining activities is symbiotically linked to changing migration and labour supply policies while migrants including labour sending countries increasingly depend on remittances. In the mining sector, cross-border migrants very often engage in mining activities in abandoned mines using skills acquired in their previous formal jobs and are referred to as *Zama-Zama,* a colloquial term meaning *"we are trying to make a living"* and this was discussed in detail in Chapter 5. In this way, the centripetal forces become dominant underpinned by the need to remit earnings back home including the desire to navigate through the social mobility ladder and this was discussed in detail in Chapters 5 and 6. Be that as it may, such material accumulation is habitually hindered by contrasting market forces coupled with austere exploitation in the hands of employers whose prerogative, according to the immigration policy of the country, is to monitor the poor migrant worker's immigration status. At this point, the basics of the industrial relations are invoked which include collective participation with local counterparts and representation by trade unions or other worker collectives to ensure wage parity. This study is important because it went beyond the discourse of vulnerability of foreign workers in the labour market and rather examined their agency, as they seek ways to maximise their efforts to earn fair wages and better working conditions.

Through an analysis of foreign workers mobilisation trajectories reflecting back from early industrial period to the post-migrant labour regime, the study is consistent with Milkman (2006) claim that immigrant workers are not docile as demonstrated by the role foreign miners displayed in solidarity with their local counterparts against apartheid and also in the establishment of the first Black trade union for mineworkers (Allen, 1993) and in addition, the much documented role of Clemence Kadalie in the formation of the first Black trade union related to the hospitality sector; the ICU (Allen, 1993). Still today, foreign miners are integrated in trade unions albeit challenges related to immigration as shown in Chapter 5 while those in the hospitality sector seem to be alienated and discriminated in the same way as their local counterparts who are employed as casuals as shown in Chapter 6. This raises a

question about the symbiotic link between migrancy, precariat and mobilisation in which the former shapes the later in a very deleterious way.

Migration laws, directly influence work contracts which are often time-framed accordingly coupled with patronage whereby it is the prerogative of the employer to monitor their foreign employees' immigration status thus subjecting them to subservient behaviour and paternalistic relationships which ultimately shape their subjectivities towards mobilisation as revealed in chapter four. Thus, any interventions by alternative worker related organisations need to consider such realities and obstacles like immigration laws and seek ways to influence policy-development in favour of migrants. Workers fluidity as a result of the work permit regime and annual contract renewals make them precarious in the labour market and this also adversely affect career progression, mobility and promotion due to career breaks as a result of the work permit regime while prospects for unionisation are minimised as membership is often defined and benchmarked along consistent subscriptions popularly referred to as *"members in good standing".* Based on his knowledge of British trade unionism, Allen (1992) maintains that:

> The value of individualism meant that workers voluntarily joined unions as individuals and regularly contributed to their upkeep, just as they subscribed to an insurance society to protect themselves against unemployment, accidents, disease or death at some indeterminate time in the future. The willingness to do that was not a natural intrinsic human reaction but a culturally determined reflex to adverse conditions (1992: 10).

While joining unions is a voluntary decision, still financial obligations such as payment of subscriptions have deleterious effects in light of circular or transnational migration and casual employment contracts. However, foreign and casual workers hardly cited financial responsibilities as deterring them from joining unions. Ironically, unions emphasise the 'Green book' identity as a pre-requisite to join. As the study shows, against all odds, foreign workers were keen to join trade unions in South Africa. This is reflected by the overwhelming positive responses expressed by respondents towards unionisation through the workplace census demonstrate a strong desire to resolve workers problems through external institutionalised representation. Again, this could be as a result of elusive conscientisation about union work through social networks or through mainstream media

Nonetheless, unions were still indecisive in their strategy paving way for self-organising as the former were prompted by their desire to become legally documented, struggles against xenophobia, poor working conditions, low wages and precarious contracts including subtle discrimination and exclusion. However, questions of sustainability of such kind of workers structures are critical in our analysis of agency in relation to realities on the ground like aspects of power, resources and state crafted policies. Valiani (2012) argues that much of the responses to transnational worker organising are reactionary and suggests the need for all-inclusive long–term organising strategies which take into account migrant workers specific needs such as granting of work permits on the collective bargaining table.

8.3 Towards a United Organised Workforce in South Africa

Dominant discourses associated with migrants as vulnerable and suffering from political apathy tend to undermine their agency and resilience while advancing trade union rhetoric which argue that immigrant workers are unorganisable. Yet, this study shows that foreign workers are actively involved in struggles aimed at transforming their workplaces in relation to bread and butter issues. With reference to the debate raised by Pennix and Roosblad (2010), it is important that unions combine both approaches (Universalist and Particularistic) if they are to fully integrate foreign workers within their ranks. A good starting point would be to address immigration challenges, which very often result in the exclusion of foreign workers from fully participating and enjoying their labour rights at the workplace. These need to take into account the fact that today, foreign workers are exploiting opportunities presented to them by advanced technology and are self-organising through linkages derived from social networks and social media platforms.

The ability to self-organise demonstrates that foreign workers are not docile and have begun to self-organise including self-representation in labour disputes underpinned by collegial support through their social media networks (in particular WhatsApp). For instance, the current workforce in the hospitality sector comprises of very young female and male workers who are very articulate in the use of modern technologic and social media in their insatiable ‘thirst’ to improve their everyday working lives. To a very minimal extent, the use of social media in the mining sector is still very subtle and this could be explained by the age factor although the informal mining sector comprises of youthful miners who are somehow techno-savvy. In light of this development, some trade unions have begun to open up their doors after realising that not only are foreign workers keen to self-organise but also local young

workers who fall outside of unions are also actively participating through social media platforms in their strong desire to belong and be recognised.

Numerous lessons could be learnt from the complexities and difficulties associated with organising foreign workers in South Africa. Antagonistic to the thesis of an apolitical immigrant as evidenced by some studies elsewhere, participants in the workplace census expressed profound interest in joining unions if they are granted an opportunity do so. In a way, this is consistent with some scholars like (Martiniello, 1997; Milkman, 2006) who challenge notions that immigrant workers are docile and unorganisable premised on the belief that foreign workers are only in a country to make money and leave. Yet, as the study revealed, the contemporary migrant aspires to settle down permanently but are kept in impermanent statuses through the precarity imposed upon them by immigration policies on the one hand, and neoliberal labour market policies on the other. Also, political instability has escalated on the continent giving effect to a large number of refugees in South Africa who view it as their permanent home such that even if their situation back home improves, still the fact that they have been exposed to a very lucrative economy further incentivises them to stay.

In their interface with foreign workers, unions need to understand discourses of agency and vulnerabilities which could facilitate or constrain organising efforts. Most importantly, there is need to appreciate that while discourses of vulnerability tend to overshadow the agency of these workers, they are not entirely passive but are somehow demobilised by structural aspects in particular institutional xenophobia manifested through migration laws and policies (see Chapter 4) including physical xenophobic violence (see Hayem, 2013). While xenophobic tendencies have been overtly elicited in the hospitality sector, this is subtle in the mining sector, where workers are more united based on historical ties forged during the struggles against xenophobia.

In a way, foreign workers to some extent have demonstrated their resilience against challenges faced and as shown in the case of the hospitality sector, have gone beyond depending on trade unions to self-organising. By expressing their associational power through their social networks, they need not be portrayed as competing against unions but as seeking ways to emancipate themselves. Unions need to self-introspect as to why in the first place foreign workers have resorted to establishing their own structures as opposed to joining existing unions; an area which needs further interrogation. In fact, political subjectivities by

unions towards foreign workers need to shift in a more positive way and the same applies to those of the latter which includes fear of the former. Most importantly, unions need to develop a deeper understanding of foreign workers lived and social realities as opposed to stereotypes and perceptions. To elucidate this point, drawing from SADSAWU experiences with organising domestic workers (see Chapter 7), it turned out that before their formal engagement with migrant domestic workers, the rhetoric was that they were difficult to organise, but as they continued to engage through the union's recruitment *'blitz'* and in collaboration with Migrant Rights Organisations (MROs), union officials later realised that foreign domestic workers were very receptive towards the union's organising efforts, perhaps more than the locals whose scapegoat is always that they operate in private "hidden" spaces (see Ally, 2007). This observation tends to dispute the contradictory and competing subjectivities related to unions' interactions with foreign workers.

Building on data gathered from empirical evidence of the research, it is important to point out that the contemporary foreign workforce seems to be ignorant about unions (Chapter 6) as the majority would not have any opportunity to work in their countries of origin as the scourge of unemployment haunts most developing countries. Therefore, to completely blame them as not being receptive to trade unions is unfair as political conscientisation is also still lacking. In some instances, as demonstrated by respondents from Mozambique (Chapter 5), who have been demobilised and traumatised by the effects of the civil war which paralysed their country for decades while those from Zimbabwe have experienced negative effects such as torture of trade union activists and their leadership by the brutal government under the leadership of the then President Mugabe.

On a separate but related note, the narrative of undocumented migrants needs to shift towards more pragmatic actions and efforts to ensure that other than complying with the dictates of national migration laws and policies, unions begin to play a proactive role in ensuring that migrant workers are legally documented by advocating for flexible conditions to acquiring work permits as has been the case with the Zimbabwe Special Permit (ZSP) and the Lesotho Special Permit (LSP). Drawing from unions' rhetoric of a Universalist approach to organising foreign workers, there is however, overwhelming evidence from the study to suggest that restrictive immigration laws and policies in their current form point to lack of commitment by unions in influencing development of immigration policies and thus undermine objectives aimed at full participation of all workers. According to Janice Fine (2014) labour has often been instrumental in the passage of restrictionist and expansionist pieces of immigration

legislation as reflected in some conflicting union policies which embrace both restrictionist and solidaristic elements (see also Alho, 2015).

In terms of representation, various models of association and representation have emerged which include social movements, worker advice offices, migrant rights organisations, probono legal centres including private legal firms who seem to be covering the representation gap and a broader spectrum of issues beyond the workplace to community challenges like xenophobia. The power of emerging social movements like *#outsourcingmustfall* should not be under-estimated as these could be vehicles to unite all workers based on their status in the labour market as casuals, outsourced and labour brokered irrespective of nationality. However, such modes of representation to a greater extent address social and legal needs including services leaving out economic needs such as wages and working conditions which are usually negotiated through the collective bargaining process at NEDLAC level. Thus, the study suggests that efforts be invested to reconcile the binaries between trade unions and MROs or Worker Advice Offices (WAOs). In other words, the idea is to augment efforts such that they complement each as shown in the two cases of Masisukumeni and ZIWUSA in Chapter 7.

Partnerships between trade unions and immigrant-oriented advice offices could serve to not only restore confidence but might invigorate trust in traditional national trade unions amongst immigrant workers. These organisations might also have complementary strengths in the kinds of services, knowledge, and collective issues they are able to address. For example, migrant organisations could assist in identifying and mobilising migrant workers while registered trade unions could take up migrant specific needs and issues at the collective bargaining table, targeting particular employers and institutions as well as bringing added resources and capacity to organise and advocate; precisely the purpose the COSATU VWTT aimed to serve (see Chapter 7). In this way, the study unravelled the strengths and shortcomings of migrant oriented advice centres and the possibilities for collaboration with trade unions in a way that might allow both sides to build greater power and unity for workers.

Most importantly, unions need to move out of their comfort zone and further extend their demands on the collective bargaining table from a fixation on ‘bread and butter’ issues to non-traditional social and policy related demands such as those related to documentation of foreign workers who stand as their potential members. Moreover, they need to fully influence

the migration policy development processes as they did during the Constitution making process where they managed to bargain for concessions in favour of workers, culminating into a very progressive Labour Relations Act (LRA). Above all, players from various spheres, through concerted efforts, need to influence crafting of more tolerant and embracing migration laws and policies (see Crush, 1995) to guarantee all who live in South Africa (irrespective of origin and nationality) full satisfaction of the fruits of democracy and universal rights as provided for in the Bill of Rights of the national Constitution (Coplan, 1995: 34) including fair labour practices for foreign workers by removing such obstacles which hinder their rights to associate and express themselves freely.

Foreign workers participation in decision-making is still limited particularly in situations where they are undocumented as revealed in the case study of the hospitality sector. Here, we witness how the national immigration laws acquiesce and emasculate foreign workers power. While foreign miners working in formal mines are documented and are required to renew their contracts annually, some have assumed positions as shop stewards. However, some are still reluctant to fully participate in workplace related actions like strikes as they fear that their precarious contracts might not be renewed. At the same time gender dynamics shape responses as none of the participants in the hospitality sector which is predominantly female were worker leaders on the shop-floor. Furthermore, while foreign workers in the hospitality sector actively participate through social media, still, overt and practical grassroots action is missing. In the context of 'sans papier' in France and immigrant workers' strike in the warehouse sector in Italy, workers employed various direct confrontational strategies like hunger strikes, demonstrations and pickets. Drawing from these two examples, it is apparent that, to achieve favourable results, mobilisation through social media platforms needs to be buttressed by direct action on the ground.

8.4 Methodological Contribution

The section below presents some methodological contributions arising from this research. Case studies as presented below constituted the bulk of my methods as detailed in Chapter 2.

8.4.1 Case Studies

The mining and hospitality sectors were used as lenses to understand mobilisation trajectories of foreign workers with the potential to provide insights of the concepts and theories under study. While different in terms of sectoral and gender dynamics, data generated from the two case studies are not mutually exclusive. In this case, the study was guided by Weber's

analysis of a generic strategy which looks for similarities among disparity cases (Burawoy 1991:289). What differentiates the two is the militancy demonstrated by miners in the struggle against apartheid which continues in the form of strikes in post-apartheid South Africa while the hospitality sector is associated with acquiescence although the in-depth study shows self–organising efforts by foreign workers in the sector facilitated through the social networks and social media platforms. In light of this, it is clear that case studies can generate very often hidden dynamics of society as analysing the hospitality sector from mere observations would only portray workers as passive.

The case studies have also managed to unravel the changing nature of the workplace in a more systematic manner demonstrating in particular how contemporary recruitment trends tend to stimulate informal migration and employment. In relation to mining, reflecting back on mobilisation trajectories through case studies, has led us to a revelation of the symbiotic link between formal and informal mining, exposing how retrenchments and recruitment policies have relegated miners in particular foreigners to the informal economy. Through an in-depth study of both sectors, the study revealed alternative models of representation with foreign informal miners relying more on private legal firms due to the criminal nature of their activities while those in the hospitality sector because of structural exclusion by unions, depend more on migrant rights organisations, worker advice offices, emerging social movements and public interest litigation organisations.

8.4.2 Ethnography

Ethnographic methods like participant observation were employed for almost three years into the writing period and allowed for substantial direct and indirect observations. Direct observations allowed me to observe foreign miners working in abandoned mines while shadowing social media spaces where those in the hospitality sector participate. This enabled me to observe dynamics such as agency, mobilisation, participation, alternative representation models and new forms of power, which might not be manifested through interviews. This allowed me to challenge the rhetoric about foreign workers apathy and indifference towards trade unions. From my experience of participant observation in this study, I have realised the importance of positionality of the researcher which might play out in both positive and negative ways.

In particular, through researching foreigner workers engaging in criminalised sectors like Zama-Zama, I learnt that one could be exposed not only to stereotypes like ‘prostitute’,

informer or spy but also could risk one's life especially when subjects of the study perceive one as a journalist or law enforcement authority and thus further emphasise the need to observe the university ethics protocol and exercising of greater caution when researching vulnerable sectors. As the study shows, the complexities associated with researching high risk spaces which are predominantly male is somehow safer with the assistance of some of the male subjects under research as they are able to point to potential spaces of danger where one could risk being raped or robbed. In other words, collaborating with subjects of research provides a localised approach to research and analysis.

Establishing a good rapport with participants allowed me to freely access their spaces at any given time and to some extent managed to address some aspects of reflexivity as gradually I became part of them such that they could freely share their strategies in my presence without fear or suspicion of betrayal. Informal spaces are also very easy to access subject to ethical negotiations than formal spaces as was revealed in the mining sector but still very difficult to navigate through hotels or restaurants even though the study revealed that some workers are informally employed in those formal workplaces like hotels and restaurants. Multi-site ethnographic studies need to be well thought of as I struggled to physically position myself at two workplaces at the same period and also taking into account the need for a coherent and systematic case study approach. Again, based on personal experience, a researcher cannot directly participate in activities which are criminalised as in my case study of illegal miners and as a result, this relegates the researcher to observer status and shadowing.

8.4.3 Workplace census

The study revealed a dearth in literature in the hospitality sector and thus the workplace census was such a good point of departure for analysis in order to understand socio-economic and political aspects like demographics of the sector, working conditions, recruitment trends, migration status, documentation, labour rights, employment contracts and mobilisation. Various issues related to this sector were noted ranging from political economy, remittances, informality, non-standard employment, collecting bargaining, working conditions, wages, socials security, labour rights, mobilisation, participation and representation of foreign workers in this sector and how this intersects with unions efforts to organise casual workers in the sector. Workplace census also assisted with identifying potential respondents for life history interviews and in a way facilitated purposive sampling.

8.4.4 Life histories

These require a lot of endurance and perseverance in order for the researcher to generate meaningful data out of them. The method also called for use of my cognitive skills and memory. In other words, participants cannot dedicate much of their time responding to a student and so where one sees the potential of a participant to generate knowledge, patience is required. For instance, the longest time I spend conducting a life history interview totalled a period of four days with a lot of catching up from previous conversations also marred with a lot of repetitions. It was also sometimes very difficult to get in touch with the participant whose schedule was always busy. But with so much dedication and perseverance, at the end of the last session, I was glad to note that substantial new insights critical to my research had emerged out of the life history interviews. However, I also noted aspects of subjectivities and manipulation of data especially that which were related to how foreign workers were integrated into the union considering that some participants were some of the foreign miners who also founded the union.

In two of the interviews, which involved ex-mine workers who are currently employed in very high senior union positions, the respondents seemed to glorify the union while at the same time denouncing the apartheid system and union rivalry which has become rampant in the post migrant labour regime. They were also not keen to highlight the challenges they encountered because of their identity as foreign nationals and presented a picture that all was well and that all workers were treated the same as union members. This was in contrast to some of the views expressed in the all foreign miners' focus group discussion at Mine A which was cited in Chapter 5. Upon further probing, I understood the disparity in views which was based on the documentation issue as partly because the senior ex-miners had benefitted from the prior amnesties offered to all miners in 1996 as documented in Chapter 4.

The advantage was that those who occupied senior union positions as shop stewards were in a much better position to accept the offer while those within the rank and file were quite cynical of the process resulting also from lack of conscientisation on the objectives of the amnesty process. Furthermore, based on direct observation, I noted the material benefits disparities between foreign ex-miners currently serving in senior union positions and ordinary foreign mineworkers who are still working on the shop-floor. On a positive note, as one participant explained; the senior ex-miners were in a better position to attract fellow foreign miners to the union using their life testimonies as evidence of the 'good' benefits of joining the union.

8.4.5 Informal interviews

Researching in criminalised spaces is very complex and risky for both researcher and participants as revealed in my research with Zama-Zama. Participants are very sceptical about one recording interviews, taking notes and photographing. Much as with life histories, the researcher relied more on memory and cognitive skills as I had to familiarise myself with key questions as a way of conducting informal interviews. I had to write up key issues emerging out of every interview in my reflective journal, away from participants but still abide by ethical protocol.

Again, even foreign workers were employed in formal hospitality workplaces were also sceptical about opening up as they feared losing their jobs as literally they were hired on informal contracts although working in formal spaces. To counter this problem, interviews were conducted outside of workplaces but still most participants were reluctant to be recorded and also did not allow me to take down notes in their presence. Thus, interviews were also informal and notes were recorded after interviews in the reflexive journal. Moreover, in the case of hospitality workers, while some were very open to share information, others tended to manipulate data given their paternalistic relationships with their employers whereby they felt the latter were demonstrating some favours by employing them while they are undocumented (see Chapter 6).

This method was problematic if I were to quote direct verbatim as it would be difficult to record the quote in a chronological way. To overcome this, I requested the participant to allow Ethel (my assistant and also translator) to capture interesting statements and indeed explained that I found it interesting to take note of and would like to use it in my final report without mentioning their name. If they agreed, then I would code the quote for incorporation into my findings section. With time, many participants got used to talking to me such that for those who had offered interesting interviews before, I would revisit our conversations again and by then, they were keen to allow note-taking in their presence.

One advantage of ethnography is that the researcher would be in a position to associate participants according to the depth of information provided and also to repeat interviews when it is necessary to do so provided the participants are not highly mobile and if there is not much high job turnover. At the same time, I realised that while Zama-Zama could move from one abandoned shaft to another in search of new mineral discoveries, still they established permanent bases where they process their ore and also where labourers,

predominantly women, are involved in grinding of the rock into fine powder. Many participants from the three categories of workers; formal and informal mining including hospitality workers were willing to share their mobile contacts with time which made it possible to make appointments if ever I needed to clarify anything out of initial informal interviews. The challenge was with some dubious male participants who would gladly share their contacts and also request for mine and later call me sometimes at awkward hours.

Women participants were also ready to exchange numbers and in many cases would call me if they encountered any problems; at their 'shafts' or social settings where they live. For instance, Mai Tanya[207] would call if police ambushed them or on issues related to gender-based violence. In January 2015, she called me one early morning inviting me to witness a suicidal case which involved domestic violence upon which they requested for my intervention with repatriation of the body back home. I explained to her that I could not assist financially but instead referred them to a migrant rights church ministry that supports immigrants in South Africa. The deceased and his family were undocumented and, therefore, I referred them to the Zimbabwean Consulate, where they were assisted with documents to clear the deceased and also for the family to be able to travel for the funeral. With the assistance of the Church and community, the family managed to put together financial resources to repatriate the deceased body for burial in Zimbabwe.

In his ethnographic work conducted among the farming community in Zimbabwe, Worby (2010) also encountered challenges related to social responsibilities and following his work, I managed to handle this situation. To the community, I had become more of an outsider – insider such that it was difficult to distance myself from the community social life and only appear to them as and when I need to collect my data. This social experience further opened up room for interaction and sharing of social information.

8.5 Future Research

While not exhaustive, this study has unravelled various factors pertaining to discourses that shape political subjectivities among foreign workers in South Africa and has also posed several questions for future research. In relation to union responses, while NUMSA quit its affiliation to COSATU on claims of the latter supporting the newly emergent black capitalists and elite (Masiya, 2012), it is yet to be realised if the union is ready to embrace foreign

[207] Not real name. Mai Tanya is a leader for the Zimbabwean community working on abandoned shafts in the Westrand area. She is also a community activist advocating for women's rights in the informal mines and informal settlements where they live.

workers into its ranks; an area which requires in-depth further research. Again, while this study failed to solicit views from independent unions like AMCU in the mining sector and the National Union of Hotel Restaurant Catering Commercial Health and Allied Workers (NUHRCCHAW) in the hospitality sector, future studies might be essential in order to fully understand mobilisation dynamics and responses by trade unions to foreign workers in South Africa.

In response to the provocative discussions raised, there is need for further research in order to provide a clearer representative outlook of factors shaping political subjectivities, mobilisation, participation and representation among foreign workers in South Africa. Such research could embrace lengthy ethnographic studies of unions and other alternative models of representation as revealed by the study. These would assist in providing an on-going analysis of responses by trade unions and MROs as the workplace dynamics continue to shift apart; from permanence towards more casualisation and as the world continues to integrate under the influence of global forces characterised by pervasive competition.

Further, longitudinal research is essential in order to understand the possibilities of a confluence between migration and labour legislative and policy frameworks in light of regional and global proposals; for instance, suggestions for a SADC visa including enforcement of universal human and labour rights at global level. On a different note, the question of union culture needs to be pursued. For example, militancy (in democratic countries like South Africa) and brutality associated with trade unionism (in dictatorial countries like Zimbabwe and Mozambique) came up in a very subtle manner in the two case studies. Such deterring factors in a way affect mobilisation of the contemporary migrant due to lived practical experiences some foreign workers have been exposed to before migration.

As the study shows, the discourses around foreign workers need to move beyond the rhetoric of vulnerability and focus more on aspects such as agency and the numerical power foreign workers bring to the movement including enabling factors for mobilisation and political participation taking into consideration advancements in technology. Who knows, perhaps in the near future, physical representation in hearings or labour tribunals would be a thing of the past and replaced by robots, or that collective bargaining negotiations would be conducted through social media or that a huge fraction of workforce will comprise of atypical and foreign workers and the big question is what then would be the role of trade unions or will they be still relevant?

Employers wield much power in a capitalist society like South Africa more especially the role they play in monitoring and enforcement of the immigration laws which provide room for paternalistic and exploitative relationships. A systematic inquiry will be of paramount to understand why the laws are complacent in enforcing such statutory requirements on employers in a more equitable manner with employees also monitoring their bosses where laws are breached (for example, when employers hire undocumented migrants).

Another issue that was not fully addressed in this study was an analysis of why contemporary migrant workers fail to directly respond to the injustices of the workplace and the restrictive immigration laws and policies today as opposed to those who were hired through the old migrant labour system who would openly stand up against injustices in a more volatile political environment like apartheid? In contrast, the case of immigrant workers in France shows otherwise as Freedman (2008) posits: "As government policies toward immigration have become more restrictive the scale of the movements has grown" (2008; 2).

This study has thrown up many questions which need further investigation and if the debate is to be moved forward, it is important to understand: given the precarious employment relations in the post-migrant labour regime, why is it that workers have become somehow passive when there is gross violation of their labour rights or is it a lack of recognition of such injustice? Furthermore, some respondents cited religious social networks as connecting them with colleagues in the same field when searching for jobs or for sharing advice or education on labour rights. This shows that, in addition to social networks based on ethnicity, foreign workers also belong to religious groups, which could shape their responses to mobilisation. Thus, it is important for future studies to interrogate how religion as a distinct factor shapes mobilisation of foreign workers.

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APPENDICES

Appendix A: Participant Information Sheet

Project title: *Emerging political subjectivities in a post migrant labour regime: Mobilisation, participation and representation of foreign workers in South Africa (1980-2013*

Good Day,

My name is Janet Munakamwe. I am studying towards my PhD degree at the African Centre for Migration & Society (ACMS) at the University of the Witwatersrand on the project titled: *Emerging political subjectivities in a post migrant labour regime: Mobilisation, participation and representation of foreign workers in South Africa (1980-2013)*

I would like to understand the key factors shaping political subjectivities amongst foreign workers in South Africa in the period 1980-2013. The key objectives of the study is to document the impact of the shift in labour migration regime on foreign workers' mobilisation, participation & representation; and track key factors determining participation, representation and mobilisation (or its lack / failure) of foreign workers in South Africa. It would be my pleasure to have you as one of my informants on the subject.

I am inviting you to be a participant in my current research study. Your selection for participation in this research is based on the fact that you are currently working in the hospitality sector in South Africa.

The research is intended for scholarly publications and the researcher will not make any personal profit out of the information collected for the study. The aim is to understand foreign workers' position and role in the South African labour market. The interview is basically a conversation between you and me and you are free to stop the interview at any point you might feel like taking a break. You are free to express yourself in the language that you are comfortable with. Your name and information would be treated with confidentiality. Your name will only appear when you want it to appear. The interview will last for approximately for some days.

If you agree to be interviewed, your participation is totally voluntary and you are free to stop the interview at any stage you might feel uncomfortable. In the written report, pseudonyms will be used, unless you don't have any reservations about the use of your name in the written report. In order for me to capture the information that you will give me, it would be essential to record the interview. However, I will only record the interview with your consent and will also take down notes, should you feel uncomfortable with being recorded. The final product of this research will be a PhD thesis whose completion is anticipated by December 2016. Every process involved with this study will abide by the University of the Witwatersrand's Ethics Protocol including your consent. A copy of this thesis will be availed to you if you wish to read it.

For further information concerning my research please feel free to contact me or my research supervisor on the following contacts:

Researcher: Janet Munakamwe – 084 097 7891; Email:
janet.munakamwe@students.wits.ac.za/

munakajanet@yahoo.com

Research Supervisor: Prof Aurelia Segatti; Tel: + 27 (011)717 4047.

Email: aurelia.segatti@wits.ac.za

Appendix B: Consent Form for Research Participants

I, _____, acknowledge that I understand the research and that the research has been fully explained to me. I also understand that the information which I give to the researcher will be used in the research report.

I further acknowledge that the researcher has promised me the following:

- That my participation in this research is voluntary
- That my personal details will remain anonymous throughout the research study as well as in the research dissertation
- That I can refuse to answer any questions which I feel uncomfortable with

I hereby consent to being interviewed for the research study**: *Emerging political subjectivities in a post migrant labour regime: Mobilisation, participation and representation of foreign workers in South Africa (1980-2013)***

I agree / **I do not agree** to the interview being audio- recorded

_____ _____

Participant

Researcher

_____

Date Signed

Appendix C: Key informant interview guide for both hospitality and mining sectors

General Questions

Could you please introduce yourself? (Name, your educational background, professional experience, etc),

When did you join this sector?

What was your professional experience before?

Would you like to share information about your current responsibilities?

Specific points to be raised with each group of key informants

Union officials:

1. Could you share with me the demographic data of your union (local/foreign labour ratio?)
2. What is the education and skills profile of your members?
3. Does your union have a policy pertaining to organizing of
4. What is your union's political strategy towards the mobilisation of foreign labour?
5. How are foreign members positioned in the industry? (in relation to skills and employment position) and how do you know?
6. How does your union's approach to foreign labour relate to the union's broader approach to precariousness, casual and exploitation of workers?
7. How has been the union leadership's response to foreign labour?
8. What is the level of consciousness amongst shop stewards in as far as mobilisation and representation of foreign workers is concerned?
9. Who do you target for union membership in your workplace? [specific question to shop stewards/ organisers]
10. What have been foreign workers' response to unionisation in your workplace?[shop stewards/ organisers]
11. What have been the strengths, opportunities and achievements in mobilising and organising migrant workers? (if any attempts have been made)
12. What have been the weaknesses and challenges faced by the union in relation to foreign labour?
13. What do you suggest that should be done towards successful mobilising, organizing and representing foreign workers in South Africa?

Government officials: Departments of Labour/ Mining/ Tourism

1. Are you able to share with me the demographic information on employment in the sector your department is responsible for? (local/foreign labour ratio?)
2. Are there any specific government-to-government bilaterals in this sector and if so which are they?
3. What is Government's policy and political strategy in relation to the employment of foreign labour in this particular sector?
4. Are foreign workers in the sector characterized in terms of skills? If yes, how?
5. Where are foreign workers positioned in the industry? (in relation to skills and employment position)
6. Are there any strengths, opportunities and achievements in the use of foreign labour in the sector?
7. What have been the weaknesses and challenges (if any) that the department faces in relation to foreign labour?

Business representatives

1. Can you please introduce yourself (name of company; the length of time you have been involved in this sector, etc).
2. What exactly is the activity of your company? How has it transformed over the past decade?
3. Are you able to share with me the demographic information of employees in your company (Local/foreign labour ratio; gender breakdown, average age of workforce etc?)
4. I would be also interested to know about employment contracts (permanent, temporary, permanent temporary, casuals; seasonal (if any)?
5. Is there a national minimum wage for this sector? If yes, how much is it? If no, how do you determine wages for your employees?
6. What is the wage range for workers in this company?
7. Do workers have social benefits? If yes, what kind of benefits do they have?
8. Does your company out-source or sub-contract any services? If yes, which ones?
9. What economic shifts, (if any) have you observed over the years and how has this affected your business? Have there been specific shifts in production processes or the organization of labour; etc?

10. In general, are there any specific recruitment strategies used in this sector (eg. Labour broking; recruitment agencies, etc)
11. Are there specific strategies at the level of the sector in relation to the employment of foreign labour?
12. Do you think changes in labour recruitment strategies and supply has affected the employment of foreign workers in your sector? If yes, how?
13. Has the shift in production processes had any influence in the recruitment of foreign labour? If yes, in what ways?
14. Do you think South African education system is producing adequate skills for this particular sector?
15. How is skills development dealt with: at the level of the company, sector, or of the subsector, or of the workplace?
16. Are foreign workers in the industry characterized in terms of skills? If yes, how?
17. Where are foreign workers positioned in the industry? (in relation to skills and employment position)
18. What have been the strengths, opportunities and achievements in employing foreign workers?
19. Has the sector faced any challenges in relation to employment of foreign labour?

Civil Society/ Foreign workers organisations/ Social movements

1. What has been your organisation's involvement with foreign labour?
2. Who are your collaboration partners or key stakeholders?
3. What have been your strengths and weaknesses (if any)?
4. What is your organisation's political strategy towards the mobilisation of foreign labour?
5. What role do you think your organisation should play towards mobilisation and representation of foreign labour?
6. What would you suggest should be done towards successful mobilisation and representation of foreign labour in South Africa

Appendix D: Interview Guide Schedule for Local and Foreign Workers

A. Worker's profile

1. Tell me about yourself; (where you were born, family, education, work history)
2. Age / gender
3. When did you come to South Africa?
4. How did you come to South Africa?[208]
5. Why did you decide to come and work in South Africa?

B. Work history

6. Where did you work in your country of origin? If yes, for how long?
7. At what age did you start working?
8. How long have you worked in this sector?
9. How did you come to be a mineworker or hotel worker?
10. How did you get your job? (through friends, relatives, labour brokers, etc)

C. Conditions of employment

11. Do you have a contract?
12. If so tell me what it contains and what you understand about it?
13. If not, would you like to have one? Why?
14. How much do you get paid per month (provide range) ? And is this the same as all your colleagues? How often do you get paid?
15. How do you get paid? (cash, bank or other forms)
16. Do you feel your current wage is fair? Why?
17. Do you receive any social benefits? (eg. UIF, maternity leave, sick leave, etc)
18. How many hours do you work per day? Do you have any shift arrangements?
19. How is work divided among workers?
20. Do you use any equipment? If so, how safe is the equipment and how often does it get serviced?

[208] Should any of these questions elicit any sign of trauma, the interview will be terminated and the person referred to the appropriate organisation (see Referral list provided).

21. Where do you live? (If you live on company premises, do you pay rent? How much? If outside, do you pay rent? How much)

22. Does your company provide transport to work? If not, how do you travel to work and how much do you spend on transport per month?

D. Work relations

23. Describe your colleagues, the people you work with. (Probe for distinction between staff, who is a 'colleague'/'superior'; esprit de corps; gender; social & national origin; differences in training & skills).

24. Are your colleagues more or less experienced and trained than you? / Do you see any significant difference between your skills and theirs? If so, how do you explain it?

25. Who do you socialise with at work? Do you socialise with your colleagues outside of work? Why / How? Are you friends with some?

26. Do you perceive any 'attitudes' from any of your colleagues toward you? If so, how do you explain it?

27. Are you free to approach your supervisor or management if you encounter any work-related problems?

28. Do you get along with your colleagues at work? Who do you socialise with at work?

Are you free to approach your supervisor or management if you encounter any work-related problems?

E. Representation, organisation, conflict management

29. Other than your work, do you participate in workplace related activities like workers committee meetings or forums?

30. Do you participate in any workplace forums?

31. Have you ever participated in a workers' protest or strike? (Probe)

32. Who represents you when you have a dispute with your employer?

33. Does management consult you for any decisions related to you as a worker?

Are you a member of a workers' organisation like workplace worker's committee or forum or trade union or social forum? If not, why?

34. Are there specific communication barriers with colleagues? Explain.

35. What are the languages you mostly use at work? If so, with who?

36. Where do you go to if you have a problem related to your work?

F. General

37. Can you tell me any good aspects of your work?

38. How about challenges and what do you suggest should be done to address them??

39. Do you have anything else to say?

Appendix E: Workplace Census Questionnaire

Good Day,

My name is Janet Munakamwe. I am studying towards my PhD degree at the African Centre for Migration & Society (ACMS) at the University of the Witwatersrand on the project titled: ***Emerging political subjectivities in a post migrant labour regime: Mobilisation, participation and representation of foreign workers in South Africa (1980-2013)***

I would like to understand the role of foreign workers in the South African economy and how this relates to accessing of labour rights in relation to mobilisation, participation and representation in the workplace. I am therefore inviting you to be a participant in my current research study. Your selection for participation in this research is based on the fact that you are currently working in the mining/ hospitality sector in South Africa.

PLEASE ANSWER THE FOLLOWING QUESTIONS BY CROSSING (×) THE RELEVANT BLOCK OR WRITING DOWN YOUR ANSWER IN THE SPACE PROVIDED.

EXAMPLE of how to complete this questionnaire:

Sex:

Male	1
Female	~~2~~

<u>Section A – Background information</u>

This section of the questionnaire refers to background or biographical information. Although I am aware of the sensitivity of the questions in this section, the information will allow me

to compare groups of respondents. Once again, I assure you that your response will remain anonymous. Your co-operation is appreciated.

1. **Sex**

Male	1
Female	2

2. Age

18 - 25	1
26 - 35	2
36 - 45	3
46 – 60	4
60 +	5

3. Ethnicity/Race

Black	1
White	2
Coloured	3
Indian or Asian	4

4. How would you describe your economic status?

Poor	1
Below average	2
Average	3
Above average	4
Affluent	5

5. Your highest educational qualification?

Grade 11 or lower (std 9 or lower)	1
Grade 12 (Matric, std 10)	2
Post-Matric Diploma or certificate	3
Baccalaureate Degree(s)	4
Post- Graduate Degree(s)	5

6. Marital Status?

Single	1
Married	2
Divorced	3
Other, specify……	4

SECTION B

This section of questionnaires refers to the general questions on migration

7. Migration status

Local	1
Internal migrant	2
International migrant	3

Where exactly do you come from?

Gauteng	1
Limpopo	2
Mpumalanga	3
Western Cape	4
Free State	5
Eastern Cape	6
KZN	7
North West	8
Northern Cape	9
Mozambique	10
Lesotho	11
Swaziland	12
Botswana	13
Zimbabwe	14
Other	15
If other, specify	

8. Do you intend to go back to your country of origin?

Yes	1
No	2
Not sure	3

9. What kind of documentation do you have?

Passport	1
Asylum	2
Refugee Status	3

South African I.D.	4
Other	5

If other, please explain_____
_

10. How many years have you worked in South Africa?

0 - 5	1
6 - 10	2
11 – 15	3
16 – 20	4
More than 20 years	5

11. Did you have to change your immigration permit / documentation to match your employment needs?

Yes	1
No	2

If your answer to the above is yes, how did you do this?_____

12. How did you get this job?

applied through human resources	1
place by employment agent	2
placed by labour broker	3
a friend referred me here	4
a relative referred me here	5

Other(explain)_____
_____
_____
_____

13. Do you know your employer?

Yes	1

No	2

If yes, who do you work for?

Mine owner	1
Employment agent	2
Labour broker	3

Other (please specify) _____

SECTION C

This section explores issues related to wages and social benefits.

14. Could you give me an indication of your current gross monthly salary range?

under R1000 a month	1
Between R1001-R1500	2
R1501- R2000	3
R2001- R2500	4
above R2501	5

15. How do you get paid?

Cash	1
Bank	2

Other, (Please specify)_____

16. Do you think your wage is fair?

Yes	1
No	2

17. Do you send some of this money back to relatives at home?

Yes	1
No	2

social benefits?

18. Other than your wage, do you receive any social benefits?

Yes	1
No	2

19. If you receive any social benefits, which one of these do you receive?

Pension	1
Health	2
Accommodation	3
Unemployed Insurance Fund (UIF)	4

20. Do you have a contract?

Yes	1
No	2

21. Do you know your labour rights?

Yes	1
No	2

22. Do you intend to continue working in this sector?

Yes	1
No	2

Explain_____
_____
_____

Section D: Working relationship
The section relates to workers mobilisation, participation and representation in the workplace.

23. How close are you to your work colleagues?

close	1
Very close	2
Somehow close	3
Not close	4

24. Do you participate in any workplace worker's meetings?

Yes	1
No	2

25. Are you consulted by management on any decision pertaining to your work?

Yes	1
No	2

26. Are you consulted by your colleagues on any decision pertaining to your work?

Yes	1
No	2

27. Are you a member of any of these?

Workers committee	1
Trade union	2
Social movements (civil society organising workers	3
Worker Advice Centre	4

Other
(specify)_____

28. Have you been a member of any of the above before you migrated?

Workers committee	1
Trade union	2
Social movements (civil society organising workers	3
Worker Advice Centre	4

Other (specify)_____

29. Would you like to join a union?

Yes	1
No	2

Anything else you would like to
say?_____
_____
_____
_____

Thank you for your time!!!

Appendix F: List of Key Informant Participants

Mining Sector

Dr Sizwe Phakathi, Occupational Health & Safety, Chamber of Mines 05/11/2013. CoH Head Office (MiWORC team led by Zaheera Jinnah and included Tesfalem Araia and myself.

Dr Lize, Elize Strijdom, Chief Negotiater, Chamber of Mines, 29/11/2013, COH Head Office (MiWORC team – Tefalem Araia and myself)

Mr Heynes, Anglo-gold Ashanti, 11/02/2014; Caltonview Offices (Was part of the MiWORC team involving Zaheera Jinnah and led by Aurelia Segatti)

Prof. Nellie Mutemeri, Senior Specialist Artisanal and Small-scale Mining Issues, 15/10/2014 Anglo- Gold Ashanti Head Office, Newtown, Johannesburg

Mr Peter Bishop, Head of Security – Anglogold Ashanti South Africa Head Office. 15/10/2014 Anglo- Gold Ashanti Head Office, Newtown, Johannesburg

Mr Gad Kwata, Director, Small-Scale Mining Directorate, Department of Mineral Resources. 25/10/16 DMR Head Office, Pretoria

Jacki, a gold buying agent. 27/09/2014. Restaurant in Roodeport

Moyo, a primary gold buyer. 06/09/2014. Durban Deep

Interview with NUM shop stewards; 16 October 2014, NUM Head Office

Richard Devilliers, Former General Manager, Harmony Gold, 21/11/2014. Restaurant in Braamfontein

Mr Nico Pienaar, Director for the Aggregate and Sand Producers Association and South Africa Readymix Association; (Informal Interview). 08/07/2015. CSMI Offices, Wits University.

Interview with Cde Lesley Bothma, MDA/NUM -14.03.2016. MDA Offices

Interview with Cde Mabea, MDA/NUM -15.03.2016; 06/06/2016 & 30/06/16 MDA Offices

Interview with Cde Moises Uamusse , Former General Secretary, from the Ex-Miners Association of Mozambique, AMIMO – 05/07/2016 AMIMO Offices

Interview with Cde Lungelwe Mkhwananzi, National Co-ordinator, from the Ex-WENELA Miners Association of Zimbabwe. Interview conducted at a regional conference on labour migration hosted by Solidarity Centre at Hyatt Regency Hotel, Rosebank, Johannesburg, South Africa. 27.01. 2017

Interview with Cde Wilson Metsing . Shop Steward and Chairman of Branch(NUM) - 07/07/2016. Cook Operations 3 Mine\shaft.

Mr Tshabalala. Head of Security. 13/09/2016. Langlaangt Abandoned Shaft.

Mr Hlome. Nduna in Abandoned Shafts. 15/09/2016. Langlaangt Abandoned Shaft

Mr Torobho. Primary buyer. 15/09/2016. Durban Deep Abandoned Shaft

Hospitality Sector

Lizzy, Restaurant Supervisor, Spur, 07/11/12. Restaurant Premises

Mr Dube, Employment Agent from Zimbabwe, 11/02/2014. Company Offices, Johannesburg,

Memory, Hotel Manager Rock Hotels, 03/09/2015. Hotel Premises

David, Hotel Manager Bon Hotels, 23/10/2014. Hotel Premises

Cain, Supervisor A Waitering Company, 28/11/204. Wits University

Shadreck, Manager B Hotel, Sandton, 12/01/2015. Sandton

Mr Libate. Training & Placement Agency for the hospitality industry. 22.02.2015

Mr Ncube. Hotel Contractor. 27/06/2015

Simphiwe, Restaurant Manager Spur. 09/12/2014. Restaurant Premises. Johannesburg South

Thomas, Waitering Contractor, 01/07/2015, Johannesburg

Mr Pito. Labour broker and placement, Hospitality Industry. 09/07/2015

Business Owner

Mr D, Hotel Owner (Director), 26/11/2014, Hotel Premises, Johannesburg (N.B. He objected to use of his real name

Mr Muhamad. Employer. 17/09/2016 (N.B. He objected to use of his real name in the report as his business was involved in a very sensitive legal labour dispute)

Mr Fasiha. Employer. 15.03.2015

Trade Unionists

Patricia Nyman, SACCAWU Gender Co-ordinator, 05/05/2014. Union Head Office, Braamfontein, Johannesburg

Thomas Katsise, Head of Research, NUM, 07/11/2012. Union Head Office, Johannesburg

Howard Mbanah, FAWU National Organiser, 08/12/2013.Head Office, Johannesburg

George Mahlangu, COSATU National Campaigns Co-ordinator, 06/07/2015, COSATU Head Office

Pinki Mguni, COSATU Gauteng Gender Chairperson 06/12/2014. Booysens Hotel, CHI/ DITSELA workshop

Monica Ntuli, SADSAWU Gauteng Provincial Chairperson. 06/12/2014. Booysens Hotel, CHI/ DITSELA workshop

Thabo Mahlangu. Former SACCAWU National Organiser. 10/11/2016. Union Head Office, Braamfontein, Johannesburg

Gideon du Plessis, General Secretary of Solidariteit/ Solidarity of South Africa. 10/10/2017. Johannesburg (conducted through e-mail)

Sebei Mametlwe, National Co-ordinator, #outsourcingmustfall.). 15.11.2016 (Informal interview)

Lebohang Phanyeko, National Organiser, #outsourcingmustfall and also National Organiser for Workers and Socialist Party (WASP). 15.11.2016 (Informal Interview at one of the #outsourcingmustfall protests)

Mr Peter Ozo-Eson, General Secretary of the Nigeria Labour Congress, (NLG). 16.09.2015. N.B. Interview conducted at the International Conference on Africa at Parktonian Hotel, Braamfontein, Johannesburg

Mr. Paapa Kwasi Danquah, Head, Legal and Administration at the Ghana Trade Union Congress (TUC). 16.09.2015. N.B. Interview conducted at the International Conference on Africa at Parktonian Hotel, Braamfontein, Johannesburg

Labour Oriented Organisations

Fundi Nzimande, the then Executive Director, Development Institute for Training, Support and Education for Labour (DITSELA), 02/07/2015 Headquarters, Johannesburg

Inviolata Chinyangara, Worker Specialist, Actrav –ILO, 03/07/2015, Pretoria Offices

Nhlanhla, Masisukumeni Worker Advice Centre,20/11/2014. Organisation offices, Mpumalanga

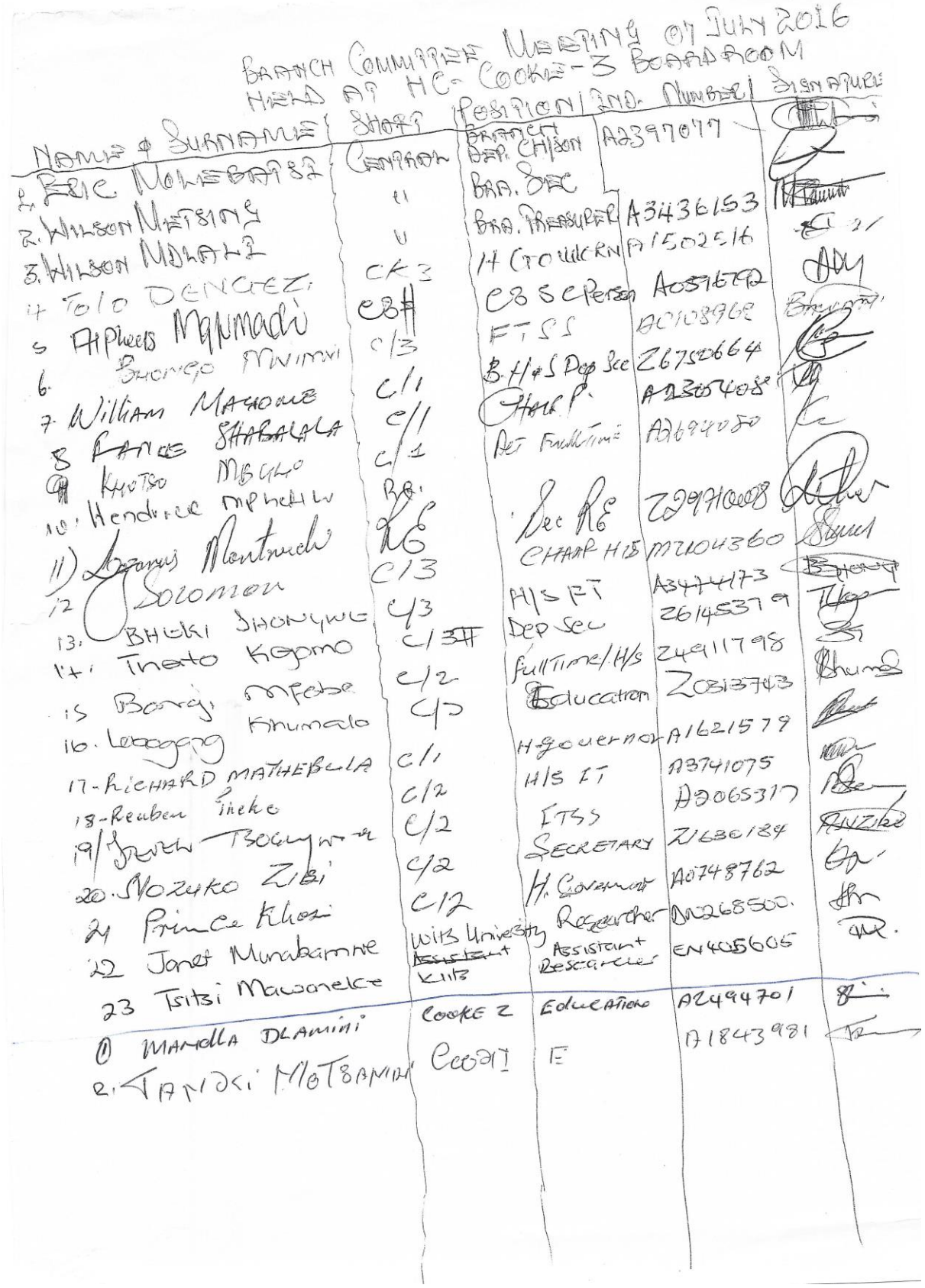
Rachel Nkosi, Masisukumeni Worker Advice Centre,20/11/2014. Organisation offices, Mpumalanga

Mandhla Masuku, ZIWUSA Secretary General, 15/11/2014. Johannesburg

Edward Muchatuta. House of Hope –Ithemba, Director. 13.02.2015. Braamfontein, Johannesburg

Advocate Shumba. Human Rights' Lawyer and Executive Director -Zimbabwe Exiles Form. 23.01.2016. Johannesburg CBD

Appendix G: List of Participants (FGDs Formal Mines(N.B. they requested that I acknowledge them in my thesis although not quoting them directly. Thus, pseudonyms were used)



Appendix H: Ethics Clearance

Research Office

HUMAN RESEARCH ETHICS COMMITTEE (NON-MEDICAL)
R14/49 Munakamwe

CLEARANCE CERTIFICATE	**PROTOCOL NUMBER H14/08/18**
PROJECT TITLE	Emerging political subjectivities in a post migration labour regime: Mobilisation, participation and representation of foreign workers in South Africa (1980-2013)
INVESTIGATOR(S)	Ms J Munakamwe
SCHOOL/DEPARTMENT	African Centre for Migration & Society
DATE CONSIDERED	22 August 2014
DECISION OF THE COMMITTEE	Approved Unconditionally
EXPIRY DATE	24/09/2016

DATE 25/09/2014 **CHAIRPERSON** E.M. Tabane (Professor T Milani)

cc: Supervisor : Prof A Segatti

DECLARATION OF INVESTIGATOR(S)

To be completed in duplicate and **ONE COPY** returned to the Secretary at Room 10000, 10th Floor, Senate House, University.

I/We fully understand the conditions under which I am/we are authorized to carry out the abovementioned research and I/we guarantee to ensure compliance with these conditions. Should any departure to be contemplated from the research procedure as approved I/we undertake to resubmit the protocol to the Committee. **I agree to completion of a yearly progress report.**

_____ _____/_____/_____

Signature **Date**

PLEASE QUOTE THE PROTOCOL NUMBER ON ALL ENQUIRIES